

**THE PRISON IDEA (UN)INTERRUPTED:
PENAL INFRASTRUCTURE EXPANSION,
RESEARCH AND ACTION IN CANADA**

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ABSTRACT

The prison as an idea and state institution has occupied a dominant place in Canadian society for almost two centuries. While imprisonment has been the object of critique from its inception, its proponents have been able to maintain penal hegemony through discourses and processes that have contributed to the reproduction of the prison idea. This study is about how the prison idea is being reproduced in Canada at this time through the establishment of new penal infrastructure. Drawing primarily on the work of Thomas Mathiesen, the finishing tendency of the state that promotes imprisonment and neutralizes other ways of understanding and responding to criminalized issues is examined. I extend this analysis by drawing attention to the unfinished tendency of the state that allows for the further entrenchment of imprisonment through techniques of opacity that prevent many of the consequences of prison expansion initiatives from becoming known and debated in democratic spaces. There are three components to this examination of state tendencies that contribute to the reproduction of the prison idea. A first component, which draws upon the access to information literature, examines the techniques of opacity used by state officials to limit access to records on new penal infrastructure that undermines the ability to understand the scope of prison capacity expansion. A second component, informed by the critical criminology and sociology of punishment literatures, explores the justifications advanced by prison officials and their external advisors in proposals to build new prison spaces tabled to politicians for consideration that animate the reproduction of the prison idea. A third component, which builds on the public criminology literature, analyses the interplay between the finishing and unfinished tendencies of the state as prison officials and politicians work towards the further entrenchment of imprisonment through ambiguous statements about the impacts of their plans, as well as arguments made in support of incarceration and to negate critiques undermining their efforts. Informed by action research, this study places an emphasis on the knowledge generated through attempts to access, understand, and contest the establishment of new penal infrastructure and sentencing measures that could lead to future prison construction.

Keywords: prison capacity expansion, prison idea, reform, abolitionism, access to information, public criminology, Canada

No one is disposable.

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GLOSSARY OF TERMS

AB	Alberta
ATI	Access to Information
BBC	British Broadcasting Corporation
BC	British Columbia
CAMP	Capital Asset Management Plan
CBC	Canadian Broadcasting Corporation
CD	Commissioner's Directive
CFCTFR	Changing Face of Corrections Task Force Report
CICS	Canadian Intergovernmental Conference Secretariat
CPC	Conservative Party of Canada
CPS	Canadian Penitentiary Service
CRCVC	Canadian Resource Centre for Victims of Crime
CSC	Correctional Service of Canada
CTV	Canadian Television
CYFN	Council of Yukon First Nations
ERC	Edmonton Remand Centre
ESA	Exchange of Service Agreements
FOI	Freedom of Information
FPT	Federal-Provincial-Territorial
HMP	Her Majesty's Penitentiary
HOC	House of Commons
JPP	Journal of Prisoners on Prisons
KROM	Norwegian Association for Criminal Reform
LPC	Liberal Party of Canada
MDC	Moncton Detention Centre
MPs	Members of Parliament
NB	New Brunswick
NDP	New Democratic Party of Canada
NL	Newfoundland and Labrador
NPB	National Parole Board
NS	Nova Scotia
NT	Northwest Territories
NU	Nunavut
OCI	Office of the Correctional Investigator of Canada
OIC	Office of the Information Commissioner of Canada
ON	Ontario
PBO	Parliamentary Budget Officer of Canada
PCO	Privy Council Office
P4W	Prison for Women (Kingston)
PSC	Public Safety Canada
RCMP	Royal Canadian Mounted Police
RNW	Radio Netherlands Worldwide
RPCC	Regina Provincial Correctional Centre
SA	Saskatchewan

SFU	Simon Fraser University
SJRCC	Saint John Regional Correction Centre
TBSC	Treasury Board Secretariat of Canada
TSN	The Sports Network
TWCC	Territorial Women's Correctional Centre
UNHCHR	United Nations High Commissioner on Human Rights
YK	Yukon

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CHAPTER I: INTRODUCTION

...the *idea* of the prison appears to have won the hegemonic struggle to define and actualize contemporary responses to the problem of crime [...] However, as Gramsci recognized, while a bloc or idea can strive for hegemonic domination that domination is never completely achieved. In short, hegemony is ‘fought for, won, lost, resisted...’ (Bennett, 1986: xv).

– Sim (2009), pp. 128-129, original emphasis.

Under attack since its ascendancy within western capitalist democracies, the modern prison has been the object of an ongoing programme of reform where its purpose has been reimagined by its proponents to perpetuate its existence (Foucault, 1977). This exercise has often resulted in the further consolidation of the power to confine and punish (Ignatieff, 1978), expanding the reach of the prison not only within the penal system, but also into communities through the introduction of so-called alternatives to incarceration such as house arrest, parole, and the like (Cohen, 1985). The banners under which the prison flag flies (e.g. deterrence, incapacitation, justice, reformation, rehabilitation, reintegration and so on) may vary over time, and disappear and reappear. However, as noted by Sim (2009) the hegemony of the prison is never complete.

This being the case, the future of imprisonment as a response to a wide-range of social issues labelled ‘crime’, while probable, is not assured and is the object of contestation between proponents and opponents of incarceration. On the one hand, there are advocates and defenders of confinement who work to persuade others of its necessity. Their work involves the ideational reproduction of the prison as a dominant idea through the ongoing ascription of meaning and purpose to an otherwise empty structure made of brick and mortar that would otherwise have no perceived function or reason to exist. On the other hand, there are those who perceive the prison to be “a fiasco in terms of its own

purposes” (Mathiesen, 1990, p. 137) and wish to halt its growth, reduce its usage or eradicate its existence altogether must also convince others, that such potential futures with reduced or no imprisonment are necessary and indeed possible. Their work involves the interruption of attempts to reproduce the prison by stripping the ideational structure that legitimates its existence. This is the struggle in which those who adopt an “abolitionist stance, a constant and deeply critical attitude towards prisons and penal systems as human (and inhumane) solutions” (Mathiesen, 2008, p. 59) are engaged.

As a normative position, penal abolitionism considers the penal system to be an assemblage of state institutions that appropriates certain conflicts as its own through criminalization (Christie, 1977), while also perpetuating harm and violence through the infliction of pain via exclusion (Hulsman and Bernat de Celis, 1982). Those adopting an abolitionist outlook advocate for the inclusive resolution of these social problems (Hulsman, 1986), while also pushing for broader structural transformation of society needed to make encounters between stakeholders in conflict possible on a larger scale than is currently practiced (Morris, 2000).

Abolitionism, “as *a way of grasping* and *a way of acting* with regard to all the discursive and non-discursive practices of the criminal justice system” (De Folter, 1986, p. 40, original emphasis), is more than a normative stance, however. It is also an amalgam of approaches to social research that aims to understand the character of imprisonment and the role it plays “as a *state* institution, intimately connected with the reproduction of an unequal and unjust social order divided by the social lacerations of class, gender, ‘race’, age and sexuality” (Sim, 2009, p. 8). Not to be understood as “a unified, unitary, coherent ensemble or agency”, the state “is always specific sets of

politicians and state officials located in specific parts of the state system. It is they who activate specific powers and state capacities inscribed in particular institutions and agencies” (Jessop, 1990, pp. 366-367 in Sim, 2009, p.8). As such, the activities of the state and its corollaries are often “contingent, contradictory and unpredictable” (Sim, 2009, p. 8). The purpose of abolitionist analysis is to inform action directed at interrupting the continuation of the prison and its corollaries (Ruggiero, 2010). This generation of knowledge is critical when engaged in an ideational struggle of this kind, providing the discursive and strategic tools needed to effectively contest penal necessity and to fight the social inequality prisons engender.

One approach to abolitionist research developed by sociologist Thomas Mathiesen (1974; 1980; 1990; 2004) over a career dedicated to working towards the elimination of prisons in Norway involves the analysis of the finishing tendency of the state, a tendency that seeks to both legitimize the prison and render ideas that challenge its existence – and those who espouse them – as illegitimate. The former involves the examination of the justifications marshalled in support of penal stasis and the further use of incarceration. These justifications are studied to develop an understanding of how the prison idea is being reproduced.

In addition to the analysis of the “supportive component” of the ideological structure “that renders the prison as an institution and a sanction meaningful and legitimate”, there is a need to examine the “negating component” of penal belief systems (Mathiesen, 1990, p. 137). This aspect of his research entails an analysis of the “neutralization techniques” mobilized by proponents of incarceration to defuse attempts to disrupt the status quo through critique, and the introduction of “fresh ideas and

initiatives” (ibid, p. 37). For Mathiesen, these “techniques vary from the more or less open dismissal of ideas which are in conflict with prevailing system interests to techniques which more subtly and unnoticeably deleted them from the agenda” (ibid). Put differently, these are techniques deployed by an “absorbent state” that “defines in” change-oriented ideas and individuals that pose a challenge to the status quo to meet its existing ends (Mathiesen, 1980, p. 287). The absorbent state also “defines out” those who do not seek to affect change through cooperation with existing hegemonic forces (ibid, p. 288).

Taken together, the analysis of the supporting and negating components of the prison idea are mobilized by abolitionists to inform action aimed at interrupting the hegemonic place prisons occupy in a given society, the results of which also become an object of analysis in the reassessment of the terms of this debate. In taking this approach, abolitionism operates as a form of action research (Ruggiero, 2010), whereby “knowledge is derived from practice, and practice [is] informed by knowledge, in an ongoing process” (O’Brien, 2001, p. 6). Through documented reflection, authoritative claims about objects of research and action are made, based on realist assertions that such claims are “factual and true” (ibid, p. 4). However, this realism is qualified by making “explicit the interpretations, biases, assumptions and concerns upon which judgments are made” about practice so that they “can give rise to theoretical considerations” (ibid, p. 5).

While Mathiesen’s conceptualization of the finishing tendency of the state is useful in understanding the reproduction of the prison idea, left under-theorized in abolitionist literature is the role that state secrecy plays in the maintenance and growth of imprisonment. It is not simply what is said in support and in defence of incarceration that

keeps the punishment train rolling. What is not disclosed by state and prison officials who deploy techniques of opacity – defined by Larsen and Walby (2012) as formal and informal processes that impact the acquisition of information held by state governments – also enables the reproduction of the prison idea by frustrating attempts by opponents to develop an analysis of the present character of imprisonment. As a consequence, the development of counter-discourses within a timeframe where action can be effective is also made difficult. This unfinished tendency in state institutions such as the prison and the development of tools, both discursive and strategic, to access information merits attention. After all, what is at stake in the struggle for abolitionists is not simply the future of imprisonment, but democracy itself (Davis and Mendieta, 2005), with access to information being a key cornerstone to political deliberations.

Drawing upon and extending penal abolitionist theory and practice, this dissertation examines *how the prison idea is being reproduced in the Canadian context* through an analysis of the discourses legitimating and processes facilitating the establishment of new penal infrastructure – a concrete manifestation of penal reassertion. I argue that the construction of new spaces of incarceration is an integral component of the reproduction of the prison idea as decisions to build them are legitimated by the stated purposes assigned to these structures that give meaning to their continued existence, in spite of its ongoing failures to achieve them. Informed by the approach to action research developed by Mathiesen (1974), I offer an account of my encounters with the finishing and unfinished tendencies of the state as I sought to uncover the scope of prison capacity expansion, examine the justifications marshalled in support of plans to build new spaces of incarceration, and analyse the neutralization techniques advanced by proponents of

confinement and pain used to deflect efforts that I, and others, made to undermine efforts to further anchor the place of imprisonment in Canada during the period examined in this study.

In this introductory chapter, I further develop the framework used to access, understand and contest the reproduction of the prison idea as part of this research project. The focus of this exercise is to identify the aspects of abolitionist theory and practice that were useful in addressing the research problems I encountered, as well as to identify gaps in the abolitionist body of work that I supplemented by drawing on other literatures: work on access to information, critical criminology and the sociology of punishment, as well as the public social research literature. In this chapter, I also provide an overview of the chapters that follow, the questions that each of them addresses, and how they relate to the broader objective of this project. But first I provide the necessary context for my study, by offering a summary of the large number of new prison spaces that were being established in Canada while I gathered my data. This prison capacity expansion boom in Canada can be located within a few broader trends that run somewhat counter to what one would expect to see in the context of a “carceral binge” (Gaucher, 2007, p. 2).

Contextualizing and Problematizing Recent Prison Capacity Expansion in Canada

From St. John’s, Newfoundland to the Lower Mainland in British Columbia, and from Iqaluit, Nunavut to Windsor, Ontario new penal infrastructure is in the process of being established across Canada.¹ At the provincial-territorial level, where adults awaiting trial and sentencing or who are serving sentences of two years minus a day are typically confined, at least 22 new prisons (see *Appendix I*) and 17 additions to existing facilities (see *Appendix II*) were in the process of being established as of 1 August 2011. Should

these facilities all come online as planned they will provide space for an additional 6,312 prisoner beds in penal institutions that housed 23,858 prisoners on a given day in 2008-2009 (Calverly, 2010, p. 19). To date, \$3.375 billion has been earmarked for the construction of these facilities,² with the price tag of projects on hold in Newfoundland and Labrador,³ as well as the Northwest Territories to be announced. These estimates do not include the costs of custody which, at the provincial-territorial level – excluding Nunavut – were just over \$1.4 billion in 2008-2009 (ibid, p. 29),⁴ with an average cost of \$161.80 per day or \$59,057 per year to incarcerate one prisoner (ibid, p. 30).

At the federal level, where approximately 13,500 individuals – usually adults serving sentences of two years plus a day – were imprisoned in 2009-2010 (CSC, 2011a, p. 3), the equivalent of 34 new units to be built on the grounds of existing penitentiaries operated and managed by the Correctional Service of Canada (CSC) were announced between August 2010 and January 2011 (see *Appendix III*). These new facilities, that are part of CSC's short term accommodation strategy to absorb the expected influx of 3,400 new prisoners resulting from the *Tackling Violent Crime Act* (2007) and *Truth in Sentencing Act* (2009) (see Head, 2010), are projected to add 2,552 new prisoner beds, with construction-related costs estimated at \$601 million. These estimates do not include federal custody expenditures, which were an average of \$322.51 per day or \$117,715.15 per year to incarcerate one prisoner in 2008-2009 (Calverly, 2010, p. 30). This is occurring in a context where CSC's budget has already increased 86 percent from \$1.597 billion in 2005-2006 (CSC, 2006), the last year a Liberal government was in federal office, to \$2.98 billion in 2011-2012 under the Conservatives (CSC, 2011a).⁵

Noting that forecasted federal penitentiary system population increases would “exert significant pressure on current capacities to accommodate inmates” (CSC, 2010a, p. 1), CSC suspended Commissioner’s Directive (CD) 550 in August 2010. This directive states: “6. Single accommodation is the most desirable and correctionally appropriate method of housing offenders” (CSC, 2001). This new counter-policy allows CSC’s five operational regions⁶ to house two prisoners in cells originally designed for one in up to 20 percent of their available spaces without seeking permission from the Commissioner (see CSC, 2010a, p. 2). Double-bunking beyond that level requires the Commissioner’s authorization (ibid). With a number of sentencing measures tabled by the Conservatives and passed in a minority Parliament in recent years that aimed to put more individuals behind bars, for longer periods of time, with fewer chances of release (see *Appendix IV*), and others reintroduced as promised by the Conservatives, who now have a majority of seats in both the House of Commons and Senate following the 2011 federal election, CSC’s Commissioner can likely expect to receive requests to further entrench the use of double-bunking in the not-so-distant future.

It should also be noted that federal penitentiary authorities have been pursuing a long term accommodation strategy (Head, 2008) as part of their ‘Transformation Agenda’ that is tasked with implementing the recommendations outlined in the *Report of the CSC Review Panel: A Roadmap to Strengthening Public Safety* (Sampson et al., 2007). The authors of this report⁷ proposed the establishment of new, multi-security-level, regional complexes to replace many of CSC’s facilities that they deemed to be outmoded. There has been much ambiguity around this penal infrastructure project, as little has been disclosed publicly about the initiative. The current Minister of Public Safety Vic Toews

initially deflected a number of questions on the topic when he assumed the position in winter 2010 (see Tibbetts, 2010a; CBC Television, 2010a). However, by June 2010 CSC's Commissioner stated that the agency was "working on a long-term plan that takes into account the need to replace some penitentiaries that have stood the test of time for many decades and no longer meet the requirements of a modern correctional system" (Head, 2010). On 6 December 2010, Minister Toews (2010a) acknowledged that CSC was scheduled to submit this "long-term accommodation strategy and investment plan for consideration" in March 2011. To date, no further details regarding the project have been disclosed to the public (see CSC, 2011b).

This push to increase prison capacity comes only a few decades removed from a Parliamentary report that was critical of incarceration as a means to achieve public safety and recommended the adoption of alternatives to imprisonment (see Daubney, 1988). It also comes just over a decade after federal-provincial-territorial governments worked together to put in place conditional sentences, more commonly known as house-arrest, as a means to reduce prison overcrowding (Roberts and Cole, 1999). It appears that under similar circumstances today, when many prison systems are again beyond capacity, instead the prison idea is not being challenged but is actually enjoying a renaissance, which this study attempts to explain.

While close to 9,000 new prisoner beds are being established in new prisons and additions to existing facilities, with others coming online through increases in the use of double-bunking, trends are emerging that trouble the logic of pursuing such a direction in public policy. First, Canada is currently in the midst of a two decade decline in the overall rate of police-reported 'crime' and more than a decade long decline in the rated

severity of police-reported 'crime' (Brennan and Dauvergne, 2011). Given that the acts and statuses that are labelled as 'crimes' must be reported to the police to trigger the penal process, these two related trends put into question calls for penal infrastructure projects predicated on the assumption that prison capacity expansion is required to address an explosion in criminalized acts (see Gilmore, 2007, p. 18).⁸ While some have pointed to the fact that police-reported 'crime' rates today are higher than they were when Statistics Canada began to compile them in 1962 (e.g. Flanagan, 2010; Newark, 2011; Lee, 2011), this historical portrait (see *Appendix V*), which is somewhat distorted due to improvements in data collection practices of Statistics Canada over the past half century, does not justify current prison construction initiatives. As noted by Doob and Webster (2006) the rate of imprisonment in Canada has remained relatively stable over the past half century (see *Appendix VI*). When juxtaposed, these trends suggest that increases and decreases in the rate of imprisonment have had a negligible impact on the level of police-reported 'crime' in Canada. This observation lends credence to the argument that the amount of incarceration in a given jurisdiction is a normative choice subject to change as beliefs, norms and values about the place of punishment in a given society evolve (Christie, 2000). A question that these developments raise, which is addressed in this study, is why jurisdictions are choosing to build more prison spaces at this time.

Second, like most jurisdictions across the world, governments in Canada have been significantly affected by the recent global financial crisis, having experienced significant employment losses (see DeKeseredy, 2011, pp. 1-2) and large budgetary deficits. In light of the significant financial difficulties faced by various jurisdictions, the timing of a multi-billion dollar diversion of scarce public resources towards expanding

the coercive arm of state governments in the form of new penal infrastructure – as social programs are cut and new government funds are raised via taxation, user fees and other means to balance the books – will likely have grave consequences. For instance, Pate (2008) argues that the retrenchment of social services in the name of deficit fighting in the 1990s created conditions where some of the most vulnerable, notably women, came into conflict with the law as they attempted to find alternative means to sustain themselves. In these instances, the individual is pathologized, with their basic needs transformed into risk factors to be addressed through so-called correctional programming that emphasizes personal responsibility and negates structural inequalities (see Hannah-Moffat and Shaw, 2000; Hannah-Moffat, 2001). In previous times of prison capacity expansion the already scarce programs said to be available to assist prisoners in their reintegration into society were further pushed to the margins as funds were diverted to bankroll new bricks and mortar, or cut back as the operation of institutions scheduled for closure and replacement winded-down. The slow death of the Prison for Women (P4W) in Kingston, Ontario that took place in the decade following the Task Force for Federally Sentenced Women (CSC, 1990) which recommended its decommissioning and the construction of new regional penitentiaries for women, is a case in point, as noted by two of its former prisoners, Melissa Stewart and Julie MacKay (1994, p. 39):

There are many women in here with substance abuse problems and no programs to help them. Why are there no programs? Cutbacks in the budget!!! Does this make sense to you? It sure doesn't make sense to me. We are returned to the street with the same problems we had when we entered the building in the first place [...] Update 1994: Edmonton [Institution for Women] is now going ahead, and we are consistently losing more services here at P4W.

In the current context, where less than five percent of the federal penitentiary system's budget is allocated towards programs, and long waiting lists exist for prisoners who seek to participate in them (OCI, 2010), along with even fewer comparable resources existing at the provincial-territorial level (Weinrath, 2009), the potential for this history to repeat itself is strong. Thus, it is vital to contest efforts to build new prison spaces, even when the reasons for building them are couched in progressive terms. I have sought to contest these efforts as part of this project, as experience has shown that such developments often exacerbate dire circumstances in the short term, while also further anchoring the place of confinement in the long term.

A third trend that puts into question the logic of expanding the capacity to confine and punish is the sheer volume of academic evidence accumulated over time that has revealed the numerous negative consequences of this direction in public policy. For instance, research on the growth of incarceration in the United States, the largest incarcerator amongst western democratic nations (see rates below), has shown that increasing the use of prison has: 1) a disproportionate impact on marginalized groups who are more likely to be caught in the net of the penal system (Mauer, 1999; Davis, 2003; Western, 2007); 2) diverts resources away from meeting the needs of the victimized (Elias, 1993); 3) hinders the reintegration of those in conflict with the law into society (Travis, 2007; Petersilia, 2009); and 4) has a deleterious impact on prisoners' communities (Clear, 2007) and their loved ones (Mauer and Chesney-Lind, 2002). For governments in Canada to increase their reliance on incarceration, albeit at a much lower level than jurisdictions in the United States, when it is known that the consequences have been so damaging elsewhere, is bewildering. Then again, scholarly evidence is not often

marshalled to develop penal policy (Tonry, 2010). How the reproduction of the prison idea occurs through the neutralization of evidence that undermines its existence is another aspect of this study.

A fourth trend that is relevant to this discussion is the fact that jurisdictions characterized by booms in prison populations in recent decades are, if one is to believe the rhetoric of politicians and senior policy makers, moving away from incarceration. In the United States, many Republican lawmakers, including Newt Gingrich and Pat Nolan (2011), who were ardent supporters of 'tough on crime' laws that led to a massive increase in the American rate of imprisonment and prison building campaigns, have initiated the Right on Crime (2010) campaign that aims to reduce their nation's reliance on incarceration. As noted by Asa Hutchinson (2011) – former Arkansas Governor, Head of the Drug Enforcement Agency under American President George W. Bush and signatory to the campaign – during his 3 March 2011 appearance before the Parliament of Canada's Standing Committee on Public Safety and National Security, most states are revisiting their mandatory minimum sentencing laws in a stated effort to ensure that the penal process is fair and to reduce the funds spent on locking people up. He also noted that even Texas recently abandoned their plan to build billions of dollars worth of new prisons in 2007, in favour of community-based approaches such as mental health services and drug treatment courts (see also Justice Reinvestment, 2010). With the prison rate in the United States reaching an all-time high in 2008 at 762 prisoners per 100,000 residents, followed by a slight decline to 743 per 100,000 in 2009 (Glaze, 2010) that coincided with the first decrease in state prison populations in 38 years (Pew Center, 2010), there is some evidence that the political rhetoric is being matched by action in

some American jurisdictions.⁹ In Europe, the British government has recently abandoned its plans to build 2,500-bed “Titan prisons” (BBC, 2009),¹⁰ while the Netherlands – a country with a comparably-sized population and rate of imprisonment to that of Canada – closed 8 of its prisons in 2009 because they did not have enough prisoners to fill them (RNW, 2009) resulting from a strategy involving an increase in community service sentences handed down by judges (RNW, 2008). How proponents of incarceration deflect arguments that allude to these experiences is also a question of relevance to this project.

In addition to the trends noted above, the development of new penal infrastructure is also problematic in that it often propels the damaging and violent practice of incarceration (Scruton and McCulloch, 2009) well into the future (Culhane, 1991). Once opened, penal institutions are difficult to close, as made visible by the continued operation of Kingston Penitentiary established in 1835. This facility represents one of the many monuments to a practice that persists and thrives to this day in spite of itself and the harm it dispenses to all. Moreover, the establishment of new prison space can lead to increases in the rate of imprisonment on the basis that “each prison cell built adds to the capacity of judges everywhere... to send more offenders to prison for longer” (Simon, 2000, p. 228). Put simply, creating new prison spaces means they are likely to be filled. A 50 percent increase in the number of women admitted to federal penitentiaries from 2000 to 2010 (Stone, 2010), following the establishment of five facilities across Canada in the mid-1990s and the 2004 opening of another regional prison in British Columbia that replaced P4W (Hayman, 2006), is a recent example of this phenomenon known as “capacity induced demand” (McCready Consulting, 2002, p. 25) in action. With new

prisons touted by CSC for their gender- and culturally-centred programming (Hannah-Moffat, 2001), “more women are being sentenced to longer periods of incarceration so that they can supposedly benefit from the treatment programs available” (Balfour, 2006, p. 169). It is this experience that led the Canadian Association of Elizabeth Fry Societies, a non-profit organization that advocates for the rights of women in prison, to abandon its long-held reformist roots and adopt an abolitionist stance (Pate, 2008). As will be shown throughout this study, such developments informed both my analysis of, and political actions aimed at contesting, the growth of prison spaces in the Canadian context.

As documented above, there is a growing network of carceral spaces in remand centres, provincial prisons and federal penitentiaries in Canada. And with this development there are numerous prospects for research, as well as challenges for advocates who wish to halt, reduce, or eradicate confinement and punishment. In the following section, I outline the analytical framework used to meet the objectives of this study – to access, understand and contest the reproduction of the prison idea in the Canadian context.

An Abolitionist Framework for Accessing, Understanding and Contesting the Reproduction of the Prison Idea

Focusing on the causes, consequences and the development of responses to that which is commonly deemed ‘criminal’, researchers involved in the development of criminological knowledge have, in most cases, been subservient to the punishment agendas of the state (Taylor *et al.*, 1973; Cohen, 1988). Intimately involved in producing knowledge about ‘crime’ and the ‘criminal’, positivist criminologists have been complicit in the reproduction of the prison idea. A recent role played by such scholars has been to help develop cognitive-behavioural programming in Canada’s prisons, particularly at the

federal level (Balfour, 2000; Duguid, 2000; Kendall, 2000; Pollack, 2000), and to participate in discussions about “what works” in ‘corrections’ (e.g. CSC, 2000a).

While critical of the “psy-sciences” (Kendall, 2000, p. 83; also see Moore, 2007) and in particular their application in the prison context, some academics, seeking to address the atrocious conditions of confinement to which prisoners are subjected, have participated in the reform of prisons. The development of the Task Force for Federally Sentenced Women (CSC, 1990) that led to the closure of P4W is one such example (see Hannah-Moffat and Shaw, 2000). While some gains were made, this collaborative initiative involving the development of a robust community-based alternatives component and the establishment of new regional prisons in conception was used by CSC to affirm the necessity of prisons for women in implementation. The community component was never implemented in a serious way. By participating in penal reform, which Pate (2008, p. 77) argues is “tantamount to rearranging the deck chairs on the Titanic”, reformist-oriented scholars have contributed to the reproduction of the prison idea in the Canadian context and elsewhere, albeit inadvertently in many cases.

In taking an abolitionist stance, I am positioning myself against positivist criminology, which reifies the terms of the penal policy debate set by the state that fails to recognize that “[c]rime is not the *object* but the *product* of criminal policy” (Hulsman, 1986, p. 11, original emphasis). Through this work, I also *attempt* to avoid the pitfalls encountered by reform-oriented researchers. These are scholars with whom I share some commitments, such as advocating for the needs of those impacted by the complex conflicts and harms in our communities that are called ‘crimes’ to be met. However, these researchers too often cede ground to proponents of the prison, particularly vis-à-vis

the necessity of incarceration, and thus are sometimes used to maintain or deepen existing arrangements. My *aim* is to generate and apply criminological knowledge in the service of an unfulfilled promise of a democracy where apparatuses of oppression, notably the prison, have been dismantled, and new ways of conceptualizing and responding to what is currently criminalized and punished that build communities instead of eroding them arise (see Davis and Mendieta, 2005). This vision of a participatory democracy, whereby citizens are provided with information and are involved in the matters that impact their lives extends to matters such as interpersonal conflict resolution and the setting of public policy. While such an ideal may never be achieved in practice, abolitionism is useful in that it serves as a sensitizing theory (Scheerer, 1986) that opens up more space for the possible through the proposition of substantive change, rather than limiting possibility through the articulation of recommendations that closely resemble the status quo. The emergence of community-based restorative justice (see Elliott, 2011) and transformative justice (see Morris, 2000) initiatives are two such examples. Below, I review some of the tools used to understand how the prison idea is being reproduced through the development of new prison spaces in the subsequent chapters of this study.

The Finishing Tendency

As noted at the beginning of this chapter, Mathiesen's framework for understanding the reproduction of the prison idea involves an analysis of both its supportive and negating components. In asserting the need for the prison and in neutralizing attempts to undermine its existence the state works towards diminishing the possibility for alternative ways of conceptualizing and responding to what is commonly referred to as 'crime'. Thus, the state maintains a central practice of reproducing social inequality.

For Mathiesen (1990, p. 138), the supportive component of the prison ideology, which includes the stated pursuit of objectives such as incapacitation and rehabilitation, has five important functions that work together to give meaning and legitimacy to incarceration. First, it has an expurgatory function, whereby “a proportion of the unproductive population of late capitalist societies could be housed, controlled and conveniently forgotten” (ibid, p. 137). One only has to look at those who typically find themselves in prisons – those who are often characterized as being a drain on the economy such as the unemployed, those said to be addicted to drugs or suffering from mental illnesses and so on – to see that penal institutions are used as a panacea to address a wide range of social issues (Davis, 2003), or more specifically, to dispose of those said to be afflicted by them (Simon, 1993; Bauman, 2004). Through social purging the prison also plays a power-draining function, whereby prisoners “are placed in a structural situation where they remain unproductive non-contributors to the system containing them” (Mathiesen, 1990, pp. 137-138). Attempts to retrench the human rights of prisoners are one example where proponents of imprisonment try to appeal to individuals who view themselves to be law-abiding citizens that deserve greater standing in society than the criminalized.

With massive harms associated with the capitalist mode of production and consumption routinely coming to the fore in the form of economic, environmental and other forms of crises, the prison also serves a diverting function (ibid, p. 138) by focusing attention on a set of harms that often have a lesser impact than those authorized or authored by those in political office and wealthy corporate actors (Reiman and Leighton, 2009). Buoyed by the symbolic function of prisons, that stigmatizes suitable enemies

through scapegoating (Christie, 1986), as well as the action function of incarceration, which allows politicians “to be *seen* to be doing something” (Sim, 2009, p. 149, original emphasis), the state works to reassert its legitimacy in the face of crises of public confidence in their ability to address shared challenges through punishment campaigns (Mathiesen, 1990, p. 14).

Within the finishing tendency of the state, Mathiesen (1990) also notes nine neutralization techniques that are used to negate failure and prevent the collapse of the prison idea. Making reference “to instructions, orders, [and] demands from the outside in general” is one approach to maintaining the status quo (ibid, p. 37). This involves the invoking of, what are argued to be, larger systemic priorities over which they have no control in determining what would be displaced by the introduction of new ideas. “Defining ideas and initiatives which are in conflict with system interests as *irrelevant*” (ibid, p. 38, original emphasis), whereby recommendations are deemed to not be applicable to the practical realities of the task at hand, is another tactic. This technique closely resembles declarations made by prison and state officials that deem suggestions to be impossible to implement given the “general conditions in the prison, lack of resources, and a whole series of other factors” (ibid). The postponement of proposals deemed to be not yet “fully developed” (ibid) is another means through which threats to the prison are disposed of. Puncturing, “whereby the practical significance of the new idea is diminished, while a front of understanding, interest, and perhaps even enthusiasm for the idea is maintained” (ibid), is useful for proponents of the prison in that it fosters dialogue with opponents with little in the way of concrete achievements.

Absorption is, arguably, the strongest technique that can be used to promote penal stasis or foster prison growth whereby the state takes up the idea “in a way which subtly and imperceptibly changes the new element in it, so that in practice it fits into the prevailing structure without threatening it. But the name is maintained, as well as the impression of having introduced something new which breaks with the previous tradition” (ibid, p. 39). This is similar to what Carlen (2002) has called the carceral clawback, whereby new initiatives introduced inside prisons are touted as transformative, but are then scaled back to meet their usual objectives of control and punishment. It is said that “prisons *must* claw back in this way – unless they are to cease being prisons and instead become all the things that the state’s legitimating rhetoric would have us believe they really are – e.g. temporary refuges, health farms or hostels” (ibid, p. 118, original emphasis).

Other neutralization techniques that are, knowingly or unknowingly, deployed by proponents of incarceration involve the denial of problems with imprisonment as an approach to understanding and responding to what authorities deem to be ‘criminal’. Non-recognition of the troubles caused by penal institutions, both inside and outside the fences that surround them, is one approach (Mathiesen, 1990, p. 140). This systematic denial also takes place under the pretence shared by its proponents “that the prison is a success, though in fact it is not and they more or less know it” (ibid). In order to maintain this pretence, disregard for disquieting evidence and the derision of expertise play an important role in maintaining the illusion of the prison success story (ibid), whose greatest success is survival in the face of massive and sustained failure.

An Unfinished Tendency

Noting the ability of the penal system to neutralize and co-opt alternative discourses and practices that threaten to undermine its existence, Mathiesen (1974) advanced the unfinished as a strategy used to introduce an alternative framework that is capable of replacing the prison. An approach that is unfinished does not seek to place old wine in new bottles, but rather aims to eradicate existing structures in favour of a configuration that is boundless and undefined. The strategy is necessarily “not based on the premises of the old system, but on its own premises” (Mathiesen, 1974, p. 13).

**Table 1:
The Forces Pulling Away from the ‘Unfinished’**

The message is	Foreign	Integrated
Suggested	Competing contradiction (alternative)	Competing Agreement
Fully formed	Non-competing contradiction	Non-competing agreement

* Source: Figure 1 in Mathiesen (1974), page 17.

To achieve its objective, the abolitionist message must operate in contradiction of the system, by deploying language that is foreign or unknown to the dominant framework, which provides a safeguard against cooptation. The alternative must also compete with the system by deploying a message that is suggested, where the results of implementation are unknown and therefore cannot be dismissed as irrelevant by proponents of the dominant framework. This dual strategy, known as the competing contradiction, is vital to the survival of an unfinished project, which is subjected to a

number of forces that attempt to stifle change (see *Table 1*). Mathiesen notes three such pitfalls: 1) the non-competing contradiction; 2) the competing agreement; and 3) the non-competing agreement.

For Mathiesen, a non-competing contradiction occurs when proponents of the alternative framework articulate a message that is not understood by the dominant system (is foreign), yet is fully formed as its potential application is tested and known. In this case, the message no longer competes with the existing framework as it can be dismissed as irrelevant to the work of the system the alternative seeks to replace.

A second tension faced by proponents of an alternative configuration is to speak the same language as the dominant system, which leads to a competing agreement. This pitfall occurs when the consequences of carrying out the message are suggested, but by virtue of using the same language it can be understood and integrated into the system. The message no longer contradicts the existing apparatus, and instead, operates as an additional appendage within the dominant framework.

The non-competing agreement is a third scenario where the alternative completely ceases to exist. This pitfall occurs when the message crafted is integrated into the dominant framework and the consequences of application are fully formed. The so-called alternative no longer competes and no longer contradicts the prevailing system as it operates like any other program within its boundaries.

In a scenario where an alternative construct manages to initially avoid the pitfalls described and abolish the once dominant framework, Mathiesen argues that the process of deconstruction ought not to end. Boundaries must continue to be pushed to ultimately erode the structures that led to the maintenance of the status quo. Should this not occur,

it is argued that we encounter a transition from one system ripe with problems to a new system with its own troubles and those lingering from a past yet to be undone. Here we can think of practices such as the death penalty that has been eradicated in many jurisdictions that, on the one hand, provide examples of successful abolitionist campaigns (Scheerer, 1986). On the other hand, these examples reveal how new repressive arrangements, often in the form of prisons, penal systems and other forms of carceral control come to take their place such as life sentences, referred to by Hartman (2009, p. 35) as “the quieter and ‘less troublesome’ death penalty” (see also Gilbert, 2009; Hemmings and Lashuay, 2009), necessitating further repression-abolishing work.

At its core, the ‘unfinished’ is a theory of political action that advances an approach to information or message management to enact a desired change. It should be noted that this strategy is not a hypothetical theory without an empirical basis. Rather, it is a sketch of the strategy used by the KROM – a Norwegian interest organization composed of prisoners, ex-prisoners, academics, lawyers and practitioners from the penal system (De Folter, 1986, p. 47) – to abolish the use of borstals for young people in conflict with the law and abolish vagrancy as a ‘crime’ in their country. Mathiesen emphasized that “alternatives or models for a ‘better’ and more expedient youth prison system [...] were at most outlined, [but] they were never shaped and formulated” (Papendorf, 2006, p. 128). This was done because Mathiesen and the KROM feared “that by choosing finished alternatives all structural changes [would] be transformed into marginal change which does not really affect the prevailing order” (ibid). The strategy allowed the group to avoid being ‘defined in’:

...the process by which the systems of ideas which were repression abolishing in origin are transformed, through the many absorbent features

of the social transformation, into repression developing systems of ideas. Through the strategy of defining in people are pushed in the direction of co-operation (De Folter, 1986, p. 49).

It also allowed them to avoid being 'defined out': "the process by which the systems of ideas which were repression abolishing in origin are simply set outside society, by being placed outside the integrative community" (ibid). In this sense, the unfinished can be seen as both an offensive strategy that "tries to do away with the repressive established system" and a defensive strategy that works "to prevent new systems of the kind which are opposed from being re-established and sliding back to old arrangements" (ibid, p. 50).

While this theory of political action serves as a useful framework for understanding how alternative visions can survive in the face of tensions that seek to suppress change, the theory is also fruitful for thinking about how the prison idea is reproduced, particularly in the Canadian context at this time. To briefly summarize, a proposition that is unfinished is one whose consequences of implementation are not fully formed and that is not amenable for debate in the integrative community. When such an ambiguous approach to political proposition is taken, opponents are put at a considerable disadvantage as they do not know the full content of the message they are presented with. The payoff for the state adoption of such a strategy is that it allows proponents to develop projects with little to no external scrutiny or to obtain support for initiatives without potential opponents knowing their key ramifications. This effectively postpones contestation until after initiatives have already been implemented and the prospect for reversing course is onerous, if not all together negated in the short term.

With state secrecy being an important feature of the Westminster parliamentary system that allows, among other things, for considerations shaping the decisions of the

Executive branch (i.e. Cabinet) to be kept private (Roy, 2006, p. 52), many governments across Canada who are in the process of establishing new penal infrastructure are using an unfinished approach. As will be shown in subsequent chapters, this strategy can involve the use of one or a combination of six techniques of opacity designed to pre-empt critique through the maintenance of state secrecy that prevents access to information that can potentially undermine the objectives pursued. Non-acknowledgement is a technique whereby state officials ignore requests for information altogether (Vallance-Jones, 2008). When these requests are acknowledged, state actors may ask for clarification or establish costly request processing fees that act as a form of deterrence in an effort to narrow the scope of the information sought and disclosed (Gentile, 2009). Postponement involves delaying the release of information that may undermine the successful implementation of an initiative until a time where public access is deemed to be largely inconsequential (Gilbert, 2000). Omission involves the exclusion of information that is not known by those outside of the circle of actors promoting a particular proposal when it is being discussed in the integrative community of democratic politics. Denial involves attempts to permanently suppress the release of information related to the execution of the idea in question (ibid). The destruction of records, a common administrative practice of state governments (Wilson, 2000), is another means through which officials prevent the disclosure of information on their policies and practices.

To understand the state of incarceration, it is necessary to gain access to this information that offers a vantage point through which one can develop an understanding of how the prison idea is being reasserted within the state system. This aspect of prison reform is often under-theorized in abolitionist research, as well as criminology and the

sociology of punishment. Thus, an additional challenge that is raised in the context of prison capacity expansion is to devise a strategy to finish that which is unfinished. Where possible, this entails moving one's understanding of the reproduction of the prison idea beyond the realm of public representation to include the realm of private deliberation amongst prison officials who put forward recommendations to politicians who are responsible for making public policy choices.

Towards the Contestation of the Finishing and Unfinished Tendencies of the State

In working towards contesting the reproduction of the prison idea, it is necessary to have access to information from which one can develop an understanding of how penal reassertion is taking place. For the purposes of this project, the information sought concerned the construction of new prisons and additions to existing facilities, the scope of which was unknown prior to this study.

The issue of access to information is a growing concern, particularly for academics interested in conducting research on the policies and practices of state government (Larsen and Walby, 2012). Barriers to information access are particularly pronounced for those who wish to conduct ethnographic and interview-based research in prisons (see Simon, 2000; King and Liebling, 2000; Wacquant, 2002; Scraton and Moore, 2006). In the Canadian context, not only do external researchers face significant challenges when filing applications to enter the carceral (Moore, 2002; Martel, 2004; Yeager, 2008), but also when attempting to obtain written records from prison agencies (Yeager, 2006).

To counter this unfinished tendency of the state, I have drawn on the access to information approach, involving the use of a contradictory mechanism within provincial,

territorial and federal governments in Canada that allow individuals to file requests to obtain previously unpublished documents. These mechanisms, which also fly under the banners of “freedom of information” and “right to information”, are contradictory in that they often simultaneously provide access to portions of the internal decision making process of state institutions, while legitimating the secrecy of others, leaving details related to certain policies and practices unknown to the requester. This study contributes to the growing literature on access to information by exploring some of the merits and limits of this approach to data collection and generation.

Examining and attempting to explain recent prison growth, particularly in the United States, has occupied a central place in critical criminology and the sociology of punishment in the past two decades (see Carrier, 2010). Within this literature there have been two broad approaches in analysis. Some researchers have taken the view that some jurisdictions have taken a ‘punitive turn’ (Bottoms, 1995) characterized by rapid rises in prison populations, a shift away from rehabilitation programming and the politicization of punishment (e.g. Young, 1999; Christie, 2000; Garland, 2001; Pratt, 2007; Simon, 2007; Wacquant, 2009). This position which purports the emergence of a ‘new punitiveness’ (Pratt *et al.*, 2005) has been critiqued for ignoring continuities in punishment practices by juxtaposing a punitive present to a nostalgic and benevolent rehabilitative past (Matthews, 2005). Such an outlook has also been critiqued for failing to acknowledge that “[t]herapeutic discourses and practices are also punitive” in the prison context (Moore and Hannah-Moffat, 2005, p. 86), while also placing the primary emphasis of analysis on political rhetoric and media representations of penality (Carrier, 2010). As noted by Carrier, the consequence of these analytical tendencies is that they lead to

judgements about the quantity of punishment (e.g. advancing arguments that a given society is said to punish too much) and sometimes have stated objectives (e.g. advancing arguments that prisons should be places of treatment) that fall into the trap of penal necessity (e.g. Bosworth, 2010; Loader, 2010; Simon, 2010).

Another approach in this discussion has been to examine current developments in penalty as symptomatic of “intensification” in the state’s “authoritarian tendencies” (Sim, 2009, p. 7), including the power to confine and punish. Such an outlook is more sensitive to continuities, as well as shifts, in penal policy and practice that have maintained and bolstered the prison idea (e.g. Zedner, 2002; Hutchinson, 2006). In adopting this more nuanced understanding of developments in punishment, coupled with an analysis of published and previously unpublished documents produced by state agencies regarding new prison construction, this study is attentive to the wide variety of arguments couched in pragmatic, progressive and punitive terms marshalled in support of these initiatives (O’Malley, 1999) within prison bureaucracies and in the public domain that aim to foreclose – or finish – other policy options.

Returning to the issue of contestation, it is important to locate this project within the professional context within which I find myself that informed the work undertaken during this study. Recently, there has been a resurgence in discussion of whether social researchers should play a public role beyond the university and academia, what objectives ought to be pursued, who should be engaged as audiences and participants in scholarly work, and how this can be achieved in practice. This is true in sociology, where Burawoy’s 2004 American Sociology Association Presidential Address that called for a greater public engagement as a means to revitalize the discipline drew reactions in

journals including a special issue of the *British Journal of Sociology* (see Hutter, 2005), as well as in criminology where the public role of research has been an important topic of discussion (e.g. Chancer and McLaughlin, 2007; Gies and Mawby, 2009; Clear, 2010; Loader and Sparks, 2011). The “public turn” in social research (Nickel, 2010, p. 694), and broader concerns for the future direction of critical criminology and its ability to influence the world in which we live, have also occupied the attention of a number of criminologists, sociologists and socio-legal scholars in Canada, whose work is often identified as belonging to this lineage of inquiry (see Hogeveen, Martel and Woolford, 2006; Huey and Paré, 2010; Doyle and Moore, 2011).

What I share with scholars who are, or have been, proponents of and participants in public social research as a means to challenge efforts to increase the use of imprisonment, is a commitment to take action.¹¹ The discussion by Loader and Sparks (2011, pp. 115-147) on the role of researchers as public criminologists is particularly instructive. They see the researcher as a “democratic under-labourer” who brings scholarly findings and related issues to the public’s attention, and opens space for debate on how to envisage and respond to criminalized conflicts and harms differently. I have also drawn on accounts describing methods of public engagement such as newsmaking criminology (Barak, 1988) and public education (Currie, 2007) that aim to deconstruct mainstream discourses and provide alternative ways of thinking about penalty. It is primarily through these methods that I contributed to broadening the terms of penal policy debates in Canada to include discussions on the fiscal costs of new penal infrastructure to undermine arguments on the need for more prisons, as well as calls for

greater government transparency to counter the often ambiguous ways in which the consequences of penal policies and related construction initiatives are presented.

With many shared concerns and features with other forays into public criminology, there are, however, a few elements that distinguish the contestation component of this study from others. First, because of the focus placed on the oscillation between research and action in the pursuit of knowledge on the reproduction of the prison idea, the place of public engagement was embedded within a larger research design, unlike many other accounts in the literature, notwithstanding some exceptions (e.g. Barak, 1999; Feilzer, 2007). However, unlike Mathiesen (1974) and other scholars who practice action research with contestation in mind, my approach did not primarily involve working within “communities of practice” (Lave and Wenger, 1991, p. 30) such as non-governmental organization to achieve mutually defined objectives.¹² Instead, I sought to develop a multi-faceted approach involving the use of various vehicles of communication (e.g. blog posts, media commentary, public education, political lobbying) to provide information derived from my research to those who occupy prominent places in these discussions (e.g. politicians, prison officials, heads of non-governmental organizations, media commentators, campaign organizers) with the goal of shaping the terms of the penal policy debates they participate in.

As a consequence of an analysis informed by abolitionist theory, there is also a heightened awareness of the role that I, as a researcher and advocate, played in the reproduction of the prison idea through the dissemination of knowledge during the course of this project. This role that researchers play is often overlooked in accounts of public criminology in practice. Here, I am referring specifically to the danger of providing an

analysis that fits into the parameters of the penal policy debate as set out by state officials. Language is central to contestation, and, if the reification of penal necessity is to be challenged, it is vital to avoid system-speak. When one is talking about ‘crime’, yet does not explicitly state that the construction of ‘crime’ is the product of political decisions of elites, often to serve their own interests and those of other powerful groups, one is using system-speak. When one refers to an individual or group of individuals as ‘criminals’, ‘offenders’ and ‘inmates’, one is reinforcing the “dehumanization of the object group using language, [that] is the first order of prison control” (Horii, 1994, p. 13; also see Huckelbury, 2009). When one talks about justice in a manner that is divorced from the reality of a penal process that fails to meet the needs of those most directly impacted by criminalized victimization (see Zehr, 1990), while also ignoring the unjust social arrangements that perpetuate other, often more consequential, forms of victimization (see Morris, 2000), one is participating in the naturalization of the existing order. A public criminology that wishes to challenge the reproduction of the prison idea must routinely challenge itself to not embody the language of the state as a matter of practice. Language transforms social situations, and whether one seeks to halt, reduce or abolish prisons and the like, no transformation is possible without changing the conversation. Admittedly, this reflex has not been automatic for me, as will be made evident throughout the course of this study, the contents of which are summarized below.

Chapter Overview

The knowledge on the discourses and processes contributing to the reproduction of the prison idea presented in this study often emerged as a result of actions I took to gain access to the scope of prison capacity expansion and to contest proposals that, if

implemented, could lead to the construction of additional penal institutions. Emphasizing the oscillation between action and research throughout the process, I have attempted to organize this dissertation in such a way that reflects how the project unfolded over time to make visible the finishing and unfinished tendencies of the state governments that frustrate attempts to contest penal necessity.

In *Chapter II: Accessing the State (of Imprisonment)* I describe the tactics used to gain access to information regarding the establishment of new penal infrastructure from provincial-territorial and federal prison agencies, including an online content search, as well as informal and formal information requests. I also outline the techniques of opacity deployed by state officials in different jurisdictions that limited what I could know about these punishment projects. In particular, I focus on CSC's use of an unfinished approach involving the non-disclosure of plans to expand federal penitentiaries. This would become a central theme of my efforts later in the study to undermine proposals to expand the use of incarceration. Following this, I describe the method used in the following chapter to analyse the documents obtained that outline arguments advanced in support of new prison construction.

After I obtained a number of published and unpublished documents on new provincial-territorial penal infrastructure, the next phase of this project involved the identification of the initial justifications for pursuing this genre of policy in an effort to understand how the prison idea was being reproduced inside state bureaucracies and by external advisors, which is the focus of *Chapter III: Legitimizing Prison Capacity Expansion*. Through this exercise, I illustrate the centrality of the rehabilitative ideal, the provision of institutional security and concerns surrounding operational efficiency as

supporting components of new prison construction designed to cope with a significant increase of remanded prisoners in provincial-territorial prisons over the past two decades. Given the introduction and passage of several federal sentencing measures in recent years under a Conservative government whose stated aim is to put more people in prison, for longer periods of time, with fewer chances of release, I also discuss the potential ramifications of these legislative initiatives that were, in most cases, not considered in the development of new prison spaces in the provinces and territories.

Concerned about the prospect for additional prison capacity expansion beyond the initiatives I had identified, which could be justified by pointing to projected or actual influxes of prisoners associated with populist federal sentencing measures,¹³ I sought to craft an approach to public engagement that could contribute to a shift in the terms of this debate. In *Chapter IV: An Initial Strategy for Contestation at a Punishment Crossroads*, I locate my approach to undermining the reproduction of the prison idea within recent discussions on public criminology. Drawing on this literature, I outline the engagement strategy adopted in this study to reach key interlocutors in the federal penal policy debate. I then discuss the key messages I used to contribute to a shift in the national penal policy conversation towards: 1) a discussion of the costs of imprisonment – known as the “treasury card” (Loader, 2010, p. 361); and 2) a discussion of the Government of Canada’s lack of transparency regarding the establishment of new federal penitentiary spaces and the implications of their sentencing measures, which I call the transparency card. Following this, I describe the focus of analysis for the following chapters that examine the discourses and processes encountered as I attempted to work towards interrupting the reproduction of the prison idea.

In *Chapter V: Penal Policy (Un)interrupted* interventions that contributed to greater awareness of cost and transparency issues related to the penal policies of, what was then, the minority Conservative Government of Canada amongst opposition parliamentarians, journalists and other actors are discussed. This analysis also involves an examination of the neutralization techniques deployed by federal government officials to deflect critique and attempts to gain greater clarity on the implications of their policies. It was in this discursive climate that the opposition declared the 40th Government of Canada to be in contempt of Parliament for refusing to disclose the full costs of their legislative proposals resulting in a temporary interruption in the Conservatives punishment agenda. However, as will be discussed in the conclusion of this chapter, the interruption was temporary as the Conservatives earned a majority of seats in the House of Commons in the federal election that ensued.

With 16 months of experience engaging in public criminology behind me informed by an abolitionist stance, there is much to think about vis-à-vis the challenges involved in engaging in this kind of work and the role one plays in the reproduction of the prison idea. In keeping with an analysis of the finishing and unfinished tendencies of the state at play, *Chapter VI: Reflections on Practice* focuses on the navigation of barriers to contestation encountered while doing public criminology. These barriers became clearer as audiences and gatekeepers to dissemination sought to determine whose side, if any, I was on, in an effort to define me in or out with their agendas, which shaped our subsequent interactions. I also discuss the difficulties of executing abolitionist discourses in practice in the midst of discussions where the terms of the debate are largely dictated by assumptions and language generated by the state and its penal system. From there, I

reflect upon how the dynamics of the university shaped my ability as a graduate student to engage in public criminology.

This study concludes with *Chapter VII: Towards an Abolitionist Future*, which returns to the main research objective of this study and provides an account of how the prison idea is being reproduced in Canada at this time. Following a brief discussion on questions that this study raises for abolitionist research and action, and about Canadian penalty more generally, I conclude by outlining short term and long term proposals to work towards a future without prisons, punishment and carceral controls.

CHAPTER II: ACCESSING THE STATE (OF IMPRISONMENT)

...how do we use the law as a vehicle of progressive change, while simultaneously emphasizing the importance of acknowledging the limits of the law...

– Angela Y. Davis in Davis and Mendieta (2005), page 92.

Introduction

A key limitation to research on the perpetuation and growth of imprisonment is the reliance on publicly available materials from which the majority of prison scholars, including those adopting an abolitionist stance, derive their findings. This is partly the result of significant barriers put in place by governments that limit researcher access to other data sources, which are particularly pronounced when one is studying opaque state institutions such as prisons.¹

By limiting their analyses to what is stated publicly by politicians and bureaucrats about penal policy and practice researchers can get a sense of how the prison idea is being reproduced as these actors market penal infrastructure projects. In cases where operational and infrastructure reviews of prison systems that recommended the construction of new prisoner beds are published, one can also get a sense of some of the arguments – those that state governments were willing to let their constituents see after considerable vetting – that informed decisions to expand the capacity of their penal institutions. However, behind the front stage of imprisonment there is also a back stage where the prison idea is reproduced, in ways that were often not communicated to the public, which contribute to the continuation of confinement. The need to excavate this unfinished facet of prison expansion is particularly vital to understanding not only the justifications developed inside prison agencies legitimating the establishment of new

penal infrastructure, but also the scope of such initiatives that often remain hidden until the shovels for these projects break ground. This information is especially relevant to abolitionist researchers who wish to interrupt the reproduction of the prison idea and contest the further entrenchment of imprisonment.

This chapter is about the barriers I encountered as a researcher seeking to access the front and back stages of penal infrastructure initiatives to excavate the scope of prison capacity expansion in Canada unfolding at this time. Beginning with a review of relevant literature, I highlight some of the barriers prison researchers have encountered in attempting to move beyond the public face of imprisonment by conducting fieldwork inside prisons. Building on these studies, I illustrate how similar barriers exist for those wishing to obtain internal records produced by prison agencies. Using an action research framework, I detail each data collection phase of this study with an emphasis on the strategies used to negotiate access to published and unpublished documents, as well as other forms of information, regarding the construction of new prisons and additions to existing facilities from the federal and thirteen provincial-territorial governments. These techniques included an online content search, informal information requests by e-mail and phone, and formal information requests through Access to Information (ATI) and Freedom of Information (FOI) protocols established by the jurisdictions concerned. I also detail the data generated in each phase of the study and the techniques of opacity deployed by state officials that limited what I, as a researcher, could know about the emergence of these penal infrastructure projects, and how these barriers shaped the development of strategies to generate the data sought. These included the use of tactics intended to reduce the scope of information requests (clarification and deterrence through

processing fees), delay disclosure (postponement), render invisible the existence of records (destruction and omission), refuse the data sought (denial) or ignore requests altogether (non-acknowledgement).

Having documented the use and legitimation of a secretive unfinished approach to penal policy making by some of the state governments contacted as part of this study, I draw on the access to information literature to reflect upon measures that could be taken to undermine the monopoly state agencies enjoy over the control of information related to their operations. To shed light on how I arrived at the findings presented in the following chapter that examines the justifications for building new spaces of confinement advanced by prison officials, external advisors and politicians, I conclude by briefly outlining the aspects of the qualitative content analysis approach (Landry, 2000) used to understand this facet of penal reassertion.

Barriers to Accessing the State and the Prison

Access to data is central to scholarly endeavours. For those interested in studying the activities of the state, which “has proved a remarkably elusive object of analysis”, access is not a given as its “agencies instinctively protect information about themselves” (Abrams, 1988, p. 61). Barring access to researchers who may be critical of their activities is a primary means through which authorities control information on their policies, practices and decisions.

Prison agencies, among the most opaque of state institutions, have been very resistant to qualitative research conducted by social scientists inside carceral institutions across the world (see Simon, 2000; King and Liebling, 2000; Wacquant, 2002; Scraton and Moore, 2006). While there are some exceptions,² preferential access has been most

often reserved for positivist researchers interested in “risk prediction, accounting, systems engineering, and the like” (Simon, 2000, p. 303). Put differently, it is researchers whose findings generally pose little political risk³ to prison authorities (Wacquant, 2002) with projects that most often seek to buttress, rather than challenge, penal necessity that typically get access to spaces of confinement and punishment.

Canadian social researchers are not exempt from this trend. For instance, Yeager (2008) was not given permission by the Carleton University Ethics Board to conduct life-history interviews with federal prisoners designated as ‘dangerous offenders’ due to his inability to secure permission from prospective host institutions through CSC’s Research Branch. Ultimately, this decision and the denials of his subsequent appeals forced him to change the focus of his doctoral dissertation. The experience led Yeager to conclude that scholars who wish to conduct research with prisoners “must be willing to expend months, maybe even years, negotiating access to (their) subjects” (ibid, p. 21). As his experience and those of others have illustrated (see Moore, 2002), is it not uncommon for social scientists to fail to gain entry inside prison walls to conduct research in Canada.

In cases where researchers are given access to prisons and prisoners to conduct their studies, they usually have to make concessions to secure their entry into the carceral. For example, Martel (2004) notes that she was only able to secure permission from CSC to conduct qualitative interviews with federally sentenced women regarding their experiences of solitary confinement by agreeing to incorporate quantitative data – the gold standard of evidence within the prison agency – into her research design. However, the subsequent findings of her segregation study (see Martel, 1999), based primarily on data obtained through interviews with incarcerated women, were ignored by CSC who

refused to attend planned meetings to discuss the implications of Martel's conclusions. She also noted that the study received little attention from media outlets that mostly described the interview-based research project as anecdotal and costly (see Martel, 2004, pp. 173-175). These are but some of the examples of "gatekeeping scrutiny" Martel personally encountered that effectively marginalized her ability to conduct and disseminate critical research within the mainstream 'correctional' field and wider society (ibid, p. 162), a phenomenon she describes as the policing of criminological knowledge.

While some are willing to spend the time and resources needed to negotiate entry to prisons or other secretive institutions, most "researchers follow the path of least resistance. Or, perhaps better, like immigrants, we tend to go where, if we are not necessarily welcomed, we are at least tolerated" (Marx, 1984, p. 2). A consequence of such decisions is that most scholars interested in studying the state undertake research that draws primarily on documents that are carefully vetted by officials prior to their publication, and thus, can only capture what the state says about its policies and practices (see Hameed and Monaghan, 2012).

One tactic that has been used to move beyond the study of the front stage of the state is to file requests under ATI / FOI protocols enshrined in law at the federal and provincial-territorial level (Piché and Walby, 2010). This approach allows individuals to obtain records regarding "the policies, decisions and operations of their governments" (Vallance-Jones, 2008, p. 6) that otherwise are not made available for public consumption (Marx, 1984; Park and Lippert, 2008).

It should be noted, however, that as the literature on access to information grows, the more evidence emerges that reveals the existence of techniques of opacity used by

gatekeepers within state governments – some of which are enshrined in ATI / FOI legislation – to regulate and control what can be known about their agencies. For instance, in 1997 Yeager requested a number of files and a software program from CSC in order to examine the markers used by the organization to classify and assess the needs of prisoners. His request for the software was denied as there is no provision in Canadian law that require the Government of Canada to hand over such records to outside observers. Although small gains were made through litigation in court regarding the acquisition of other related materials, the process was costly in terms of the time and money the researcher was required to invest (see Yeager, 2006). As will be shown below, there are also limits to the knowledge that can be generated using ATI / FOI regarding the establishment of new penal infrastructure, requiring the development of creative approaches to negotiating access to the data needed to understand this facet of the reproduction of the prison idea.

Negotiating Access

The main objective of this study is to understand how the prison idea is reproduced within the context of new penal infrastructure initiatives at various stages of completion in the Canadian context. To answer this research question there was a need to identify the scope of prison capacity expansion, examine published and unpublished documents detailing the justifications underpinning these specific projects, as well as study how the disclosure of this criminological knowledge was being policed by state agencies. Below, the four primary phases of data collection used for these purposes are described, with an emphasis on the barriers and actions taken at each stage to obtain the information sought, and the research undertaken that informed subsequent actions to this end.

Phase I – Online Content Search

This study began in February 2009 with an online content search of the fourteen prison agency websites across Canada for relevant web pages, news releases and announcements, as well as published reports related to prison capacity expansion.⁴ It should be noted that the degree of information available appears to be proportional to the amount of input the public has in deciding where these facilities will be constructed. Proactive disclosure by prison authorities regarding the establishment of new penal infrastructure can be evaluated along a continuum, from state authorities that actively provide information to the public for the purposes of receiving input to those who limit disclosure to enhance the expediency of projects by excluding the public from the process.

On one end of the continuum there are agencies like the Yukon Department of Justice (2009a), whose Correctional Redevelopment aimed at renewing the territory's prison system was based on the recommendations of the Corrections Consultation co-chaired with the Council of Yukon First Nations (CYFN) between November 2004 and March 2006. In the years since the implementation process began, members of the public have been invited to participate in the process to shape decisions related to the objectives, programs and infrastructure of the territory's prison system. Many materials related to the initiative, including information on the negotiations between the Yukon Department of Justice and the CYFN regarding the site for the new Whitehorse Correctional Centre, were and continue to be available online (see Yukon Department of Justice, 2009b). This approach to establishing penal infrastructure is one that is open in that it enrolls constituents into decision-making through the promise of input, yet has a finishing effect

by making it clear at the beginning of the process that new prison spaces will be created as a result. Through the establishment of such parameters the perpetuation of the prison idea is not threatened.

In the middle-range there are a few provinces that have provided detailed profiles on new facilities at various stages of completion. For instance, the Government of Ontario posted web pages for the proposed Toronto South Detention Centre and South West Detention Centre in Windsor (see Ontario Ministry of Community Safety and Correctional Services, 2009a; 2009b). Information on the anticipated economic benefits, location of the facilities, project phases, architectural drawings and how to give feedback regarding facility construction are included. Again, the destination – the construction of new prison spaces – is not up for debate when state governments adopt a semi-open approach, effectively defining-out those interested in pursuing alternative approaches to enhancing safety in their communities.

Agencies such as CSC sit on the other end of the continuum. While the organization published the *Report of the Correctional Service of Canada Review Panel: A Roadmap for Public Safety* (Sampson *et al.*, 2007) that proposed the replacement of aging facilities with multi-security-level regional complexes for men in each of their five operational regions, information related to this proposed infrastructure initiative has become increasingly restricted over time. Following the establishment of a “Transformation Team” to implement the recommendations of the roadmap, a series of articles were written in CSC’s *Let’s Talk* staff magazine – a publication buried in the agency’s website architecture – outlining related initiatives. One article, written by then Senior Deputy Commissioner Don Head (2008) noted that CSC was undertaking a

“comprehensive plan” to modernize their physical infrastructure in lieu of the review panel’s recommendations. As recently as July 2009, one of their web pages (see CSC, 2009a) listed “Physical Infrastructure” as a key component of their “Transformation”, along with a series of planning priorities. These priorities included the development of a project plan for regional complexes, “[l]ooking at opportunities of public / private partnerships for funding and building”, and “[b]alancing current construction / infrastructure renewal demands that are critical for current and short-term operations” (ibid). Having previously been informed that records I requested on CSC’s plans for regional complexes “do not exist within the Correctional Service of Canada” (e.g. CSC, 2009b), I immediately filed two new requests under the federal *Access to Information Act* (ATIA, 1985) when I came across this information on their website. In a conversation with a CSC ATI analyst on 17 September 2009, I was again informed that no records exist within the organization pertaining to new physical infrastructure. I responded that such a decision could not be possible given that the organization’s website stated as much. Upon visiting the bookmarked webpage where I had previously made note of CSC’s physical infrastructure plans I found that the link was broken⁵ and the main “Transformation” webpage had been updated that month (CSC, 2009c). The content I had cited previously in my July 2009 ATI request had vanished. Now, the only mention of “[m]odernizing physical infrastructure” was on a list with other “Transformation Agenda” priorities without any other details (ibid).

While the destruction of records has been described as “a necessary and legitimate business activity, provided it is conducted rationally and in compliance with law” (Wilson, 2000, p. 127), it could be argued that the example above is an illustration of how

this activity can be employed for the purposes of obfuscation. The use of this technique of opacity to render invisible published online records either signalled that the agency was pursuing a plan to build new regional complexes and no longer wanted to provide details to the public about it or that this policy proposal had been interrupted. The gap in knowledge that existed as a result of the adoption of a closed and unfinished approach, involving no public consultation and limited information disclosure, kept CSC's penal infrastructure plans and their consequences hidden from view at this stage of the study.

By the end of my search of all relevant government websites a number of published reports and press releases were collected. Through an initial analysis of these documents, eleven new provincial-territorial prisons at various stages of completion⁶ were identified including: 1) a replacement facility for Her Majesty's Prison in St. John's, (see Newfoundland and Labrador Department of Justice, 2008a); 2) new institutions in Montérégie, Roberval, Amos and Sept-Îles, as well as the re-opening of a prison in Percé (see Ministère de la Sécurité publique du Québec, 2008); 3) new detention centres in Toronto and Windsor (see Ontario Ministry of Community Safety and Correctional Services, 2009a; 2009b); 4) a new women's prison in Headingley (see Government of Manitoba, 2006); 5) the newly opened Regina Provincial Correctional Centre (RPCC) (see Saskatchewan Ministry of Corrections, Public Safety and Policing, 2008); and 6) a new facility to replace the Whitehorse Correctional Centre (see Yukon Government Cabinet Communications, 2009). With this information, I began the next stage of my study.

Phase II – Informal Information Requests

A second method used to obtain information on new prisons was informal information requests via telephone (see *Appendix VII*). Having worked in various departments of the Government of Canada, I encountered many state officials who took their jobs serving the public very seriously (see Piché, 2006, pp. 146-152). I assumed that those that I, as a member of the public, would contact for information regarding the establishment of penal infrastructure would exhibit openness vis-à-vis my queries, even in cases where information regarding these facilities were not available online. Based on this preconception, I decided that openness would be the posture adopted to negotiate access to the information sought.

With a list of questions in hand (e.g. Are you currently building or planning to build new prisons? What developments led to the decision to construct new facilities?), I phoned the various agencies. Whether I made contact with an official or left a message on their answering machines, I stated my name and that I was a doctoral student from Carleton University conducting research on prison construction across Canada hoping to obtain information informally about these projects without having to go through formal channels (e.g. filing ATI / FOI requests or submitting research proposals).

Of the fourteen agencies contacted, six provided information regarding the need for constructing new facilities and the planning process, as well as groups and organizations officials consulted. These included: 1) Prince Edward Island's Community and Correctional Services; 2) New Brunswick's Department of Public Safety; 3) Ontario's Ministry of Community Safety and Correctional Services; 4) Manitoba's Corrections Division; 5) British Columbia's Ministry of Public Safety and Solicitor

General; and 6) Yukon's Community and Correctional Services. A seventh agency, Newfoundland and Labrador's Department of Transportation and Works, also provided similar information after I was referred to them by the Department of Justice in that province. Of the remaining jurisdictions contacted, five departments including Nova Scotia's Correctional Services Division, Québec's Ministère de la Sécurité publique, Saskatchewan's Ministry of Corrections, Public Safety and Policing, Alberta's Correctional Services Division and Nunavut's Department of Justice limited their disclosure to the number of new prisons planned and their locations.

In my conversations with officials from CSC, I was unable to obtain any information on new penitentiary construction initiatives. The respondent legitimated this denial of information by noting that any proposal to build facilities, should they exist, would be a matter of Cabinet confidence. With that established from the outset of my communications with CSC, the official provided a list of criteria the agency would consider if they were to establish new penitentiaries, demonstrating at least some willingness to impart how the facility planning process works at the federal level.

While most agencies I contacted demonstrated varying degrees of openness in response to this initial round of informal information requests, the Northwest Territories Department of Justice never returned any of the four phone calls made over the one-month period, deploying a technique of opacity that can simply be described as non-acknowledgement. I encountered this tactic less frequently than others who have conducted cross-jurisdictional studies using only ATI / FOI requests (see Vallance-Jones, 2008, p. 4).

As noted previously, through an online content search, eleven new prisons at various stages of completion in Canadian provinces and territories were identified. While no new information was obtained regarding prospective CSC facilities, through informal requests over the phone information on another nine prospective provincial-territorial facilities for remanded and sentenced adults in the process of being established was obtained including: 1) potentially another facility to replace the Her Majesty's Prison in St. John's, Newfoundland in addition to the one institution previously discussed publicly; 2) a new prison to replace the Prince County Correctional Centre in Prince Edward Island; 3) a new prison in Antigonish County and another in Cumberland County, Nova Scotia; 4) a new remand centre near Moncton and a new prison in Dalhousie, New Brunswick; 5) a new Edmonton Remand Centre in Alberta; 6) a new remand centre in Burnaby, British Columbia; and 7) a new prison for women in Iqaluit, Nunavut. Having completed this stage in the study, I compiled all relevant data and included it in targeted formal information requests with Canadian prison authorities.

Phase III – Formal Information Requests

While one's ability to obtain information on the activities of state agencies using informal requests relies principally on the willingness of officials to divulge their knowledge, formal information requests – including those filed using ATI / FOI protocols – involve an on-the-record application for information which necessitates an on-the-record response from state agencies. In the case of ATI / FOI requests, individual applicants are resorting to law to coerce information from state governments regarding issues such as the construction of new penal infrastructure – records that “should be public in the first place” (Vallance-Jones, 2008, p. 6).

In an attempt to maximize record disclosure, I partitioned my first wave of formal requests into three parts. To mitigate the possibility that respondents would claim that no records existed pertaining to my requests because no new prisons were in the process of being built, the first paragraph would provide an overview of new facility construction in the jurisdiction in question where applicable. In the second and third paragraphs, details concerning the records I deemed essential to my study, such as the justifications legitimating their construction, were provided. Anticipating that many authorities would claim that my requests were overly broad, which would result in time delays and high processing cost estimates, the fourth paragraph included requests for details pertaining to projected prison construction in the next five years that could be discarded, if needed, to preserve the other aspects of the requests.

For the purposes of comparison, ATI / FOI requests were filed with twelve of the thirteen provincial-territorial prison agencies, with five formal requests to the Ontario Ministry of Community Safety and Correctional Services filed via e-mail (see *Appendix VIII*). Five similar ATI requests were filed with CSC. Of these twenty-two formal requests, sixteen were fully processed by prison agencies. Three other such agencies each partially processed a request and forwarded portions of my file to infrastructure departments at no extra cost, concluding that they did not possess all the records relevant to my requests.⁷ Another three agencies each partially processed a request and recommended that I file additional requests to other departments who held the remainder of the records sought.⁸ While request transfers are described by Gilbert (2000) as a way for authorities to avoid the disclosure of records, based on the additional records obtained I would make the case that such actions and recommendations on behalf of state officials

can yield benefits in some instances, particularly in the case of government infrastructure projects involving departments other than agencies responsible for public works. As new information became available on CSC's website, two additional ATI requests regarding new regional complexes were filed (see *Phase I*). By the end of this component of my study, a total of thirty formal information requests had been filed, twenty-nine of which have been processed.⁹

Based on previously unpublished records obtained from these requests that included internal reports, ministerial briefings, memorandums and other documents, information on an additional four facilities were also obtained including: 1) a new pre-trial detention centre for youth, women and individuals with mental illnesses at an unspecified location in Labrador (see Kennedy, 2008);¹⁰ 2) a replacement remand centre in Saskatoon, Saskatchewan (see Saskatchewan Ministry of Corrections, Public Safety and Policing, 2007); 3) a new prison for men in Rankin Inlet, Nunavut (see Nunavut Department of Community and Government Services, 2008); and 4) a replacement prison for women in Fort Smith, Northwest Territories (see Northwest Territories Department of Justice, 2009).

As data on new prisons using formal requests were obtained, I became aware that state authorities were omitting key information from the public regarding these infrastructure projects. What makes the use of omission as a technique of opacity problematic is that it does not involve the explicit denial of information, but rather denies disclosure without even acknowledging the existence of records. Evidence of this practice being used can be drawn from the presence of information pertaining to the planning of new prisons in ATI / FOI records that were not posted on the websites of the

governments of Prince Edward Island, Nova Scotia, New Brunswick, British Columbia, Nunavut and the Northwest Territories at the time I had filed my requests. The failure of officials to mention plans to construct new provincial-territorial facilities in Labrador, Saskatoon and Rankin Inlet in conversations over the phone that were outlined in documents obtained by ATI / FOI are also examples of omission in practice.

The ATI / FOI process is one where designated state officials – who may or may not have knowledge of the subject of the request – are tasked with obtaining information from other state officials who hold the records sought by the applicant. The actions of those responsible for the management of requests are also shaped by their compliance and case clearance objectives. As a result, ATI / FOI coordinators do, on occasion, seek to reduce the scope of information searches where the disclosure process may be viewed as overly cumbersome by requesting that applicants rephrase or narrow their queries for the purposes of clarification. Concerning the twenty-nine formal requests that have been processed as part of this study, officials from three public bodies asked that I clarify certain passages to ensure that they were searching for the records sought.¹¹ Two other public bodies sought a reduction in the scope of my requests, which I refused as I was not given any indication of the types of records that the organizations possessed that would inform how the applications could be revised.¹² However, most agencies did not seek clarification regarding my formal information requests.¹³

A technique of opacity encountered frequently during this stage of the study was postponement, where state officials would process requests with delays beyond the established limits outlined in legislation and other guidelines (see Gilbert, 2000; Shapiro and Steinzor, 2006; Badgley *et al.*, 2003).¹⁴ For instance, in four cases, ATI / FOI

requests were processed with delays of thirty days or under with notification.¹⁵ Six other ATI / FOI requests were processed with delays in excess of thirty days without notification,¹⁶ a practice not allowable under law. The first four of five formal requests filed via e-mail to Ontario's Ministry of Community Safety and Correctional Services, although not processed under the auspices of the province's FOI laws, were completed with a delay of over ninety days. The most egregious example of postponement in action pertains to a request for records filed with the Ontario Realty Corporation, the branch of the Government of Ontario responsible for the acquisition of properties, who have yet to respond to my July 2009 FOI request.

Those who file ATI / FOI requests are also likely to encounter “[h]igh fee estimates and high public interest thresholds to waive fees” (Snell and Sabina, 2007, p. 60). Gentile (2009) argues that cost estimates for searching, photocopying and reviewing records pertaining to such requests often act, whether intended or not, as a deterrence mechanism forcing individuals to modify or abandon their efforts (see also Yeager, 2006; Rankin, 2012). During this study, the Prince Edward Island Office of the Attorney General sent a fee notice of \$5,607.50 to process one FOI request, which prompted me to drastically revise the scope of the query when an appeal to obtain a fee waiver was rejected. As a result, there was a radical disjuncture between the records initially sought and those received, although at a reduced cost of \$275.00. I also reduced the scope of a request to Nunavut's Department of Justice by removing the excerpt that sought information pertaining to the construction of new prisons in the territory over the next five years to avoid paying the initial \$625.00 processing estimate. In another case, I filed a fee waiver in response to a request processing cost estimate of \$270.00 from the British

Columbia Ministry of the Attorney General and Ministry of Public Safety and Solicitor General, which was rejected. However, I decided the cost was reasonable and kept the request as is. In the end, these records were obtained without cost, as the officials responsible for processing the request had determined that the file had taken an unreasonable amount of time to process. While deterrence, whether by intent or outcome, through high cost estimates was used by some state government officials, it should be noted that the total cost of processing the ATI / FOI requests for this portion of this study was \$638.50, a reasonable price considering the amount of records disclosed.

In this phase of the study, there were many examples where records on new prisons in Canada were subject to denial. These included the withholding of information by state agencies, but also redactions to released records were encountered. In principle, ATI / FOI legislation across Canadian jurisdictions mandates that records can only be deemed partially or fully refused if agencies can demonstrate that the injury resulting from their disclosure would unreasonably harm the operations of state government or would violate the privacy interests of an individual named in the records (Gilbert, 2000).

It should be noted that only seven of the twenty-nine formal requests processed as part of this phase of the study were returned without the denial of records.¹⁷ The remaining twenty-two requests processed included a variety of exemption clauses covering seven broad categories such as: 1) policy or legal advice and recommendations from a public body to Cabinet / Executive Council (n=9);¹⁸ 2) disclosure of information would be harmful to law enforcement or the security of an institution (n=7);¹⁹ 3) disclosure of information would unreasonably reveal personal information, or invade the privacy, of a third party (n=6);²⁰ 4) deliberations of Cabinet / Executive Council (n=4);²¹

5) disclosure of deliberations of a public body would be harmful to intergovernmental relations (i.e. negotiations with another department or government) (n=4);²² 6) disclosure of records would be harmful to the financial and economic interests of a public body (n=3);²³ and 7) records produced by members of legislative assemblies (n=1).²⁴

One major consequence of the techniques of opacity encountered and the inadequate recourse channels available to challenge the unfinished tendency of state governments was that I did not obtain substantial information regarding the long term penal infrastructure plans of Canadian prison authorities. As such, the findings produced at this juncture of the study were limited to the punishment plans unfolding in the short term without an idea of what would be coming later on down the road.

Although some information was withheld through the exemption clauses listed above, I was not inclined to file complaints with the independent bodies responsible for overseeing ATI / FOI in the provinces and territories as I was generally satisfied with the records obtained. However, complaints were filed with the Office of the Information Commissioner of Canada (OIC) in relation to the claims made by CSC officials that no records existed regarding the construction of new federal penitentiaries given the existence of contradictory evidence that did not support such claims (e.g. Head, 2008). Within those complaints, I also asked the OIC to investigate the processing delays for these requests. While the delay portions of these complaints were partially successful, resulting in friendly reminders being sent to CSC stating that they had obligations to process requests within the prescribed time periods, like those of Yeager (2006), my grievances did not result in the generation of additional information.

While the OIC considers the complaints to be resolved, I consider their resolution to be toothless and seriously doubt that CSC has significantly altered their practices. This was evident when I filed two additional requests for information held by CSC related to their physical infrastructure plans, of whose existence I had become aware during a presentation by a member of their Research Branch at the November 2009 Annual Meeting of the American Society of Criminology.²⁵ Not only had it taken over 120 days to process these requests, CSC had altogether exempted their release citing sections 18(a)(b)(d)²⁶ and 21(1)(a)(b)(c)(d)²⁷ of the *ATIA* (1985). The former suppresses the disclosure of records – in this case records related to penal infrastructure plans – under the premise that its release could damage the financial position of a federal government department, while the later legitimates non-disclosure principally on the basis that the policies under discussion have yet to be implemented.

The frustration of attempts to obtain information on costly federal government initiatives by invoking the need for secrecy, however, was not unique to my experience. Since the election of a Conservative government in 2006, CSC had also rebuffed a number of attempts by Members of Parliament (MPs) and Senators belonging to opposition parties to obtain the economic cost and prisoner population projections associated with sentencing legislation they were debating and voting on. For example, in a blog post dated 21 October 2009 addressed to his Senate colleagues, Liberal Serge Joyal (LPC, 2009) noted that when he questioned CSC Commissioner Don Head regarding federal penitentiary population projections related to the *Truth in Sentencing Act* (2009) prior to its passage, Head responded: “In terms of disclosing the numbers, at this point I cannot disclose them because they are considered to be a cabinet confidence”.

Senator Joyal expressed concern over the lack of disclosure by Commissioner Head, noting:

In other words, honourable senators, we were told that this information was out of our reach in order to determine if this bill would have a severe impact on the health and life of the inmate population, with the proper balance of budgetary investment to maintain the current level of safety, which is critical according to the ombudsman [the Correctional Investigator of Canada] who reported to us (ibid).

By not releasing this information on this and other bills tabled during the 39th and 40th parliaments, and other related measures such as CSC's penal infrastructure plans, key consequences associated with the implementation of the Conservatives penal policy agenda remained unknown (suggested) and outside the realm of (or foreign to) democratic debate. As a consequence, the possibility for critique was, at best, limited to approximations on their impact, and at worst, altogether negated as no one outside a select group of CSC officials and Conservative Parliamentarians who formed the Executive were privy to these so-called matters of Cabinet confidence knew the totality of the 'law and order' message. Despite this, members of what was then a majority opposition in the House of Commons and Senate were unwilling to dig their heels into the sand and exercise their right to some of the information that was being kept in secret. Instead, they passed a number of, although not all, sentencing measures tabled by two minority Conservative governments including the *Truth in Sentencing Act* (2009).

Given that the unfinished tendency in the federal government's approach to penalty was a central aspect of their stated efforts to put more people in prison, for a longer time, which could potentially trigger a new wave of prison capacity expansion beyond what I had already uncovered, I contemplated the following question: how to finish, or make visible, the foreseen outcomes of federal sentencing measures and penal

infrastructure plans developed by CSC to inform democratic debate on the future of punishment in Canada? While beyond the scope of this chapter, this question would become a central aspect of my dissemination efforts aimed at contesting the further entrenchment of the prison idea that are discussed in *chapters IV and V*.

Phase IV – Informal Information Requests

Earlier in this chapter, I reviewed the approaches to negotiating access to information on prison capacity expansion, including being open about my research objectives when requesting information from state officials informally over the phone and using formal channels, such as ATI / FOI, to coerce the release of additional information and unpublished documents. Having analysed some of the data months after it was originally obtained, as records from some jurisdictions were obtained at a later time than others, it was necessary to confirm the accuracy of the information generated. Given the intention of eventually disseminating related findings to inform ongoing debates in penal policy, there was also a need to find a way to obtain or verify data regarding the number of prisoner beds that were being added to prison systems across the country and the fiscal costs associated with their construction, including additions to existing facilities.

At this stage in the study, I anticipated that it would be difficult to obtain the information sought for two reasons. First, given that most jurisdictions in Canada were faced with significant economic deficits, I expected that they would resist disclosing the costs of new prison spaces, particularly as they were cutting expenditures elsewhere to limit the size of their budgetary deficits. Second, many of the redactions in the documents obtained using ATI / FOI pertained to the internal properties of new facilities,

such as new prisoner beds. To negotiate the disclosure of the information sought, I calculated that a measure of coercion and bluffing would be required.

As noted in the introductory chapter, social researchers have raised concerns about the challenges of communicating their findings to publics outside the academy and affect broader change in the world. These interventions, while not novel, have resulted in calls for public social research across disciplines that would enhance this role academics can play (Feilzer, 2009). To date, this literature has been treated in isolation from the access to information literature that is largely focussed on the techniques used to obtain data, along with the barriers encountered during the research process. Given that state governments produce new texts in response to attempts to collect data from them (e.g. ATI / FOI correspondence) and dissemination activities based on information they have disclosed (e.g. daily media briefs based on news coverage) (see Larsen and Walby, 2011), the disconnect between these literatures unnecessarily limits their use. For instance, one could engage in dissemination activities as a means to generate data, rather than simply as a means to communicate it.

To coerce the disclosure of information not obtainable by more conventional means, I attempted to merge these two solitudes through the organization of a public forum entitled *Prorogation as Opportunity: Proposing New Directions for Criminal Justice Policy in Canada* where I would present preliminary findings. After I secured four other participants²⁸ for a panel scheduled for 17 February 2010, all fourteen prison authorities were contacted by phone or e-mail to inform them that I would be presenting findings on the establishment of new penal infrastructure at a public forum in Ottawa (see *Appendix IX*). Both for agencies that did and those that did not previously disclose

information related to the costs of building new facilities and the number of additional prisoners they could house, I stated that I was going public with the data obtained and wanted to ensure I had the most up-to-date figures. In cases where I did not have the information above, I was engaging in bluffing.

With the exception of CSC, who continued to adopt the technique of denial, all prison authorities responded positively to this round of informal queries, either confirming information previously obtained or by providing new information without necessarily being aware because I never fully disclosed my preliminary findings to them at this juncture. One key piece of information that emerged was the decision by the recently elected New Democratic Party government in Nova Scotia to cancel the prison projects in Antigonish and Cumberland counties in favour of building one facility. Further, I learned that a pre-trial detention centre, which the Government of British Columbia originally planned to build in Burnaby, was being moved to Surrey because of community resistance. I also confirmed details related to 10 additions to existing provincial-territorial prisons. This approach to data collection was repeated on three other occasions as I prepared reports for the bi-annual meeting of the Provincial-Territorial Heads of Corrections in May 2010 (see Piché, 2010a), a March 2011 hearing of the Standing Committee on Public Safety and National Security (see Piché, 2011a), and an October 2011 appearance before the Standing Committee on Justice and Human Rights (see Piché, 2011b).

The use of this approach to data collection proved to be significant in that I could point to the most up-to-date information on new penal infrastructure in Canada when publicizing findings on the scope and cost of prison capacity expansion (see *Table 2*).

Furthermore, this tactic allowed me to insulate myself from critique, if the information I was given and disseminated were to be deemed inaccurate, as responsibility for errors could be attributed to the lack of transparency and dishonesty exhibited by state officials during the research process. I was also in a position to publicly critique CSC's refusal to disclose their penal infrastructure plans to Canadians, a secretive posture that stood in sharp contrast to the approaches adopted by many of their provincial-territorial counterparts.

**Table 2:
Scope of Ongoing Prison Capacity Expansion in Canada**

17 February 2010	31 May 2010	3 March 2011	2 October 2011
PT: - 22 new prisons - 10 additions - 5,788 additional prisoner beds - \$2.724 billion for construction-related costs Federal: - No plans disclosed	PT: - 22 new prisons - 16 additions ²⁹ - 6,514 additional prisoner beds - \$2.829 billion for construction-related costs Federal: - No plans disclosed	PT: - 23 new prisons - 16 additions - 7,348 additional prisoner beds - \$3.049 billion for construction-related costs ³⁰ Federal: - 34 additions - 2,552 additional prisoner beds - \$601 million for construction-related costs	PT: - 22 new prisons ³¹ - 17 additions ³² - 6,312 additional prisoner beds ³³ - \$3.375 billion for construction-related costs ³⁴ Federal: - 34 additions - 2,552 additional prisoner beds - \$601 million for construction-related costs

As will be discussed in *Chapter V*, the secrecy associated with the costs of the Conservative Government of Canada's penal policies and related capital construction projects became a central theme on the federal political scene in 2010 and 2011. It is in this discursive context that CSC disclosed a short term accommodation strategy in June

2010 involving the establishment of new units located on the grounds of existing facilities (Head, 2010). The Government of Canada also acknowledged in December 2010 that a long term accommodation strategy was to be submitted by CSC to Cabinet for consideration in March 2011 (see Toews, 2010a).

Reflections on Data Collection

In the previous section, the strategies used to identify the scope of prison capacity expansion, and access published and unpublished information produced by provincial-territorial and federal government departments in Canada regarding their recent and ongoing penal infrastructure initiatives were outlined. The techniques of opacity encountered during this initial data collection process and the information obtained at each phase that informed subsequent attempts to generate new data were also documented. From this aspect of my action research experiment, a number of observations can be drawn, related to: 1) the limitations of official document research and ATI / FOI as a supplemental approach to data generation for the purposes of working towards an understanding how the prison idea is reproduced; and 2) the need to enact negative reforms to reduce the information gulf between what is and is not disclosed publicly about prison capacity expansion plans to inform contestation of their presumed necessity. Each of these issues is discussed below to illustrate the insights that can be gained by bringing the access to information literature into conversation with topics examined in criminology and the sociology of punishment.

Limitations of Official Document Research and ATI / FOI

One of the primary lessons of this cross-jurisdictional study is that no single method of inquiry is equipped to generate comprehensive knowledge regarding specific

developments in state confinement and punishment. The tendency for scholars to exclusively use published governmental documents when studying the state is a research practice that reveals just as much as it obscures (see O'Malley *et al.*, 1997; Hier, 2012). Had I only relied on such material, I would have drawn the conclusion that there were at least eleven provincial-territorial prisons at various stages of completion across Canada at the time I initially went public with my findings about the scope of prison capacity expansion in February 2010. As a result, eleven other new prisons identified at that time through informal information requests by phone and formal information requests using primarily ATI / FOI would have not been considered at this juncture of the study. Many other details, including the justifications advanced in support of these prison capacity expansion initiatives not found in published documents (see *Chapter III*), would have also not been generated for further research.

Conversely, had the informal information request portion of the study been jettisoned, fewer records would have likely been obtained using ATI / FOI as the absence of such information would result in a lack in specificity in the composition of these requests. Outdated information, including the establishment of two new prisons in Nova Scotia that were consolidated into one facility (see Nova Scotia Department of Justice, 2009) and the selection of Surrey as the location for a new detention centre in British Columbia (see British Columbia Ministry of Public Safety and Solicitor General, 2009a), would have not been identified without an additional online content search had informal information requests not been undertaken following the ATI / FOI requests.

In light of these observations about the limitations of official document research and ATI / FOI as data collection approaches, it is important to acknowledge that the

materials gathered provide a detailed, but partial, account regarding this aspect of the reproduction of the prison idea. Other realities, which have not been constituted through discourses made intelligible in this study, are possible.

Democracy, Secrecy and Access as a Negative Reform

Over a quarter century ago, advances in information management technology, freedom of information legislation, and an emerging body of literature dedicated to its study, led Marx (1984) to express hope for the future of scholarship on the state. While it is difficult to quantify whether or not the landscape for such research has improved or deteriorated, my experience leads me to conclude, like Abrams (1988), that it remains difficult to access the back stage of the state.

Reflecting upon the amount of work needed to identify which jurisdictions have recently built or are currently constructing new penal infrastructure in Canada, it is alarming that most of the information obtained was not readily available for anyone to deliberate upon the justifications, benefits, as well as costs of these large-scale initiatives at a time where such debates could have led to a different conclusion. While Badgley *et al.* (2003) argue there are plenty of incentives for government employees to generate records such as accounting for their practices and recommendations, given that much about the policies and practices of the state, including the construction of new prison spaces, is hidden from the public, this suggests there is a shortage of enticements for their disclosure.

As noted by Gilbert (2000, p. 91), information commissioners in Canada have repeatedly criticized “bureaucratic resistance” to the federal access to information legislation. Ignorance of staff vis-à-vis their obligations to release records to the public

(Badgley *et al.*, 2003, p. 17), “ingrained conservatism” when managing records in order to preserve the status quo of operations, and a sentiment that disclosure would lead to unjustified challenges of their decision-making given their expertise (Gilbert, 2000, p. 90) are all factors that may shape the availability of information on the Government of Canada’s activities, as well as those in other public bodies across the country and elsewhere.

A consequence of the techniques of opacity deployed by state governments that limit access to their activities is the maintenance of information asymmetries where “those who have been mandated to govern have greater access to information on policies, programs and services that are meant to satisfy the needs of the public, while the public themselves have limited access to this information” (Snell and Sabina, 2007, pp. 64-65). The issue of information asymmetries is one that needs to be addressed because it signals that debates necessary for the development of informed and representative policy in democratic societies are often being jettisoned in favour of the political expediency that comes with secrecy in a manner that permits the activities of bureaucracies and political representatives to go unchecked. As a result, citizens are left to endure the financial costs and other consequences of policies that they know little or nothing about until their implications become visible well after implementation. This is the case for those living in communities across Canada who now find a new prison in their backyards, often with little to no debate about the merits and pitfalls of these initiatives.

Shapiro and Steinzor (2006, p. 101) argue that individuals “have a right to know about the business transacted in their name”. If we accept this argument, the question then becomes how to ensure that state agencies respect this right and what mechanisms

can be put into place to allow individuals to exercise it. In recent decades, the response amongst jurisdictions in Canada has been to create and periodically revise ATI / FOI laws. However, if the black boxes in which information regarding state policies and practices disappear from view are to be reduced, more than laws are needed. Writing on advances in FOI in Australia, Snell and Sabina (2007) have argued that the development of technology is enhancing government information sharing with non-state actors there. While additional technologies ought to be developed and implemented in Canada, should such advances not coincide with the development of a culture of open government among state officials and a citizenry that demands that their right to information is respected (ibid, p. 68), information asymmetries will continue to exist, diminishing the possibility for debate around state projects, including whether or not to develop new prison spaces.

In my view, reforms in the area of public policy must not bolster the state monopoly over the (non-)disclosure of information. If the limits of ATI / FOI legislation are to be acknowledged, negative reforms are required that chip away at, rather than legitimate, the information firewalls of government that shut out citizens from acquiring and making use of information that may reveal problematic aspects of proposed and enacted state policies. Kazmierski (2009) has made a case that access to information should be enshrined as a right under the *Canadian Charter of Rights and Freedoms* (1982) that would further limit the ability of state governments to withhold information from citizens. It is argued that such a measure would allow individuals to exercise their fundamental freedoms under section 2(b) – “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication” – as their arguments would benefit from timely knowledge on the activities of state governments

rather than hearsay. Kazmierski also makes the case that greater access to information ought to be protected under section 3 that affords every Canadian citizen the right to vote, arguing that the non-disclosure of information restricts the ability of voters to deliberate on the record of, and promises made by, those in power. In addition to Kazmierski's proposition, there is a need to dismantle clauses in ATI / FOI legislation that prevent the disclosure of much of the information that is kept secret under the guise of Cabinet confidence and similar provisions to enrich debates on policy options and decisions on matters, including those currently appropriated by the penal system and its appendages. Such a visibility measure would hold state officials to greater account for their actions to the individuals they claim to represent and serve, bolstering democratic governance.

A Note on Data Analysis

In spite of the limits encountered in this study during the data collection phases described in this chapter, the records obtained totalled thousands of pages. Unpublished ministerial briefing notes and memorandums, as well as published and unpublished reviews of prison infrastructure and / or operations, were the principal texts gathered as part of this study. Press releases and state government website content pertaining to the development of new prison spaces were also collected where available. While the published and unpublished documents gathered are all related to the establishment of new penal infrastructure in Canada, some of the information contained in them was more relevant than other information for understanding how the reproduction of the prison idea was occurring through these initiatives. As such, the approach to the analysis of these documents was tailored to answer the following questions:

- 1) What were the justifications marshalled in support of the establishment of new penal infrastructure by state officials and external advisers to build new prison spaces?
- 2) What other policy options were considered, if any, by state officials and external advisers in conjunction with, or instead of, additional prison spaces?

For this stage in the project, I used a qualitative content analysis approach involving the identification of themes in the texts examined (Landry, 2000). I then used a mixed analysis grid (*ibid*, p. 336), where relevant texts were categorized according to two major themes: 1) justifications for building new prison spaces; and 2) other policy options considered in conjunction with, or instead of, additional prison spaces. Texts that did not include information that fit into these two themes (e.g. technical and engineering reports for new penal infrastructure sites, land deeds, building permits, and the like) were excluded from this analysis.

Once this initial categorization took place, each selected text was read and coded to create analytical sub-categories as themes emerged from the documents under examination (*ibid*). The emerging themes outlined in each of the two categories of documents were then compared across jurisdictions to identify similarities and differences in the justifications for building new penal infrastructure, along with other policy options considered. The following chapter examines how the prison idea is being reproduced within provincial-territorial governments through finishing discourses that legitimate the creation of new prison spaces, restricting how criminalized conflicts and harms are conceptualized and responded to in the Canadian context.

CHAPTER III: LEGITIMATING PRISON CAPACITY EXPANSION

A Conservative government will protect our communities from crime by insisting on tougher sentences for serious and repeat crime and by tightening parole. We will ensure truth in sentencing and put an end to the Liberal revolving door justice system. The drug, gang, and gun-related crimes plaguing our communities must be met by clear mandatory prison sentences and an end to sentences being served at home. Parole must be a privilege to be earned, not a right to be demanded.

– Excerpt from page 22 of the 2006 Conservative
Federal Election Platform.

It is both important and urgent that we address the remand question. There are two choices: we find a remedy for the growth of the remand population or we find more resources to deal with it.

– Excerpt from page 7 of the 2009 Changing Face
of Corrections Task Force Report.

Introduction

When data collection for this project began in February 2009, penal policy was a focal point of debate in the House of Commons and Senate. With the Conservatives having first earned a minority government in the 2006 federal election with a populist campaign that included promises to ‘get tough on crime’ (see CPC, 2006, pp. 22-25), a number of bills were introduced in 39th Parliament with the stated purpose of putting more people behind bars, for longer periods of time, with fewer chances of release prior to the expiry of their sentences (see *Appendix IV*). Some of these punishment bills were passed with support of one or more of the parties in the majority opposition, while others did not pass as they were either scrutinized in committee – which was denounced by the government who claimed to want the swift passage of legislation – or sat idle on the order of paper undebated. In their first term in office, the Conservatives had also commissioned a review of CSC that recommended the following: 1) amend the *Corrections and*

Conditional Release Act (CCRA, 1992) to place ‘public safety’ as the primary objective of the federal prison system; 2) encourage prisoner accountability through measures such as replacing accelerated parole review and statutory release with an ‘earned parole’ scheme that would mandate, among other things, that those incarcerated federally complete all programming prior to being eligible for community supervision; 3) reorient programming to increase the employability of federal prisoners upon their release from prison; 4) increase drug interdiction efforts to eliminate illegal substances in penitentiaries; and 5) replace aging infrastructure deemed to be outmoded to manage a “changing offender profile” said to comprise more dangerous prisoners than in previous times, and to provide institutional security and programming within multi-security-level regional complexes that could facilitate the cascading of prisoners as they work their way down security classifications towards ‘earned parole’ (see Sampson *et al.*, 2007).

The Conservatives continued to place an emphasis on ‘law and order’ during the 2008 federal election campaign by promising to re-introduce bills that had not been passed in the previous Parliament and institute additional measures in the name of public safety (see CPC, 2008, pp. 35-39). It is in this contextual backdrop that I expected to find that the majority of provincial-territorial penal infrastructure initiatives I had identified in the first three data collection phases of this study (see *Chapter II*) were being put in place to mitigate an expected surge in the number of prisoners resulting from new federal sentencing measures. However, as this component of the study – that sought to identify the justifications that were driving this expansion in prison capacity to inform action aimed at contesting the further entrenchment of imprisonment – progressed, I encountered the unexpected. Instead of citing a need to build more prisoner beds in

response to the Conservative punishment agenda, the information I had obtained showed that prison officials and external advisors from most jurisdictions were calling for new penal infrastructure to address issues associated with a longstanding increase in the number and proportion of provincial-territorial prisoners who were awaiting trial and sentencing versus sentenced prisoners.

In an effort to understand how the prison idea is reproduced through the process of establishing additional spaces of confinement, this chapter examines the potential sources of the increase of prisoners in remand identified by prison officials, external advisors and researchers including: 1) a greater emphasis on risk aversion by the judiciary vis-à-vis individuals accused of coming into conflict with the law prior to trial and / or sentencing; 2) delays in the administration of the penal process associated with a dearth in judicial resources; and 3) defence-initiated delays in the penal process to allow their clients to obtain more credit for time served prior to conviction and sentencing. From there, the following problems identified by prison officials and external advisors related to this shift in provincial-territorial prison populations that formed the supportive component legitimating decisions to build new penal infrastructure are reviewed: 1) a shortfall in remand capacity and a stated desire to alleviate overcrowding to ensure the safety of staff and prisoners; 2) a 'changing' prisoner profile composed of various sub-populations that are said to pose unique challenges to the management of penal institutions necessitating the creation of separate and specialized spaces to accommodate each group of prisoners; 3) the existence of aging infrastructure that is said to be outmoded for the efficient management of facilities, as well as the provision of modern security and rehabilitation programming in lieu of identified prison population changes. I

also locate the place of alternative policies as the future of provincial-territorial penal infrastructure was being planned and the persistence of an ideology of penal necessity that forecloses, or finishes, opportunities to change perceptions of, and responses to, criminalized conflicts and harms. As few jurisdictions cited new federal sentencing measures as a justification for their prison capacity initiatives, I conclude by discussing the implications for research and action this finding raised that informed the contestation component of this study. Before proceeding, however, I briefly review and identify the strengths and shortcomings of some of the key explanations of prison expansion advanced in critical criminology and the sociology of punishment to illustrate how this component of my study differs from them in its analytical approach.

Understanding Prison Expansion

As noted in the introductory chapter, a sizeable body of literature has developed that aims to explain the growing use of imprisonment in many countries in the Western world, notably the United States (see Carrier, 2010). For some observers, this trend has signalled the ascendancy of a ‘punitive turn’ (Bottoms, 1995) or a ‘new punitiveness’ (Pratt *et al.*, 2005) in some jurisdictions. Amongst these scholars, it is argued that penal policies advanced in these societies are characteristically less, or not at all concerned, with the rehabilitation of prisoners. Further, it is asserted that penal policies have become increasingly politicized by elected officials, and have consequently resulted in the implementation of longer sentences and harsher conditions of confinement. As will be discussed below, there is certainly evidence to suggest that penal policy making has been couched in punitive terms and politicized in Canada since the election of a Conservative federal government in 2006. Whether this is new and signals a radical turn in penal

policy or is contributing to decisions by provincial-territorial governments to establish new penal infrastructure discussed in previous chapters is, however, another matter.

Post-disciplinary Penalty

In the first few decades following the Second World War, many western democracies began to pursue rehabilitation as a central objective of imprisonment. This development coincided with the emergence of welfare states that sought to enshrine a minimal standard of living from the young to the old, as well as provide a social safety net to help integrate those who had lost employment or faced other challenges back into society as productive members (Garland, 1990). Carrier (2010, p. 4) notes that in societies where “post-disciplinary penalty” is said to be the *modus operandi* of its prisons, researchers argue that modernist attempts towards the inclusion of prisoners into society through programming have eclipsed (Garland, 2001), in favour of a modality of punishment primarily concerned with their exclusion from society (Young, 1999) in the form of human warehousing (Bauman, 2004; Simon, 2007).

An examination of developments on the Canadian federal political scene in recent years could lead one to conclude that the Conservatives are working towards slowly abandoning what Garland (2001, p. 34) has termed “penal welfarism”. In the 39th Parliament (2006-2008) and 40th Parliament (2008-2011), incapacitation – or as Prime Minister Stephen Harper calls it, “taking the bad guys out of circulation for a while” (Kennedy, 2011) – was a common refrain expressed to justify a legislative agenda that was often focused on reforms to sentencing and the administration of the penal system. Such measures included placing further restrictions on bail, introducing mandatory minimum sentences for additional criminalized acts, as well as further restricting the use

of community custody and release mechanisms. The stated goal was and continues to be clear: the Conservatives want to put more people in prison, for longer periods of time, with fewer chances of release into the community prior to the expiry of their sentences in the name of public safety. This emphasis on incapacitation is not only reflected in their argumentation, but also in the names of certain bills, such as those first introduced in 2nd Session of the 40th Parliament like the *Ending Conditional Sentences for Property and Other Serious Crimes Act*¹ and the *Protecting Canadians by Ending Early Release for Criminals Act*.² However, the question remains: what is new about such policies?

It should be noted that previous Progressive Conservative and Liberal governments, who were responsible for the creation of the penal policies that the current Conservatives were seeking to alter or abolish as I was gathering and analyzing documents regarding new penal infrastructure, had also advanced measures primarily driven by the logic of incapacitation on occasion (see Webster *et al.*, 2009). For instance, a Liberal government introduced and passed the *Criminal Law Improvement Act* (1997) amending section 515(10) of the *Criminal Code of Canada* to provide greater discretion of the courts to order the detention of individuals accused of coming into conflict with the law prior to trial and / or sentencing when “necessary in order to maintain confidence in the administration of justice having regard to all circumstances” (Johnson, 2003, p. 15). This measure would later be cited as a contributing factor in the increase in the number of remanded prisoners. As will be discussed further in this chapter, it is primarily the increase in this segment of the Canadian prison population that led provincial-territorial governments to plan new penal infrastructure.

While there has been an “intensification” in the pursuit of punishment (Sim, 2009, p. 7) by the current Conservatives as illustrated by the sheer volume of penal policy measures they have introduced for legislative debate, it is necessary to acknowledge that they are not the original or only torchbearers of the ‘tough on crime’ message that legitimates the purging of criminalized individuals through incarceration. Moreover, it is important to note that even measures that have been couched in the progressive language of rehabilitation, such as the *Task Force on Federally Incarcerated Women* (CSC, 1990) and what followed thereafter are still punishment agendas. As argued by Moore and Hannah-Moffat (2005, p. 86), when ‘correctional’ imperatives pursued by prison authorities these “[t]herapeutic discourses and practices are also punitive”. Prisoners, after all, “are not... free subjects” and “[t]hey are not at liberty to make personal choices and are made to participate in programming designed to change them as part of their punishment” (ibid). That this most often goes unacknowledged is a failure to recognize the “liberal veil” of Canadian penalty that discursively conceives of the prisoner as a “free subject who makes her or his own choices” (ibid). Put differently, incarceration legitimated by the pursuit of rehabilitation is still punishment. More importantly, as it relates to the research objective of this study, the pursuit of rehabilitation has often been advanced to justify the perpetuation and growth of imprisonment (Mathiesen, 1990).

Politicized and Expressive Penalty

Carrier (2010, p. 4) notes that those subscribing to the ‘punitive turn’ thesis also point to the ascendancy of a brand of penal policy making that is more “politicized and expressive”. Punishment is seen as politicized as private troubles are made into public issues by individuals, interest groups, news outlets and / or politicians that call for a

legislative response to the injustices they perceive to exist. Punishment is seen to be expressive in that laws are crafted and communicated in such a way that privileges certain sentencing principles such as deterrence (the idea that one who knows they will be punished swiftly and severely if they come into conflict with the law will be less likely to engage in such actions), denunciation (the notion that a sentence needs to send the right message to law breakers and society at large that such behaviour is not acceptable in a given society), and proportionality (the promise of receiving the sentence one deserves for the harm they have caused) over other objectives predominantly associated with penal welfarism such as rehabilitation. One can also observe more credence given to the notion that the criminalized should be accountable and are ultimately responsible for their rehabilitation and integration into society that began to take shape in Canada during the 1990s (see Duguid, 2000; Hannah-Moffat, 2001; Moore, 2007). Some refer to this trend as the emergence of a neo-rehabilitative ideal (Morgan, 1995), whereby rehabilitation and the divestment in state ownership for achieving the ‘correctional’ objectives of imprisonment are simultaneously promoted.

Similar to the public safety trope, the terms above have been frequently invoked by the Conservatives inside and outside the halls of Parliament, and also in the titles of bills such as the *Truth in Sentencing Act* (2009).³ In advancing such penal policies, the Conservatives – who often raise the spectre of ‘suitable enemies’ (Christie, 1986) who have committed heinous acts, while reserving space for ‘suitable victims’ (Butler, 2006) who are called on to mobilize their emotional capital to advance penal policies – have engaged in what Bottoms (1995) calls populist punitiveness. This tactic is employed by politicians to tap into the perceived punitive sentiments held by the voting public through

the promotion of emotive and simplistic ‘law and order’ policies that appeal to one’s ‘common sense’ (Wacquant, 1999) to generate electoral support (Christie, 2000). An example of this form of politicking can be found in the excerpt from the 2006 Conservative election platform included at the beginning of this chapter.

Other examples of politicization during, and in the periods preceding, the initial data collection phases of this study included the frequent announcements regarding the tabling, legislative status and passage of bills garnering media attention by the federal government. The following quotes included a press release entitled ““Protection of Society” to Become Main Objective in Corrections System” (PSC, 2009a) announcing the introduction of the *Strengthening Canada’s Corrections Systems Act*^A on 16 June 2009 by, then, Public Safety Minister Peter Van Loan is case in point:

The Government is taking a new approach to corrections by putting a greater focus on public safety [...] We are also putting the rights of victims first, by proposing changes to help keep them better informed [...] We are fulfilling our commitment to make key reforms to the current corrections system so that offenders are more accountable for their actions, rehabilitation is more effective, and safety in our communities is paramount in all decisions in the corrections process.

In the same press release, then Minister of National Revenue Jean-Pierre Blackburn added: “The Government’s priority is the safety and security of Canadians in their homes and communities. The measures we are proposing today will help to ensure greater public safety for all”.

Just over a month later, the Conservatives posted another press release, this time on their party’s website entitled “Liberal Obstruction on Crime” (CPC, 2009). This intervention focussed on the status of a bill re-tabled during the 2nd Session of the 40th Parliament known as *An Act to amend the Controlled Substances Act and to make*

consequential amendments to other Acts. The bill, which contained mandatory minimum sentences for marijuana production and trafficking, had been passed in the House of Commons and was in the process of being studied in the Senate when the government went on the attack:

The Conservative government has introduced new legislation to get tough on criminals that manufacture drugs and those that sell drugs to children. These new laws should be in place, protecting Canadians right now. If it weren't for [Liberal Leader] Michael Ignatieff and his unelected Liberal Senators obstructing the bill, that is.

When the media are watching, the Liberals pretend to be tough on crime. But behind closed doors, they will use every trick in their book to prevent this legislation from passing.

Michael Ignatieff and the Liberals are proving to Canadians that when it comes to the safety of families and our communities, they would rather play politics.

Ironically, this bill was later passed in the Senate, but died on the Order Paper prior to receiving Royal Assent when the Conservatives prorogued Parliament on 30 December 2009. This sentencing measure was first introduced during the 2nd Session of the 39th Parliament when an election called by the Conservatives killed the progress of their legislative agenda in September 2007. Other re-tabled legislative measures, such as *An Act to amend the Youth Criminal Justice Act*,⁵ were also accompanied by new waves of announcements and hype. One question these developments raise is whether the politicization of penalty seen recently in the Canadian context is a new phenomenon.

While one can safely say that the Conservatives have politicized penal policy more frequently than previous federal governments over the course of Canada's history, they are not the first to make punishment a political issue. For instance, the Progressive Conservatives used the same genre of discourse when they tabled the CCRA (1992) on 8

October 1991. In the press release announcing the legislative measure entitled the “Protection of Society the Focus of New Corrections Reform Bill”, then Solicitor General Doug Lewis stated:

Protection of society is the primary objective of the Corrections and Conditional Release Act [...] This bill reflects the government’s determination to restore public confidence in the corrections system” (Solicitor General Canada, 1991a, p. 1).

Canadians have told the government that they want their communities to be safer. We have listened and responded (ibid, p. 3).

Just over a month later, when the opposition was proposing amendments to the bill in committee, another press release entitled “Public Safety Delayed” was issued on 15 November 1991. In the press released, Lewis “expressed anger that [the] Liberal critic for Solicitor General Canada is evidently delaying the process of C-36 [i.e. CCRA]” (Solicitor General Canada, 1991b, p. 30). Lewis was also quoted stating: “this is just a stall [...] It’s quite sad to see people calling for these tougher laws, and then turn face and deliberately delay them for partisan ends [...] I cannot imagine that their constituents will be too impressed” (ibid). As noted by Larsen and Piché (2009, p. 14), the “essential interchangeability of these texts from 1991 and 2009 is striking. Instead, it is not so much a matter of ‘old wine in new bottles’ as it is a matter of ‘old wine in old bottles’”. It is with this in mind, that current developments in federal penal policy in Canada, like those elsewhere in the world, must be understood as extensions of past political practice (Matthews, 2005).

The Insufficiency of the ‘Punitive Turn’ Thesis

The objective of the analysis presented thus far in this chapter has not been to negate the impact that federal sentencing measures introduced by the Conservatives since coming

into office in 2006 on the current number of individuals that are or will be imprisoned in jails, prisons and penitentiaries in the future should a change in trajectory not take place. Rather, the aim has been to illustrate the inadequacy of using the ‘punitive turn’ as a way to explain current developments in penal policy using recent history as an example.

There is, however a more important reason for having reviewed these developments for the purposes of this study that examines how the prison idea is being reproduced through the construction of new penal infrastructure in Canada. As noted by Carrier (2010), those who subscribe to the ‘punitive turn’ thesis have the tendency to focus their analyses on the creation of new laws, political rhetoric and the mediated spectacle of punishment. While some attention is paid to external advisors who are often appointed to publicly review penal policies and practices, often left unexamined are the justifications advanced by state officials and external advisors behind closed doors to expand prison capacity. By broadening the analysis in this manner a different picture regarding the principal considerations shaping decisions to build new penal infrastructure in Canada emerged.

While unpublished documents obtained during phases I to III of data collection from the governments of New Brunswick, Alberta and British Columbia alluded to the need to consider planning additional prison spaces beyond those already in the process of being established, only Prince Edward Island had incorporated projections related to federal sentencing measures into their current prison capacity expansion initiatives. In phase IV of data collection, which overlapped with the contestation component of this project, I was informed that the Government of Newfoundland and Labrador had put on hold their planned penal infrastructure projects to ensure that the province is able to meet

the capacity demands associated with federal legislation.⁶ An official from the Ontario Ministry of Community Safety and Correctional Services would also later report that the province had considered federal measures⁷ in their 15-year infrastructure requirement plan that has not been made public.⁸ With most jurisdictions not having integrated prison population projections associated with federal sentencing measures as they planned facilities currently at various stages of completion, what else might explain the creation of new prison spaces across Canada? This question is the focus of the following section.

Sources of the Remand Boom

When compared to countries that have experienced significant growth in the rate of imprisonment, Canada has had relative stability in penalty since the 1960s. Examining trends from 1960 to the early 2000s, Doob and Webster (2006) note that while the rate of imprisonment in the United States increased by more than five times from 1970 to 2003 to 714 per 100,000 residents and the incarceration rate in England more than doubled from 1960 to 2002 to 139 per 100,000 residents, Canada's level of imprisonment was no lower than 83 per 100,000 residents in 1974 and no higher than 116 per capita in 1995. While one could make the argument that a 39.8 percent increase in the rate of imprisonment of a country from 1974 to 1995 is significant, when coupled with data that shows incremental increases and decreases (see *Appendix VI*), rather than the wholesale expansion associated with the American and British experience, one can rightly point to "Canadian blandness" in this area of public policy during the period surveyed (ibid, p. 331). However, this does not mean that size and composition of prison capacity has been a non-issue for prison agencies across the country.

In the early- and mid-1990s provincial-territorial and federal governments discussed ways to cope with a gradual increase in the number of prisoners that was contributing to prison overcrowding. These discussions led to the introduction of conditional sentencing – more commonly known as house arrest – by a Liberal government in 1996 as a new form of community-based confinement for individuals who previously received a sentence in the range of two years minus a day and were incarcerated in a provincial-territorial penal institution (Roberts and Cole, 1999). While this measure led to a decrease in the number of sentenced prisoners held in prisons administrated by the provinces and territories (Roberts and Gabor, 2003), the number of remanded prisoners in these facilities began to rise dramatically. Webster *et al.* (2009, p. 82) note that the population of remanded prisoners had more than tripled at a “rate of 12.6 per 100,000 in 1978 to 39.1 per 100,000 in 2007”. The most pronounced increase has occurred in the last two decades and a half.

From 1986-1987 to 1996-1997, between 23 and 30 percent of provincial-territorial prisoners were on remand (Johnson, 2003). By 2000-2001, 40 percent of those incarcerated by the provinces and territories were awaiting trial and / or sentencing (*ibid*), with these prisoners accounting for approximately half of this institutionalized population in 2004-2005 (Beattie, 2006). Since that time, those remanded in custody have outnumbered sentenced prisoners at the provincial-territorial level (Porter and Calverly, 2011). In other words, today there are more people that have yet to be tried or sentenced for coming into conflict with the law than those serving a sentence in penal institutions operated and managed by the provinces and territories. According to McCrank *et al.* (2009, p. 14), this development in the Canadian context stands in sharp contrast to

remand levels elsewhere in the world that have recently hovered around 20 percent in England and Wales, Scotland, Australia, New Zealand and the United States.

While the increase in remand has been uneven across Canada, this development did not go unnoticed by prison officials and politicians (Webster *et al.*, 2009, p. 84), becoming a regular topic of discussion at the annual meetings of the federal-provincial-territorial (FPT) ministers of justice and public safety.⁹ By November 2007, these ministers agreed to launch a more comprehensive study to examine what they perceived to be a changing composition of their prison populations (Newfoundland and Labrador Department of Justice, 2007). The study, “undertaken by an expert chair, not affiliated with any jurisdiction, and three expert panel members to assist the chair”,¹⁰ was mandated to examine the following:

...the changing nature of adult corrections across all provincial and territorial jurisdictions in Canada with the goals of better understanding the characteristics of the correctional population and associated impacts on the delivery of institutional and community correctional services. The Task Force would review demographic data to confirm and/or quantify the nature of the adult corrections population in provincial and territorial jurisdictions across Canada, as well as the nature of the recent shifts in its composition. The Task Force would review demographic data to confirm and/or quantify the nature of the adult corrections population in provincial and territorial jurisdictions across Canada, as well as the nature of the recent shifts in its composition. The Task Force would then analyze these trends to determine the implications for service delivery; make recommendations, considering trends and other relevant information, such as best practices and approaches from other jurisdictions, on how the provinces/territories and federal government can best collaborate to find synergies around program delivery and infrastructure planning.

This study would also involve a survey of “corrections officials to solicit subjective assessments of how they are managing issues created by population changes” and meetings with the Provincial-Territorial Heads of Corrections to gather their feedback (McCrank *et al.*, 2009, p. 1).

As the group established the terms of reference for the cross-jurisdictional study, which included revisiting the division of penal labour whereby only prisoners serving sentences of two years plus a day were the responsibility of the federal government,¹¹ the Government of Canada limited their involvement in the initiative to the provision of statistics from CSC, arguing that they had completed their own review of their penitentiary system (i.e. Sampson *et al.*, 2007).¹² Despite the setback, the *Changing Face of Corrections Task Force Report* (CFCTFR) (McCrank *et al.*, 2009) was completed and circulated to participants at the FPT meeting in October 2009 (see CICS, 2009). The sources of the remand boom identified by provincial-territorial prison officials outlined by task force members in their report are reviewed below and supplemented by the research of Webster *et al.* (2009), illustrating how this shift was precipitated by changes elsewhere, notably in the administration of the penal system, that were often not addressed in favour of building new penal infrastructure.

Risk Aversion Prior to Trial and Sentencing

A first component of rising remand rates is an increase in the number and proportion of individuals awaiting trial and / or sentencing admitted to custody. While the “obvious explanation is that crime must be up”, the CFCTFR noted that at the time of analysis “the number and the rate of adults charged (for all offences, all Criminal Code non-traffic offences, and violent offences), have not changed appreciably, and, expressed as a rate, are, if anything, in moderate decline in recent years” (McCrank *et al.*, 2009, p. 11).¹³ Thus, an explanation regarding increases in the number of admissions to remand studied by the task force lay elsewhere.

Turning their attention to the judges responsible for granting bail, the authors of the CFCTFR argued: “people who decide whether an offender [sic: accused] is held in custody are well aware of sensational cases in which an alleged offender commits a notorious crime while on bail” (ibid, p. 13). Webster *et al.* (2009) note that this perceived risk is felt across the penal system by various actors, including police officers who arrest the accused, the Crown attorneys responsible for the prosecution of cases, the judges or the justices of the peace responsible for the adjudication of court processes, and so on. In circumstances where the social benefits of releasing individuals who are presumed innocent (e.g. protecting their right to bail unless there is ‘just cause’, the cost savings associated with their non-incarceration, allowing them to maintain their ties in the community and the like) are mostly invisible and the professional costs (e.g. an accused party not appearing for a scheduled court appearance or is alleged to have committed another ‘crime’ while on bail) are visible and, on occasion, publicized in the news media, the more incentives there are for the aforementioned actors to be risk averse (ibid, pp. 100-101). Such an orientation may be having profound consequences as “we appear to be witnessing a generalised practice whereby decisions are either being continually passed along to someone else or simply delayed by those responsible for making them” (ibid, p. 99). In practical terms, risk aversion appears to have had a number of consequences that have come to the fore in the last decade, including, but not limited to: 1) more charges being laid against an accused party that increases the complexity of cases; 2) an increase in the proportion of cases that enter courts via bail proceedings; 3) an increase in the number of appearances to resolve the bail question; 4) a greater number of conditions placed on individuals who are granted bail that increases their probability of

revocation and remand; and 5) an increasing rate of individuals never being granted bail in the first place (ibid, p. 97-101).

The CFCTFR partly attributed the developments noted above to legislation that has been supported and even requested “for the most part” by “provincial and territorial governments and with broad support across federal political parties” (ibid, p. 13). They also argued that there has been a “hardening” of the individuals who increasingly come before the courts “with records of violence and offences against the administration of justice, like failures to appear” (ibid), contributing to court decisions to keep more individuals in remand. Whether defendants have past records of criminalized violence or not, it should be noted that the most recent data compiled by Statistics Canada shows that 68 percent of those admitted to remand in Newfoundland and Labrador, Nova Scotia, New Brunswick, Ontario and Saskatchewan were charged with “non-violent offences [...] the most common of which were failure to comply [just above 10 percent] and breach of probation [10 percent]” (Porter and Calverly, 2011, p. 13).

Delays in the Administration of the Penal Process

A second component of rising remand rates is the amount of time individuals spent awaiting trial and / or sentencing in custody. The CFCTFR attributed this trend to increases in “[c]ase processing times experienced in most, if not all, jurisdictions” that “are long and getting longer” (ibid). The claim is supported by data compiled by Statistics Canada stating: “the median elapsed time for a case to reach completion in the 10 reporting jurisdictions [excluding Manitoba, Northwest Territories and Nunavut] was 101 days” (Thomas, 2010, p. 12). By 2004-2005, this median processing time for the jurisdictions surveyed had increased to 128 days, marginally decreasing to 124 days by

2008-2009 (ibid). While such figures suggest, at first glance, that there exists a court backlog that is causing individuals to stay in remand longer, Webster *et al.* (2009, p. 97) note that there appears to be a “culture of adjournments [...] whereby requests to remand a case to a later date are seen as somehow inevitable or acceptable” that is underpinning this trend. As will be discussed further in the following section, they attribute this development to strategic choices made by defence attorneys to delay proceedings to secure greater credit for time served at sentencing for their clients.

With little control over what transpires in court and other aspects of the penal process that generate demand for prison beds, the authors of the CFCTFR recommended the following penal reforms be made ““upstream” of corrections”:

Ministers responsible for police, prosecution, and courts administration should:

- i) review their bail release processes to ensure they are optimal;
- ii) enhance their efforts to improve case processing times and reduce the number of court appearances (McCrank *et al.*, 2009, p. 18).

These proposals were prefaced with the argument that “too many people are on remand for too long” and that the “roots of the problem lie in public policy and the administration of justice, so that is where the better solutions will be found”. The task force warned that “if nothing else is done” prison authorities would have to address longstanding overcrowding issues “by building more facilities and hiring more staff” (ibid).

The ‘Incentive’ of Remand

Arguing that the remand boom is an issue to be dealt with by the penal system as a whole, requiring “the full and integrated corporation of all components from policing, through the crown prosecutors, courts and corrections, in order to ensure an effective system” (ibid, p. i), the CFCTFR made the case for a significant change to sentencing

legislation. Based on the belief that the “practice of awarding double and even triple credit for days served on remand creates an apparent incentive to a person, who expects to be convicted and sentenced to custody, to stay on remand” (ibid, p. 13), resulting in disparities between the sentences handed-down to individuals for similar acts committed under similar circumstances (ibid, p. 17), the task force recommended the following:

The Criminal Code should be amended to remove credit for time served from sentence calculation and instead the sentence be deemed to have begun on the day the person entered custody. When calculating [the] warrant expiry date and eligibility for conditional release, the sentence would be deemed to have begun on the day that the person entered custody, but any days not spent in custody between that date and the sentencing date would not count as part of the calculation of the warrant expiry date or conditional release eligibility.¹⁴

This recommendation closely resembled earlier calls by provincial and territorial governments to remove credit for time served that lent legitimacy to the tabling of the *Truth in Sentencing Act* (2009) by the federal Conservatives. While Webster *et al.* (2009, pp. 96-97) have noted that defence lawyers had increased the number of requests for adjournment prior to the resolution of bail in Toronto, the evidence to support claims that a significant proportion of defendants are gaming the system by instructing their lawyers to delay the penal process by any means necessary to obtain a lesser sentence at the end of the ordeal is, at this stage, weak at best (see Weinrath, 2009).

Also missing from the dominant narrative regarding credit for time served was any discussion of the purposes of this sentencing provision that have been outlined by Manson (2004). First, given that prisoners in remand have little to no access to programming, this credit was in place to recognize that these incarcerated individuals were essentially serving what is known as “dead time”. Second, this credit was in place as a means to compensate remanded prisoners for essentially being warehoused in

decrepit, dangerous and overcrowded facilities. Beyond the recognition of the harms of remand, such provisions were designed to encourage state governments to improve prison conditions and bolster the resources of the judiciary to ensure the prompt resolution of the cases before the courts. It is these considerations, along with concerns about the budgetary implications of the legislation (see LPC, 2009), that prompted the, then, majority Liberal opposition in the Senate to attempt to amend the *Truth in Sentencing Act* (2009) to enable judges to “allow a maximum credit of one and one-half days for each day spent in pre-sentencing custody” (Casavant and Valiquet, 2010, p. 1). Another amendment presented sought to “allow a maximum credit of two days for each day spent in pre-sentencing custody” where justified (ibid). These amendments were later defeated.

Based on an assumption that defendants who, under the previous sentencing regime, would choose to subject themselves to the conditions of provincial-territorial prisons where they were remanded to receive more credit for time served over a swifter justice process, the desired impact of this measure on prison populations becoming a reality is far from certain. Moreover, it still remains to be seen what the impact of this measure – that was put in place, in part, to reduce the rate of remanded prisoners – will have on the rate of prisoners serving sentences in provincial-territorial prisons. Should the number of court cases and judicial processing times be stagnant or grow in the future, this one legislative measure – one of many passed in the 39th and 40th Parliaments or reintroduced in the 41st Parliament – could lead to a continuation of the remand boom compounded by an increase in more prisoners serving longer sentences, not only in federal penitentiaries, but also in provincial-territorial prisons, to the tune of billions of dollars (see Rajekar and Mathilakath, 2010). According to information and documents I

have obtained, the impacts of this and other federal sentencing measures were not considered in most jurisdictions, as prison authorities made cases for the expansion of their capacity to confine and punish. In the following section, I explore the justifications cited by these actors in support of their recommendations to build new penal infrastructure.

The Case Made for Prison Capacity Expansion

As noted above, prison agencies from the provinces and territories had collectively recognized that the “increase in the number of inmates on remand is beyond the control of correctional services” (McCrank *et al.*, 2009, p. 1). They also had been advocating for an integrated response across penal system agencies and different levels of government to reduce the number of individuals awaiting trial and / or sentencing. Among the stated reasons underpinning this call for change by the CFCTFR were the “practical problems” in administering prisons with an increasing number of remanded prisoners, including: 1) rising costs associated with transporting individuals to and from court; 2) overcrowding in facilities close to courts and the underutilization of those further away; 3) security concerns with managing prisoners who are experiencing uncertainty about the future; 4) the price tag of building new facilities with each bed costing as much as \$300,000; and 5) difficulties providing programming (ibid, pp. 13-14). The task force also referred to the “moral implications for the administration of justice and civil society” of having more remanded than sentenced prisoners in provincial-territorial prisons on a given day (ibid, p. 10; see also pp. 14-15), although these implications are not fully explained.

While the task force commissioned by the Provincial-Territorial Heads of Corrections argued that “[b]uilding remand centres is expensive and resourcing a bad

trend [and] is paving a road we shouldn't be on" (ibid, p. 15), prison officials and external advisors from each province and territory were operating, building, designing, planning or submitting documents to political representatives outlining a need to construct new penal infrastructure. Below, I review the most common justifications advanced by proponents of incarceration in published and unpublished systemic reviews, internal ministerial briefing notes and memorandums, and other documents to generate support for the establishment of new prison spaces at the provincial-territorial level amongst others working in state bureaucracies and elected members of governments.¹⁵

Overcrowding

With increases in the number of remanded prisoners, most provincial-territorial prisons across Canada have either been close to, or over, their designed capacity in recent years. In an external review of the operations of Nova Scotia's prisons, Deloitte (2008, p. 98) noted that with an average capacity utilization rate of 89 percent since 2006, the province fared better than the national average of 96 percent and was below most jurisdictions surveyed (see *Table 3*).

**Table 3:
Average Capacity Utilization since 2006**

NS	BC	AB	SA	ON	NB	NL	YK	NT	NU	Total
89%	128%	81%	108%	94%	108%	100%	54%	81%	154%	96%

* Source: Deloitte (2008), page 98.

This evidence of overcrowding in some jurisdictions is also evident in other studies across Canada. In 2008, an internal review in New Brunswick noted that its prison system had been "operating at about 40% over capacity, averaging close to 400 inmates daily in an adult system originally designed for 284 people" (New Brunswick Community and Correctional Services Branch, 2008, p. 18). This rise in the province's

prison population had been principally driven by a remand population that had more than tripled, from 45 in 2000 to 145 in 2008 (ibid, pp. 19-20). With a prison system with 833 cells as of 2009, the Government of Saskatchewan's response to a 2008 external investigation of an escape at the RPCC noted persistent growth since 1998-1999, where the prison population was 1,203, to January 2009, where the prison population was 1,498 (Saskatchewan Ministry of Corrections, Public Safety and Policing, 2009, p. 5). During this period, the number of remanded prisoners in the province had more than doubled from 245 to 575.

There is also evidence of overcrowding in other jurisdictions that did not provide information to Deloitte (2008) as they completed their study of Nova Scotia's penal institutions. An internal review of Prince Edward Island's prison system noted that "[o]vercrowding is an ongoing challenge", with the 94-bed Provincial Correctional Centre "coping between 120 and 145 offenders" that are on occasion triple-bunked (Prince Edward Island Office of the Attorney General, 2008a, p. 3). In the unit for incarcerated women "designed for four females [...] up to 18 female offenders are housed" (ibid). A 2004 study commissioned by the Quebec government noted a capacity utilization in the jurisdiction had climbed to around 100 percent, which was attributed to a decrease in the use of parole, an increase in parole revocations, as well as a consistent increase in remanded prisoners from 1984 to 2002 (Landreville and Charest, 2004). While the capacity utilization in Manitoba was not disclosed to either Deloitte (2008) or in documents obtained as part of this study, the report of the public consultation to establish a new prison for women noted that in their tours of provincial and federal

institutions in the region the task force members were “advised that space consideration are at a premium in the facilities” (Bruce *et al.*, 2005, p. 11).

It should be noted that the table compiled by Deloitte (2008) does not tell the full story, as entire systems and facilities in jurisdictions deemed under capacity most of the time are over capacity some, if not, most days. For instance, in 2007, “Nova Scotia’s facilities were overcapacity about 205 days, or 54% of the time” (ibid, p. 97). From January to April 2008, capacity utilization in the province had been consistently over 100 percent (ibid). The Territorial Women’s Correctional Centre in Fort Smith, Northwest Territories is an example of a penal institution coping with a dearth in carceral supply, with a number of briefing notes sent by officials to the territorial Minister of Justice since 2003 stating that the facility is not large enough to accommodate the number of incarcerated women housed there (e.g. Northwest Territories Department of Justice, no date). A more prominent example is the overcrowding documented at the Edmonton Remand Centre (ERC) that was originally built to accommodate 332 prisoners, which warehoused an average of 880 individuals in 2005-2006 (Alberta Infrastructure and Transportation, no date).

Some of the findings presented by Deloitte (2008) regarding capacity utilization are misleading in cases where jurisdictions do not define the term according to the single-cell accommodation standard outlined in the *United Nations Standard Minimum Rules for the Treatment of Prisoners* (UNHCHR, 1975), to which Canada is a signatory.¹⁶ Among these jurisdictions is British Columbia, whose “daily count averaged 2,189 from April 2004 through January 2005” and by February 11, 2006 had reached 2,639 with a remand count exceeding “1,200 for the first time” (British Columbia Corrections Branch, 2006a,

p. 1). At that time, the system capacity was 2,654 beds, “including all special purpose and temporary use beds (medical, observation, segregation)” (ibid). With a system capacity of 1,404 cells, as of May 2007 British Columbia had double-bunked close to 80 percent of its provincial prisoners (ibid), a rate higher than “any jurisdiction in Canada” (British Columbia Corrections Branch, 2007a, p. 1). A memo dated 1 May 2007, noted that should the trend continue the system would “be short by 320 beds” in 2009, circumstances that would lead to triple-bunking in “cells originally designed for one” (British Columbia Corrections Branch, 2007b, p. 1). In fiscal year 2008-2009, the situation worsened as the prison population had risen to “record levels”, averaging “2,809 with peaks exceeding 2,900” prisoners (British Columbia Corrections Branch, 2009, p. 1). As a result, “at any time about 90% of inmates are double-celled”, with two remand centres in the Metro Vancouver area operating “between 190% and 210% of their capacities” (ibid).

Double-bunking, the practice of incarcerating two prisoners in a cell originally built for one person, is not unique to British Columbia but is a “common practice” used to address overcrowding in all Canadian provinces and territories except for Nova Scotia, according to a report by Deloitte (2008, p. 98). Triple-bunking has also been used in Ontario where 11 out of 31 of the jurisdiction’s prisons regularly warehouse three prisoners in one cell,¹⁷ as well as Alberta (see Alberta Infrastructure and Transportation, no date, p. 28).

In addition to double- and triple-bunking, other custodial approaches have been in place to deal with ongoing capacity pressures as calls for new prison spaces emerged. The conversion of other institutional spaces is another approach to managing

overcrowding outlined in documents obtained during this study. In Prince Edward Island, “[v]isitation, library and group program spaces” were converted into dorms (ibid). As noted in an internal report by New Brunswick Community and Correctional Services Branch (2008, p. 19), the jurisdiction even used spaces designated for imprisoned youth to incarcerate adult prisoners “in contravention of United Nations convention, the Miller Inquiry report and good correctional practice” (ibid, p. 19)¹⁸ in response to the growing reliance on remand in the province.

When faced with overcrowding or otherwise lacking the capacity to incarcerate certain segments of their prison population such as women, the provinces and territories have transferred prisoners to some of their other less crowded facilities. However, with prison spaces becoming increasingly scarce this option has become less viable. For example, transferring prisoners from the overcrowded ERC to “other, less secure facilities” that “are also at, or near, maximum capacity” was deemed no longer a suitable accommodation measure by the office of the Alberta Solicitor General and Public Security (2006a, p. 4). With other jurisdictions facing similar capacity challenges, there is evidence that the use of exchange of service agreements (ESA) with other state governments to accommodate prisoners became increasingly less available in the Canadian context. For instance, an ESA between New Brunswick and CSC to accommodate provincial prisoners that ended in March 2009 was described as “worn and strained” (New Brunswick Community and Correctional Services Branch, 2008, p. 20).

The overcrowding of provincial-territorial prisons, principally driven by consistent growth in the number of remanded prisoners, generated a series of challenges for prison system administrators and staff on the ground. When a prison was over the

capacity it was designed for, officials from many jurisdictions, including New Brunswick, Alberta and British Columbia, argued that the safety of both prisoners and staff was increasingly at risk.¹⁹ As noted in an internal review of Prince Edward Island's prison system, should overcrowding persist and new space not be created "there is heightened risk of serious problems such as rioting, inmate violence, suicide, disease outbreak, escapes and/or staff labo[u]r issues" (Prince Edward Island Office of the Attorney General, 2008a, p. 8). For the province, such events needed to be avoided as "[o]ngoing correctional-related crises in Nova Scotia and Newfoundland have shown that any crisis associated with correctional services can have a significant impact on confidence in the overall Justice system and government" (ibid). Establishing new infrastructure was also viewed as necessary to meet the legal obligations of the provincial prison system that if breached could result in "[p]ublic and independent inquiries" whose "recommendations become regional standards" (Prince Edward Island Office of the Attorney General, 2008b, slide 4). Based on this identified need and anticipated growth resulting from "current Canadian criminal code amendments and an expanded Exchange of Service Agreement with Correctional Services Canada" (Prince Edward Island Office of the Attorney General, 2008a, p. 4), provincial officials estimated that a capacity of 190 beds would be needed "to safely manage client demand and meet legislative mandates" (ibid, p. 3). Should such a measure not be taken, it was argued that "the system will also face the politically sensitive problem of being forced to implement early release to relieve some pressure" (ibid, p. 8).

Beyond these issues, some officials were concerned about complaints from prisoners and their advocates. For instance, in a business case submitted to the Alberta

Treasury Board, it was noted that overcrowding and related prison conditions “have led to Charter challenges (at a considerable cost to defend)”. Thus, in order to “comply with existing legislation and constitutional responsibility for care, custody and control of inmates; and adequately provide space for inmates and support services both now and into the future” (Alberta Infrastructure and Transportation, no date, pp. 29-30), a new and larger remand centre was deemed to be required. In this instance, the language of human rights was neutralized through the technique of absorption (Mathiesen, 1990, p. 39) to legitimate the expansion in the state’s capacity to deprive individuals of their liberty.

With additional space and resources being diverted towards the management of overcrowding, concerns were also raised about the ability to provide programming – which in the context of provincial-territorial imprisonment is already scarce at best (Weinrath, 2009) – to both remanded, as well as sentenced prisoners. Among those concerned about this issue were prisoners housed in overcrowded facilities in Newfoundland and Labrador, who felt that the lack of programs was “compounded to a greater or lesser extent in all institutions by the physical and environmental conditions, the lack of recreation, the delays in getting things done, and uncertainties regarding cancellations and lock-downs” (Poirier *et al.*, 2008, p. 137). It is partly with this in mind that an external review of the province’s prison system (Poirier *et al.*, 2008) supported plans to build new penal infrastructure. Similar concerns were raised in an internal review of New Brunswick’s prison system that noted that the needs of various stakeholders “falls to a low priority for correctional managers who spend much of their time managing mainly operational issues on a day to day basis” associated with overcrowding (New Brunswick Community and Correctional Services Branch, 2008, pp.

20-21). With other custodial options either exhausted, deemed unsustainable or politically unviable, new prisons and additions to existing facilities were pitched as necessary solutions to cope with the expected continuation of the remand demand.

A 'Changing' Prisoner Profile

Provincial-territorial prison authorities were not simply concerned about the rising populations of facilities housing remanded prisoners, but also identified shifts in the composition of their prison populations. Described colloquially amongst officials as the “changing offender profile”, this trend has been cited as a justification for building new penal infrastructure. The starting point for this argument is that in previous years prison populations were homogeneous and facilities did not need to be built to spatially segregate prisoners other than for reasons of security classification. It is then postulated that prisoners today are much more diverse in terms of the risk they pose to the safety of other prisoners and staff, as well as the needs they are said to have that require ‘correctional’ intervention. For those who subscribe to the “changing offender profile” thesis, there is a need to build ‘modern’ penal institutions that can facilitate the spatial segregation and delivery of programming to prisoners who are often grouped into four sub-populations distinct from the general population.

A first population whose continued overrepresentation in prisons across Canada has led to calls for the creation of new carceral spaces is Aboriginal peoples. While Aboriginal peoples represented 3 percent of the general population in 2008-2009, they represented 21 percent of those admitted to remand and 27 percent of those serving sentences of two years minus a day in provincial-territorial prisons (ibid). It should also be noted that they represented 18 percent of individuals admitted to federal penitentiaries

during this period. This issue was raised in a number of reports recommending the establishment of new penal infrastructure in Newfoundland and Labrador,²⁰ New Brunswick,²¹ Manitoba,²² Nunavut²³ and the Yukon.²⁴ As with the erection of healing lodges by CSC in the 1990s (see Hayman, 2006), recommendations to build more ‘culturally appropriate’ milieus for incarceration frequently coincide with similar proposals for programming, as well as the hiring and retention of Aboriginal staff to work with these prisoners.

Kilroy and Pate (2011) note that women are the fastest growing prison population worldwide. Canadian jurisdictions have not been exempt from this broader trend as noted in a recent study by Statistics Canada (Babooram, 2008, pp. 36-37) that showed an increase in both the number and proportion of incarcerated women in provincial-territorial prisons from 2001-2002 (remand = 11,494 or 10 percent / sentenced = 5,961 or 9 percent) to 2006-2007 (remand = 15,640 or 12 percent / sentenced = 6,523 or 11 percent). This trajectory has also been noted in reports examining prison systems in Prince Edward Island,²⁵ New Brunswick,²⁶ Manitoba²⁷ and Nunavut.²⁸ An increase in the number of incarcerated women has been central justification for the construction of new provincial-territorial prisons or units in these jurisdictions, with the exception of New Brunswick that has yet to implement a recommendation to build a new facility similar to the federal penitentiary for women in Truro, Nova Scotia. The premise underlying these proposals is that most penal institutions are not built with incarcerated women in mind, and thus, new facility construction, along with the hiring of female staff and the development of gender-specific programming, is required to meet their needs. These rationales for the establishment of new prison spaces are similar to those articulated as

CSC erected new regional prisons for women across Canada in the past two decades (see Hannah-Moffat, 2001; Hayman, 2006).

Citing an increase in the number of incarcerated individuals with mental health and / or substance addiction issues has also featured prominently in discussions regarding the need to build new penal infrastructure to manage the “changing offender profile” in certain jurisdictions. It should be noted, however, that as recently as October 2010 Statistics Canada has had difficulty capturing the scope of this issue at the provincial-territorial level. This is due to the fact that jurisdictions – with the exception of Saskatchewan who reported that 92 percent of prisoners housed in their penal institutions required treatment for substance abuse (Calverly, 2010, p. 13) – did “not yet have the ability to record needs information in their administrative systems, and / or the ability to transfer the information to the Canadian Centre for Justice Statistics” (ibid, p. 32; also see Sinha, 2009). As with other identified sub-populations, deficits in the availability of specialized services and staff to address the needs of these prisoners have been raised in reports and internal documents related to the prison systems of Newfoundland and Labrador,²⁹ Prince Edward Island,³⁰ New Brunswick,³¹ British Columbia³² and the Yukon.³³

A growing number of identified gang members within prisons has been cited in reports and other documents focussing on provincial prisons in Saskatchewan,³⁴ Alberta³⁵ and British Columbia.³⁶ The concerns associated with gangs in the context of overcrowded prisons are best captured in the following excerpt of a business case submitted by the office of the Alberta Solicitor General and Public Security (2006a, p. 4)

to the provincial Treasury Board for the establishment of a new remand centre in Edmonton:

...[the] ability to keep co-accused offenders, incompatibles, and gang members apart, as well as accommodating large scale arrests, is compromised by limited space availability. Overcrowding also increases the frequency of threats and attacks on correctional staff and inmates.

Prison officials and external advisors cited these challenges as requiring prison capacity expansion to better manage identified gang members. Left unproblematized is the low threshold of what constitutes a gang or “criminal organization”, which in section 467.1(1) of the Criminal Code of Canada is defined as:

...a group, however organized, that
(a) is composed of three or more persons in or outside Canada; and
(b) has as one of its main purposes or main activities the facilitation or commission of one or more serious offences that, if committed, would likely result in the direct or indirect receipt of a material benefit, including financial benefit, by the group or any of the persons who constitute the group.

Taken as a whole, the “changing offender profile” is essentially code for legitimating the use of incarceration as a governance strategy to manage Aboriginal victims of Canada’s colonization project (LaPrairie *et al.*, 1996), women who turn to sex work and the drug trade to survive (see Comack, 1996; Balfour and Comack, 2006; Acoose, 2011), individuals identified as having mental health and drug addictions issues (OCI, 2010), as well as marginalized youth who are said to be involved in gangs (Schissel, 2006). Coupled with statistics showing that a significant portion of those imprisoned have not completed high school and are unemployed (see Babooram, 2008; p. 33; Calverly, 2010, p. 25), the prison in Canada, like elsewhere in the world, is increasingly being conceived and / or used as a panacea to deal with a wide array of social issues (Davis, 2003).

Outmoded Infrastructure

In addition to the justifications for new penal infrastructure related to the size and composition of provincial-territorial prison populations advanced by prison officials and external advisers reviewed in this chapter, there are a number of inadequacies associated with existing facilities related either to their age and / or geographic locations. According to documents obtained as part of this study, these deficiencies have implications for: 1) the conditions of confinement and the prospects for rehabilitation of prisoners within decrepit facilities; 2) the provision of institutional security and public safety; 3) the operational efficiency of facilities; and 4) the administration of imprisonment and the penal process. These implications are reviewed below.

The issue of facility age garnered significant attention in the external review of Newfoundland and Labrador's prison system. Review panellists were particularly critical of the "deplorable physical condition of Her Majesty's Penitentiary" (HMP) (Poirier *et al.*, 2008, p. 16), a facility built in 1859. In their report they noted various problems with the aging institution:

The cleanliness or the lack of it is horrendous. There is a build up of dirt and grime throughout the Penitentiary. This was especially evident around radiators, steps, and in the corners of several rooms. It appeared that the interior of the Penitentiary had not been painted in years as there were areas where paint was literally peeling off the walls and ceilings. In other places there were holes in the plaster that had been left unrepaired. These holes did not appear to be recently damaged. Washrooms were filthy and staff often had to resort to cleaning them on their own. While some cells had been renovated, others had been plastered at some point and had gaping holes in the walls (*ibid*, pp. 16-17).

The condemnation of conditions at HMP where many cells do not have windows, were also widely criticized by prisoners interviewed as part of the province-wide review:

The old, run-down, high security prison was [...] the worst facility in which to serve time. Whether inmates had been incarcerated in Stephenville, Bishop's Falls, Happy Valley-Goose Bay, a federal penitentiary or a provincial prison in another province, there was an overwhelming belief that any of those prisons compared quite favorably to HMP [...] Some [...] spoke passionately about deplorable prison conditions and the effect they have on their ability to cope, and about such matters as mental health issues and the impact they have on the prison population (ibid, pp. 138-139).

With all stakeholders consulted during the review who were asked about the state of HMP critical of the conditions at the facility, the report supported its closure and replacement.

In New Brunswick, the age of facilities was viewed as a blemish on the reputation of its provincial prison system. The Moncton Detention Centre (MDC), built as “a short term “temporary” solution to local prison needs” in 1979 (New Brunswick Community and Correctional Services Branch, 2008, p. 25), was cast in a particularly negative light:

...[the MDC] is now completely inappropriate to meet the correctional and security needs of inmates or fulfil the obligations of the Province of NB [New Brunswick] around modern justice services and corrections. There is consistent agreement that MDC is a very high stress correctional environment located in the parking lot of the Delta Beausejour Hotel that undermines any claim that New Brunswick practices effective corrections. Though there are other serious correctional issues in New Brunswick, replacing MDC is the number one priority for provincial corrections today.

The replacement of the Dalhousie Jail, a facility “well over a century old”, was also recommended in the internal review of the province’s prison system (ibid, p. 30).

In the Northwest Territories, several memos sent to the Minister of Justice proposed the replacement of the existing Fort Smith Correctional Complex as the facility was deemed to be “an aging building that does not suit the needs of the Corrections Service” (Northwest Territories Corrections Service, 2008a, p. 1). The age of facility was cited as “the main reason for this capital project” (ibid). The Yukon’s Whitehorse

Correctional Centre, built in 1967, was also deemed outmoded. During a public consultation on the future of imprisonment in the territory participants demanded greater prisoner accountability and programming. The government responded with a promise to build a new prison that would facilitate “offender rehabilitation and healing”, helping “offenders rebuild identity and renew relationships with family and community” (Yukon Corrections Action Plan Implementation Office, 2006, p. 5).

In addition to poor prison conditions linked to aging infrastructure, a number of jurisdictions identified difficulties with establishing dynamic security, also known as direct supervision. This form of supervision allows staff to interact with prisoners in various sections of institutions. It is said to promote rehabilitation efforts, as well as enhance security by allowing for frequent contact and information to be exchanged between those working and living in penal institutions. The dynamic security measures are contrasted to static measures such as locks, perimeter fences and the like that keep prisoners inside and non-prisoners outside institutions, but are not viewed as sufficient on their own to provide security within facilities. A shift towards, or buttressing of, dynamic security was cited as a challenge in the provincial prison systems of Newfoundland and Labrador (Poirier *et al.*, 2008), Nova Scotia (Deloitte, 2008), Ontario³⁷ and Saskatchewan³⁸ (Saskatchewan Ministry of Corrections, Public Safety and Policy, 2007; Peet *et al.*, 2008; Saskatchewan Ministry of Corrections, Public Safety and Policing, 2009) that could be resolved by the construction of new institutions, as well as better training and implementation of procedures by staff. An internal review in Prince Edward Island tabled in response to an architectural assessment by a consulting firm also cited the age of its prisons to legitimate the establishment of new spaces of confinement. The

report noted that the province's "current adult facilities are Summerside, opened in 1876, and Charlottetown, opened in 1979. Given the age of these facilities, it should not be a surprise that they fall short of current standards. The shortfalls have significant implications on safety and security" (Prince Edward Island Office of the Attorney General, 2008a, p. 8).

Beyond security within institutions, some provincial-territorial prison authorities have also been concerned about their ability to maintain public safety by keeping prisoners inside prison walls when deemed necessary by the courts and officials responsible for overseeing community release. Recent escapes in Nova Scotia and Saskatchewan associated, in part, with deficiencies in penal infrastructure, were advanced as justifications for expanding the capacity of their prisons. A similar rationale was cited in a briefing note making a case for the establishment of a new prison for women in the Northwest Territories which noted that the "Territorial Women's Correctional Centre (TWCC) is not a secure facility" (Northwest Territories Corrections Service, 2008b, p. 1). The potential of escape during prisoner transfers when used as a means to manage facility overcrowding was also perceived to be a threat to public safety in Alberta (see Alberta Solicitor General and Public Security, 2006b, p. 4). Similarly, it was noted that "current overcrowding in BC [British Columbia] jails compromises safety to the public, to staff, and to the inmates" (British Columbia Corrections Branch, 2007c, p. 1). Officials argued that these deficiencies could be managed through the implementation of the CAMP – Capital Asset Management Plan – that sought to expand the capacity of the province's prison system through the establishment of new facilities and new units at existing facilities (ibid).

As has been the case with previous prison building campaigns, concerns related to the operational efficiency of existing facilities are cited as another reason for establishing new penal infrastructure (see Moore and Hannah-Moffat, 2002). In Prince Edward Island, an external review by North-46 Architecture Essential Design Firm (2008, p. 16) noted that cost effectiveness is central to a facility performing its purpose. The firm also argued that “having functional spaces appropriately located relative to each other”, which are “appropriately sized and equipped”, are required to “properly serve their intended functionality” (ibid). The perceived lack of functionality in these terms was among the considerations that prompted recommendations to redevelop or replace existing penal infrastructure in the province.

The costs associated with the existing configuration of cells and overcrowding were identified as challenges undermining the overall operational efficiency of the New Brunswick prison system. Citing an abundance of maximum-security cell space that is used to incarcerate prisoners deemed to be low- and medium-risk, an internal review noted that this practice “is a very expensive and ineffective way to meet the needs and manage the risks of these inmates” who “are much better served in lower security, cheaper jail space or on safe conditional release into the community” (New Brunswick Community and Correctional Services Branch, 2008, pp. 28-29). The report also noted that overcrowding in the daily range of 100 adult prison beds had cost the province “in excess of \$3.5 million this fiscal year [...] With no evidence that this spending in any way reduces offending or improves public safety when an inmate is released” (ibid, p. 26). In a context where “large sums of money are already being paid out as a result of overcrowding”, it was argued that “it is far better to plan and invest in more viable

correctional alternatives now in order to be much more effective in our corrections outcomes later” (ibid, p. 38).

As noted at the beginning of this section, the existing geographic dispersal of prisons has also been cited as a justification for building new penal institutions in a few jurisdictions. In British Columbia, it was argued that another local remand centre was required in the Metro Vancouver area. In a briefing note to the Minister of Public Safety and Solicitor General, officials from the British Columbia Corrections Branch (2006a, p. 1) argued that remanded prisoners “cannot be relocated away from the court of jurisdiction” where their hearings are held.

In the lead up to its founding as a territory in 1999, reports on Nunavut’s prisons have also raised concerns associated with the location of prisons where residents from the territory are housed.³⁹ More specifically, officials were concerned that criminalized women from Nunavut were confined at the Territorial Women’s Correctional Centre in Fort Smith, Northwest Territories. They had also expressed a desire to “repatriate federally sentence men” incarcerated in federal penitentiaries (McCready Consulting, 2002, p. 7). Noting “the importance of keeping offenders in their home communities and for working towards having Inuit offenders serve their sentences in Nunavut” (ibid, p. 1), successive territorial governments have considered building more and smaller facilities to provide “opportunities for the communities to face up to deal with the social problems that give rise to unacceptable behaviour” (ibid, pp. 20-21). The issue of geographic dislocation, and its relationship to rehabilitation and community integration, was also central to discussions that led to the establishment of regional prisons for federally sentenced women to be housed ‘closer to home’, near their families and communities, in

the 1990s and 2000s. As noted by Hayman (2006, p. 100), “the immense size of Canada meant that, wherever the new facilities were eventually sited, some of the women would still be many hundreds of kilometres from their home communities”. The same argument applies to all provinces and territories including the smallest jurisdiction, Prince Edward Island, which is over 200 kilometres in length.

Deemed outmoded to meet modern standards of confinement, the pursuit of rehabilitation and institutional security, public safety, as well as demands for operational efficiency in both prisons and the penal system more generally, jurisdictions continue to pursue the replacement of obsolete prisons with a renewed, yet still obsolete (Davis, 2003), prison idea. As this section illustrates, the objectives of imprisonment – and in this case prison capacity expansion – are multiple and contradictory (O’Malley, 1999). For instance, it is well documented that concerns for institutional security have triumphed and displaced the imperatives of rehabilitation that, at times, have legitimated the perpetuation and expansion of imprisonment (Mathiesen, 1990). This was and continues to be the case in Canada, as made evident in the recent reform of federal imprisonment for women whereby a vision for minimum-security facilities that was to emphasize treatment and healing eventually translated into multi-security-level institutions with segregation cells, large perimeter fences and other fixtures associated with imperatives of institutional security (Hayman, 2006; Pate, 2008). Given the track record of the prison, there is no reason to believe that such a “carceral clawback” – defined as “the power of the prison constantly to deconstruct and successfully reconstruct the ideological conditions for its own existence” (Carlen, 2002, p. 116) – will not reproduce itself in new provincial-territorial spaces of confinement, displacing efforts to provide programming to

prisoners in the name of institutional security. Budgetary concerns in the context of a global fiscal crisis could also have the same effect. More important, however, is the fact that no matter the justification, even when benevolent and / or pragmatic in intent, imprisonment is a form of punishment (Moore and Hannah-Moffat, 2005) and violence (Scruton and McCulloch, 2009). Seen in this light, the construction of more prison spaces represents to continuation of harm, not its prevention as proponents of incarceration claim.

Human Nails and the Prison Hammer

Maslow (1966), p. 15) once noted that “[i]t is tempting, if the only tool you have is a hammer, to treat everything as if it were a nail”. While it would be disingenuous to say that the penal system, and particularly the prison, is the only instrument used by provincial-territorial governments to manage the so-called dangerous classes (e.g. the uneducated, unemployed, ethnic and racialized minorities, individuals who do not conform to gender expectations, persons perceived to be or who are actually suffering with mental health issues, prohibited substance users, and others), there is evidence to suggest that those within the state-system are operating with a narrow conception of the issues they face and what is available to them on their tool belts to address them. This is illustrated in the policy options considered as remand populations soared, a changing prison population was identified, and some of their penal infrastructure was considered to be outmoded.

As a group, the Provincial-Territorial Heads of Corrections provided feedback to a task force examining the remand demand that noted:

...the matter of greatest urgency is the burgeoning remand population. Addressing this requires the rest of the justice system to recognize its

responsibility for what is a resource issue for corrections but is really a moral issue for the administration of justice (McCrank *et al.*, 2009, p. 36).

Within this comment lies a not so subtle message that having more people in provincial-territorial prisons awaiting trial and / or sentencing than individuals serving sentences undermines the overall legitimacy of the penal system. And while some jurisdictions have put in place additional resources to deal with issues such as court backlogs that contribute to an upswing in the use of remand by hiring additional prosecutors and judges, for their part, prison officials and external advisors either did not consider community-based incarceration arrangements or recommended their implementation alongside the construction of additional penal infrastructure. Notable, however, is the fact that while most of the provincial-territorial governments below have gone ahead with the construction of new prison spaces, recommended community-based custody measures that will be discussed below appear to have not been implemented in most cases. Somewhere between “conception and implementation”, to use Rothman’s (1980, p. 421) words, these ideas have been neutralized in one way or another, with the prison idea again emerging as the primary weapon in the punishment arsenals of Canada’s provinces and territories.

In Newfoundland and Labrador, where one or two new prisons to replace HMP were being considered in 2009, external reviewers “recommended that action be taken to identify and process low-risk inmates to ensure that the provincial temporary absence program is utilized to a greater extent” (Poirier *et al.*, 2008 p. 134). This program was “severely curtailed” due to an escape and subsequent investigation in 2000 that led to increases in the security ratings of prisoners (*ibid*, p. 133). Noting that “[c]ommunity-based correctional programs are more cost-effective than keeping offenders in prison and

help to promote the rehabilitation and reintegration of the offender” (ibid, p. 134), the reviewers recommended that the province “develop policies to promote continuity between institutional and community-based programs” in conjunction with new penal institutions to facilitate the safe re-entry of prisoners into society.

A report on Nova Scotia’s prison system, which had a single-bunking policy, noted that other jurisdictions that have encountered similar challenges have simply redefined the term “capacity” to allow for double- and triple-bunking when the need arises (Deloitte, 2008, p. 95). The report went on to note that should the province adopt “double bunking, it will further reduce capacity pressure” (ibid, p. 98). Other options adopted by other prison authorities to deal with systemic overcrowding identified in the external review included accommodating adults in youth facilities, retrofitting recreational and administrative spaces to allow for additional beds, building new facilities and using administrative releases (ibid, p. 99). Noting that plans were in place at that time to build new penal institutions in Antigonish and Cumberland counties with double-bunked cells, Deloitte recommended that the Correctional Services Division conduct a capacity review by 2018 and that the Department of Justice should “[r]eview alternatives to custodial corrections to assist in decreasing short- and long-term capacity demands” (ibid, p. 127).

With a new remand centre and prison in the process of being built in New Brunswick, a 2008 internal review recommended the creation of a “Community Corrections Strategic Advisory Committee”, including the province’s Minister of Public Safety and other stakeholders, that would be tasked with making use of the “untapped capacity in the community that could provide more and better correctional services in this

time of serious overcrowding in our adult jails” (New Brunswick Community and Correctional Services, 2008, p. 8). Community-based ‘alternatives’ to incarceration such as “the creation and expansion of drug courts, mental health courts, and aboriginal people courts” (ibid, p. 8-9), as well as “new alternative residential and treatment placement” were recommended as ways to reduce or end “the use of jail custody and criminalization for citizens with mental illness and addictions issues” (ibid, p. 58).

In Manitoba, where the number of incarcerated women housed in an aging Portage Correctional Centre – a facility considered to be located too far away from Winnipeg where most incarcerated women in the province are from – was increasing, the provincial government had launched a public consultation in December 2004. Following three public hearings, a number of private meetings with stakeholders and visits to penal institutions in the region, the advisors recommended a combination of a new prison for women and healing lodges based on the design of the Okimaw Ohci Healing Lodge – a CSC institution in Saskatchewan. Transitional housing in the community for criminalized women “as alternatives to incarceration in a conventional facility” (Bruce *et al.*, 2005, p. 3), were also proposed in the hope that such housing “could replace traditional jail sentences for low risk women offenders” (ibid, p. 10).

With “a rare and distinct opportunity for Canada’s newest political jurisdiction – that of developing a system of correctional facilities unhindered by old and culturally inappropriate concepts” (McCready Consulting, 2002, p. 1), two paths for future penal infrastructure were presented to the Government of Nunavut. ‘Path A’ proposed the construction of a 128-bed multi-security-level ‘healing facility’ for longer term prisoners, two minimum- and medium-security ‘healing lodges’ for shorter term prisoners totalling

42 beds, a 10-bed community custody facility, along with 12 bed spaces for the ‘land program’ – a work release initiative, and an attendance centre for individuals supervised in the community (see *ibid*, pp. 12-13). ‘Path B’ involved a smaller 76-bed ‘healing facility’, the two ‘healing lodges’, along with 48 beds across the territory in various community custody facilities and a 16-bed ‘land program’ (see *ibid*, p. 16). Despite the recommendation made by consultants that ‘Path B’ be adopted due to the geographic dispersal of facilities and increased prospects for involvement of communities where prisoners are from with unique cultures (e.g. dialects spoken), a variation of the cheaper ‘Path A’ was adopted by the territorial government whereby the aging Baffin Correctional Centre was to be kept open. At this stage in the implementation process, a new 46-bed facility for men is in the process of being built in Rankin Inlet.

While community custody measures were included in the policy options for incarcerated men in Nunavut, such ‘alternatives’ were proposed only as interim measures for incarcerated women in the territory until a permanent facility could be constructed (*ibid*, p. 26). The permanent accommodation options presented included: 1) the ‘status quo’, involving the use of transfers of women prisoners to the Territorial Women’s Correctional Centre in Fort Smith, Northwest Territories; 2) the construction of a 10-bed women’s unit at a men’s prison deemed “inherently inappropriate” (*ibid*, p. 25); and 3) a new facility specifically for women (*ibid*, p. 26). In the end, a variation of the third option was chosen involving the establishment of a new 8-bed facility for women in Iqaluit.

Having maximized the use of transfers inside and outside the province (Alberta Solicitor General and Public Security, 2006b, p. 3), along with double- and triple-bunking

(ibid, p. 4), a business case “to identify the solution that best meets the future (next 30 years) needs of the Solicitor General & Public Safety Ministry to safely and securely house remanded inmates from across northern Alberta” was submitted to the province’s Treasury Board in 2006 (Alberta Solicitor General and Public Security, 2006a, p. 4). In the business case, three options were proposed: “Alternative 1 – Status Quo”, “Alternative 2 – Upgrade the existing ERC and add a second building”, “Alternative 3 – Replace the existing ERC with a new facility” (ibid, p. 5). Community-based custody arrangements were not tabled as a policy option as such measures were deemed to be inappropriate as the risk posed by prisoners to the safety of others was perceived to be too high. Put differently, this option was considered to be “impossible to implement” (Mathiesen, 1990, p. 38), neutralizing suggestions that would undermine efforts to build a new ERC, which had been recommended by prison officials since at least 2002-2003 when the Correctional Services Division in the province had tabled its 10-year capital plan.

Unlike operational and infrastructure reviews conducted elsewhere in Canada, Landreville and Charest’s (2004) assessment of Québec’s prison system did not begin with the assumption that the construction of penal institutions was necessary or inevitable. Noting that the recent increase in the provincial prison population was the result of lower rates of conditional releases and temporary absences, the academics argued that reversals of these trends through a 10 percent increase of the use of these mechanisms over two years would reduce the number of prisoners to manageable levels (Landreville and Charest, 2004, p. 81). With the report in-hand, the provincial government later decided to implement a community custody strategy (Lalande, 2010) to

coincide with the establishment of new prisons and the expansion of existing institutions. Similar developments occurred in the Northwest Territories where the government recommitted to restorative justice initiatives in local communities (Northwest Territories Department of Justice, 2011).

What these developments signal, in my view, is the existence of ingrained conservatism that is dominant within state government bureaucracies and the corridors of electoral political power whereby the prison is seen as a necessary social institution, and an inevitable response to an increasing number of social issues and statuses that are appropriated by the penal system. In cases where ‘alternative’ custody arrangements are introduced, past experience suggests that such arrangements will likely contribute to an overall widening of the net of the penal system (see Cohen, 1985). A rising remand population, composed of individuals who they themselves argue, on occasion, should not be incarcerated in the first place, could signal the need for a national conversation on the growing role confinement and punishment play in Canadian society. However, prison officials from the provinces and territories, along with their external advisors such as the CFCTFR, argued that the matter is for the penal system – police departments, courts, prison agencies and parole authorities – to resolve. And in fairness, as long as publics are perceived to want, or actually demand that, their elected representatives expand the place of incarceration, it is those working within the penal system that have to navigate the emerging terms of engagement that are often set for them. Penal necessity and the inevitability of more incarceration to come seem to be operating assumptions guiding penal policy and practice in Canada at this time. However, I could be wrong but

discrepant data, should it exist, would be buried in the unpublished records that were withheld and redacted in keeping with the unfinished tendency of the state.

Implications for Research and Action

At several points in this study, it has been argued that contemporary literature on prison expansion has been largely preoccupied with an analysis of legislation, political rhetoric and media representations concerning punishment. While I do not wish to suggest that such work is not valuable, it often comes at a price whereby the role played by penal bureaucracies in the perpetuation and further entrenchment of the prison idea is often ignored. This is arguably the result of an assumption amongst many critical criminologists and sociologists of punishment that the role of penal system professionals has been subsumed by the so-called recent politicization of punishment. However, claims concerning the death of bureaucracies as it pertains to setting penal policies seem to be greatly exaggerated if the case of Canada is any indication.

Over two decades ago, Garland's (1990) exhaustive treatment of the question of punishment in society through the lens of various social theories paid significant attention to the role of professionals in the development of thought underpinning modern penality in the previous two centuries. His incorporation of Weber's work on the rationalization of government, in particular, is instructive as it highlights how "penal professionals tend to orientate themselves towards institutionally defined managerial goals rather than socially derived punitive ones" (ibid, p. 184). This is seen in this chapter where new penal infrastructure is viewed by prison officials and external advisors as a means to develop systems of punishment that are more efficient, secure and capable of rehabilitating prisoners. The pursuit of these 'rational', or rationalized, ends as a means

to cope with the remand demand has been a significant force in the prison capacity expansion that is underway today at the provincial-territorial level.

The political climate in which penal administrators and practitioners operate must also be accounted for. These civil servants may tend to operate in a risk averse manner that often see alternatives to incarceration displaced, or treated as a means to supervise and control populations in the community that would have previously been dealt with informally or through different spheres of governance. With the political attention and publicized scrutiny concerning that which has been criminalized and the question of punishment, an increasing number of identified social problems such as mental health and drug addiction are being addressed within the realm of 'criminal justice'. As in the past, where "a powerful penal bureaucracy has done much to remake modern punishment in its own image" (Garland, 1990, p. 188), this study has illustrated how these actors are bringing a number of challenges facing Canadian society within their orbit through the identification of a 'changing offender profile'. Further investigation is required to examine if it is simply a coincidence that the assertion that prisoners today pose greater challenges than in previous times emerged in a context of declining police-reported 'crime' rates where one could expect incarceration rates to decrease should norms around punishment remain stable. More importantly, however, the concern expressed for meeting the needs of identified sub-populations said to compose an evolving prisoner population signals that punitiveness in Canada today continues to be couched in benevolent terms, even existing alongside politicized calls for harsher treatment of the accused and convicted. Where the penal bureaucracy is concerned, perhaps the Canadian case is an outlier in an increasingly punitive world as some have suggested (see Meyer

and O'Malley, 2005; Doob and Webster, 2006; Webster *et al.*, 2009), or perhaps western democracies have not entered into a post-disciplinary era as neatly as some 'punitive turn' theorists suggest (Matthews, 2005; Moore and Hannah-Moffat, 2005; Carrier, 2010).

Within the context of this project informed by action research (Mathiesen, 1974), these findings raised two important challenges. As noted previously, only the governments of Newfoundland and Labrador, Prince Edward Island and Ontario had attempted to account for federal sentencing measures at this juncture of the study in their prison capacity expansion initiatives according to information I obtained. With a federal government tabling new sentencing measures whose stated aim was to increase the number of individuals convicted by the courts that are sent to prison, as well as the length of the time served in penal institutions, a first challenge came to the fore: to find a way to contribute to an interruption of these measures that would likely exacerbate the capacity pressures experienced by their provincial-territorial counterparts.

In a context where prison officials and external advisers had identified the ascendancy of a 'changing' prisoner population to justify the construction of new prison spaces, a second challenge emerged: to find a way to problematize the use of imprisonment as a catch-all 'solution' to issues the penal system appropriates as its own in a manner that could contribute to a greater proliferation of discussions on how to conceive and respond to these matters differently. How strategy was developed to address the two challenges raised here, in addition to the challenge posed by the secrecy exercised by the federal government in their pursuit of new penal infrastructure outlined in *Chapter II*, is the focus of *chapters IV* and *V*.

CHAPTER IV: AN INITIAL STRATEGY FOR CONTESTATION AT A PUNISHMENT CROSSROADS

Philosophers have only interpreted the world in various ways; the point, however, is to change it.

– Karl Marx (1845).

Introduction

At different times, in different countries, criminological researchers have lamented the lack of influence that scholarly research has had on the formation of public opinion, as well as penal policy that, more often than not, is hijacked by opportunistic politicians who focalise on ‘crime’ and punishment as a way to generate broader electoral support. Over a decade ago, Garland and Sparks (2000, p. 201) responded to such sentiments arguing that “there is, in the end, little point in being dismayed when governments behave politically. It is, after all, what they do”. They did, however, encourage criminologists to “engage public discourse in order to address a central issue of our time” (ibid).

Recently, this debate has evolved and focalised around the idea of a public criminology, involving the dissemination of research findings and related commentary beyond the classroom, the university and academia. This concept has been the topic of special issues in scholarly journals such as *Theoretical Criminology* (2007) and *Criminology & Public Policy* (2010), and other publications (e.g. Loader and Sparks, 2011). Some of these pieces focus on providing a laundry list of reasons why criminologists should take on the challenge of ‘going public’, with an emphasis on the objectives that ought to be pursued and the audiences a public criminology ought to reach (e.g. Chancer and McLaughlin, 2007; Currie, 2007; Uggen and Inderbitzin, 2010). Other contributions are more pragmatic in their focus, with an emphasis placed on different

approaches that can be used to engage extra-academic publics (e.g. Barak, 2007; Stanko, 2007) and the resources required to pursue such activities (e.g. Land, 2010). Practice-oriented accounts have also reflected on the challenges encountered while doing public criminology, including gaining access to dissemination vehicles and influencing audiences (e.g. Petersilia, 2008; Feilzer, 2009; Rock, 2010; Mopas and Moore, 2011).

Whether or not these interventions resonate beyond the realm of scholarship is very much a question of timing and context. As noted by Tonry (2010, p. 793), “[r]esearch-derived evidence influences policy and practice in some places, at some times, and on some subjects”. The opening of “windows of opportunity” (ibid, p. 787) is also critical in shaping the ability of researchers to gain access to vehicles of public opinion formation that shape the terms of penal policy debates such as news outlets (Barak, 1999). Mathiesen (2008, p. 62) refers to these moments as “turning points” where opportunities to halt and reverse regressive penal policy trajectories emerge. As will be discussed further below, the issue of timing and context was certainly crucial to my ability to communicate my research findings and related commentary to a wide range of audiences.

After nearly a year of collecting and analysing data on how the prison idea was being reproduced in Canada through the construction of new penal infrastructure, I had come to three conclusions by December 2009. First, there was significant growth in the capacity to confine and punish underway at the provincial-territorial level at a significant economic cost. Second, in a context where a number of sentencing measures were being tabled federally, the evidence I had accumulated showed that most provinces and territories had not accounted for the impact of these reforms on their prison populations

as they put in place plans to build new prison spaces. Instead, these facilities were primarily being erected in a stated effort to address a burgeoning remand population, with justifications related to the provision of institutional security and programming, as well as operational efficiency, forming the supportive – finishing – component of these initiatives. Thus, should the punishment agenda of the federal Conservatives continue, with legislation that sought to mandate longer prison sentences for criminalized acts and restrict the use of community custody, it was probable that further prison capacity expansion would be required in the future. Third, the adoption of an unfinished approach to penal policy by the federal government, whereby many of the consequences of their policies such as related penitentiary construction plans and their fiscal implications were kept secret, prevented a comprehensive discussion on the merits and potential pitfalls of their proposals.

In a context where the terms of the debate were largely being dictated by the Conservatives who positioned themselves as being ‘tough on crime’ and characterized Parliamentarians from the majority opposition who would ask questions or resist the passage of their measures as being ‘soft on crime’, there was a need to contribute to a change in the parameters of the conversation that was leading to a further entrenchment of imprisonment in Canada. An opportunity to work towards such a change occurred when Prime Minister Stephen Harper prorogued Parliament on 30 December 2009 (CBC News, 2009), killing the pieces of legislation that had been tabled in the House of Commons and Senate that had not received Royal Assent. For me, the extended winter break for federal Parliamentarians was a potential turning point – a punishment

crossroads – where a shift in the national conversation about penal policy in Canada could be made possible.

Situating my approach to contesting the reproduction of the prison idea within the literature on public criminology, this chapter is about how I initially attempted to mobilize my research findings to contribute to a shift in the terms of the federal penal policy debate with the goal of interrupting, or finishing the unfinished, punishment agenda of the Conservatives. In particular, I discuss the public engagement strategy devised, with an emphasis on the messages I sought to convey and the various vehicles I sought to use, to reach and encourage stakeholders to move beyond the ‘soft’-‘tough’ pendulum that had marked recent penal policy discussions. In keeping with the action research approach adopted in this study, I conclude with a discussion of the signposts that shaped my analysis of the supportive and negating discourses animating the reproduction of the prison idea as the expansionary penal policies of proponents of incarceration were critiqued and my relationship to this process that are the subject of the following two chapters. Before proceeding, however, I briefly turn my attention to the public criminology debate to illustrate where my approach to extra-academic engagement informed by penal abolitionism differs and is similar to the objectives pursued and audiences targeted by advocates of public criminology.

The Public Criminology Debate

Academics calling upon their colleagues to become publicly engaged are not a new phenomenon. Nickel (2010, p. 700) argues that the “contemporary advancement of the normative ideal of public intellectuals contributing to social transformation by contesting objective knowledge dates back to Karl Marx’s statement in *Theses on Feuerbach*”,

which is cited at the beginning of this chapter. In this piece, “Marx was calling for intellectuals to reveal alternative understandings of what exists and of possibility, which would in turn reveal alternative courses of action as being debatable by those whose lives such actions impact” (ibid). Nickel also illustrates that recent calls for public engagement are certainly not limited to the discipline of criminology, but rather extend across other fields, most notably in sociology, but also in geography, history and anthropology. This development is referred to as “the public turn in the social sciences” (ibid).

The purpose of the following section is to briefly review the objectives pursued by proponents of public criminology and the audiences they seek to reach. Drawing on penal abolitionist thought, which has a long tradition of public engagement (Ruggiero, 2010), it is argued that proposals for a public criminology are restricted by their reformist orientation in both their aims and the relationships they seek to cultivate. In light of this argument, a broader programme for a public criminology is proposed, one that displaces the hegemony of the prison idea and the penal system.

Public Criminology for What?

In criminology, attempts to destabilize the field are frequent (Hil and Robertson, 2003, p. 91), as old debates are rehashed in an attempt to reconstitute the *raison d’être* and the *modus operandi* of the discipline (Martel *et al.*, 2006, p. 636). Often, these discussions focus on methodological practice (e.g. Austin, 2003) or the application of social theory (e.g. Matthews, 2009). Agenda setting conversations outlining specific questions that require criminological attention also feature prominently in the literature (e.g. Zedner, 2007).

In addressing the question “what is criminology for?” some scholars have made the case for a public criminology. Such proposals have emerged largely out of the perception “that criminology as a discipline has become increasingly marginal to the larger public discussion of crime and criminal justice, and decreasingly capable of affecting the thrust of social policy” (Currie, 2007, p. 176). Thus, the central objective sought by proponents of public criminology is “relevance and status within larger public policy debates” (Chancer and McLaughlin, 2007, p. 155). If given a prominent place at the penal policy table, it is argued that criminologists ought to pursue a more moderate approach to punishment than has been practiced in recent decades in some jurisdictions where prison populations have dramatically increased (Loader and Sparks, 2011). The danger of such a dual-pursuit is that researchers run the risk of reifying the terms of the debates in which they would like to participate (Hulsman, 1986), rather than pushing boundaries through “informed sociological research and imagination” (Ericson, 2005, p. 371).

This pitfall has been encountered in that past as a number of critical criminologists in the 1980s, notably in the United Kingdom, “bid farewell to phenomenology and welcomed traditional crime classifications as well as criminal justice procedures in order to fight street crime that finds its victims among the working class” (Scheerer, 1986, p. 19). These efforts, frequently advanced under the banner of ‘left realism’, often did not produce arrangements that protected citizens, but rather contributed to their domination through the proliferation of imprisonment and the rise of robust surveillance networks. Knopp (1994) also notes that many progressive feminist scholars who denounced the imprisonment of women gravitated towards repressive

instruments of social control to respond to violence against women, contributing to the overall legitimacy of using incarceration to address complex conflicts and harms including those affecting criminalized women. It is with these and other examples in mind that public criminology must operate in a manner that is reflexive by examining its own role in the reproduction of hegemonic arrangements in cases where its critiques are neutralized and proposal are co-opted (Mathiesen, 1990). That is, if such efforts are to avoid repeating the well-documented pitfalls encountered by those espousing reformist politics.

Penal abolitionism aims to address this lacuna in reformist agenda setting by simultaneously seeking to eradicate the harms experienced by those in conflict perpetuated by the adversarial penal process and the infliction of punishment, while also advocating for the revitalization of the fabric of societies by providing more opportunities to develop solidarity and meet the human needs that conflicts engender through inclusive resolution (Hulsman and Bernat de Celis, 1982). With research opening “the way for alternative forms of perception and alternative ways of control” (Christie, 1998, p. 130), the abolitionist perspective proposes that it “may be a worthwhile job for criminologists to systematically point out these chances and help develop them” (Steinert, 1986, p. 30). However, such an agenda is accompanied with sustained vigilance about the prospects of neutralization and cooptation in an effort to avoid contributing to the further entrenchment of repressive arrangements (Mathiesen, 1990). This is achieved using an action research approach that examines the outcomes of political action to inform subsequent interventions (Mathiesen, 1974).

As will be further explained through this chapter, the contestation approach I adopted as part of this study was, like other public criminology interventions, concerned with establishing relevance to penal policy debates. However, I *attempted* to distance myself from the objective of penal reform, in favour of abolitionist praxis that places an analysis of political action, as well as an expanded vision of what is possible in terms of conceptualizing and responding to criminalized acts and statuses, at the centre of engagement.

Public Criminology for Whom?

As recent discussions on public criminology emerged largely out of the perception that criminology has “distressingly little impact on the course of public policy toward crime and criminal justice” (Currie, 2007, p. 175), a primary intended audience are policy-makers. While proponents identify problems with the renewal of this relationship in “that criminologists will continue to respond to the government’s crime control priorities rather than articulating a broader criminological agenda and they would have little to no control over how their data will be used” (Chancer and McLaughlin, 2007, pp. 157-158), the need to reach this audience is maintained.

For Currie (2007, p. 178), in order to have success convincing lawmakers “to do the right thing”, it is important that criminologists engage the voting public, who, through the electoral process, shape penal policies. Chancer and McLaughlin (2007, p. 158) also argue that criminologists “cannot sidestep their responsibility as citizens to participate in the broader public conversation” and need to engage this audience so that individuals can be better informed in their deliberations for political representation.

To expand the range of research activities in which publics including “community and non-profit organizations” can be involved, Currie (2007, p. 187) also encourages colleagues to create institutional spaces that allow them to be “actively involved in framing the questions we ask, rather than just listening to what we have to say about our findings”. Penal abolitionists have long taken up this call to action, however, their principal concern is to work with “collective actors and social movements” (Ruggiero, 2010, p. 207) to achieve shared objectives. Abolitionists acknowledge that criminological literature is littered with examples of how those harmed in criminalized conflict are most often excluded from meaningful participation in their resolution (Christie, 1977) and from the production of related scholarly knowledge (Gaucher, 2002). As “[a]bolitionism is in one way or another related to the principle of solidarity with the expelled of society” (De Folter, 1986, p. 60), primary publics include criminalized and non-criminalized victims, and those accompanying them along the journey towards healing. Penal abolition “is a movement which tries to let people speak for themselves” and validate their perspectives (ibid, p. 59). Ruggiero (2010, p. 207) provides a few examples of such practice:

Christie talks to serial killers and concentration camp officers, Mathiesen spends as much time with students as he does with prisoners, while Hulsman is engaged in practical experiments, meeting disputants in problematic situations, all individuals who are the protagonists within the domain of ‘crime and justice’ monopolized by experts.

It is with this in mind that it is argued that the “sociology inspiring abolitionism, in brief, prioritizes specific actors and their collective action that can bring change from below” (ibid, p. 207). In the context of addressing conflicts and harms appropriated by the state

and its penal system, such actors include criminalized and non-criminalized victims, as well as their loved ones and interested members of their communities (Elliott, 2011).

In some ways, my approach to public criminology is informed by abolitionist praxis in the manner described above in the work undertaken in the production of the *Journal of Prisoners on Prisons* (JPP). This publication “brings the knowledge produced by prison writers together with academic arguments to enlighten public discourse about the current state of carceral institutions”.¹ However, the contestation component of this study, like more conventional approaches to public criminology, was primarily aimed at reaching policy makers, most notably federal Parliamentarians whose votes on sentencing measures would shape the future of imprisonment in Canada for years to come. With that said, this pursuit was not to be undertaken in isolation. Rather, I sought to reach a wide range of participants involved in the federal penal policy discussion with the goal of contributing to a shift in the terms of the debate using messages derived from my research findings. This approach to public criminology is the focus of the following section.

A Multi-faceted Approach to Public Criminology

With the long term objective of abolition in mind, the immediate task to work towards this end was to contribute to a halt in the expansionary trajectory in Canadian penalty that risked becoming more intensified as new federal sentencing measures introduced by the ruling Conservatives were being debated in Parliament. It should be noted that these legislative proposals had been widely critiqued by the majority of individuals and groups who made presentations during committee hearings in both the House of Commons and Senate in a manner that was well-publicized. However, those sitting in the majority

opposition in both chambers from February 2006 to December 2009 passed many the measures before them despite voicing reservations (see *Chapter III*).² Larsen and Piché (2009, p. 15) commented on these developments, arguing:

There appears to be an unspoken agreement about the rules of ‘tough on crime’ rhetoric, whereby the only politically viable response to the charge “My opponent is soft on crime” is to make vigorous assertions to the contrary, accompanied by gestures towards one’s own ‘get tough’ credentials. For example, even the acknowledged left-of-centre party has recently advocated that the designation of ‘violent offence’ should be applied to auto-theft (NDP, 2008, p. 32), revealing the degree in which parties of all political stripes parrot hard-line talking points about crime control and sentencing (Tham, 2001).

Thus, if an interruption of the Conservative punishment agenda was to take place, it was necessary to contribute to the creation of a discursive climate within which opposition Parliamentarians could be seen as reasonable in rejecting the bills before them.

To effect the change desired would require more than the one voice of a graduate student with findings concerning the scope of provincial-territorial prison capacity expansion and the secrecy with which the federal government was pursuing their penal infrastructure projects. I did, however, believe that I had actionable information that, if presented in the right way, to the right people, could contribute to a shift in the terms of the discussion.

The multi-faceted approach to public criminology adopted in this study was primarily concerned with reaching opposition Parliamentarians who were voting on Conservative punishment bills, with the goal of having the narratives communicated to them being taken up in the argumentation and questioning of these penal policy debate participants. As the media is a key tool that elites such as politicians use to sway the opinions and decisions of fellow elites (Aeron Davis, 2003), I also sought to reach

members of the press working in print, radio, television and web-based outlets covering federal penal policy. The rationale for this was simple: members of the press have a part in setting the agenda of related discussions through the questions they ask, the voices they illuminate and silence, and the overall narratives they communicate through their products being consumed by their audiences, including Parliamentarians. Other participants I sought to reach were prison officials, professional and voluntary groups working within the penal system, along with advocates that serve prisoners and victims who provide penal policy advice to those in political office. I also wanted to research members of the general public who elect Parliamentarians and could conceivably influence their voting behaviour – particularly in the House of Commons where members are elected – on issues of punishment.

This approach to extra-academic engagement is similar to Loader's (2010, p. 363) approach to penal moderation-as-politics, involving "making one's case across the now diverse settings of public will formation... fostering dialogue with citizens and seeking to challenge and move (rather than take-as-given) prevailing understandings of the meanings and place of punishment in our collective life". However, unlike Loader, I do not accept the presumed necessity of the prison and penal system.

With a general idea of those I wanted to reach, a number of practical questions needed to be answered: what messages could I use to connect with the audiences / participants I had identified that would increase the likelihood that they would be taken-up as their own? What vehicles of communication could I use to reach them? When should I begin my intervention? Each practical question is discussed in turn to illustrate

how I initially sought to contest the reproduction of the prison idea that informed subsequent forays into public criminology as part of this study.

Constructing the Initial Messages

What is commonly called ‘crime’ engenders strong emotions such as anger and fear, not only amongst those directly affected by these complex conflicts and harms, but also to those who bear witness at a distance often through the lens of the news media (Katz, 1987). Mopas and Moore (2011, p. 2) argue that a central problem with “public criminology as it is typically practiced” is that academics have the penchant “to ignore and dismiss the role of human emotions”, or, worse, argue for their negation in favour of views informed by cold, hard facts.

Similarly, Loader and Sparks (2011, p. 83) problematize the use of “cooling devices” by criminologists to neutralize “processes that have heated up the criminal question”. Such techniques include appeals for “reaffirmed legality and justice”, calling for policy informed by criminological research that seeks “to explain offending and discover what works to prevent or reduce it”, pointing to “new ways of thinking about and techniques for controlling crime under the banner of ‘crime science’”, and advancing arguments to insulate penal policy from “the heat of electoral policies and clamorous media coverage” through the creation of more robust expert-led bureaucracies (ibid, p. 84), also known as “cultivating indifference” (Loader, 2010, p. 362). The use of “decoy rhetoric” that aims to initiate ‘moderate’ penal measures “under the cloak of some symbolically tough messages” and the “treasury card” that points to the sizeable cost of imprisonment as a public expenditure that should be used less frequently to save taxpayer dollars (ibid, p. 361) are two other approaches to penal moderation. Loader argues that

the use of such devices “leave unaddressed and unabated the emotions that animate demands for penal severity and provide a reservoir of support for rulers committed to penal solutions to the crime problem” (ibid, p. 362). He then warns that in the worst-case scenario, stealth approaches “aggravate the frustrations of citizens who feel shut out from processes which they think affect their lives and about which they may care deeply, or who are (justifiably) irritated by social and political actors who are judged to be pressing their case by means of elite conspiracy or sleight of hand” (ibid).

As noted by Ian Brodie, a former Chief of Staff for Prime Minister Stephen Harper, the Conservatives tapped into these perceived public sentiments as they dismissed critiques from experts such as “sociologists, criminologists, and defence lawyers” who are “all held in lower repute than Conservative politicians” (Geddes, 2009). Brodie added: “Politically it helped us tremendously to be attacked by this coalition [...] So we never really had to engage in the question of what the evidence actually shows about various approaches to crime” (ibid). For the Conservatives, experts in penal policy and practice are among those to be vilified in the pursuit of electoral gain. A 28 January 2008 speech by Prime Minister Harper is one example where the Conservatives sought to neutralize critiques directed at their punishment agenda through the derision of expertise:

Some try to pacify Canadians with statistics. Your personal experiences and impressions are wrong, they say; crime is really not a problem. These apologists remind me of the scene from the Wizard of Oz when the wizard says, ‘Pay no attention to that man behind the curtain’. But Canadians can see behind the curtain. They know there’s a problem. They know it was caused by a generation of lawmakers who embraced the bizarre notion that the rights of criminals outweigh the rights of law-abiding citizens (Harper, 2008).

With the federal government resorting to heat as they engaged in the reproduction of the prison idea, it would make little sense to respond in kind by trying to put the conversation on ice through a cold delivery of research findings.

Drawing on Locke's (1690) writings on the role that public intellectuals can play as a "democratic under-labourer" who mobilizes knowledge gained through research in the service of democratic politics, Loader and Sparks (2010, p. 117) propose the following programme for public criminology in the pursuit of a "better politics of crime and its regulation" as a corrective to cool criminological expertise:

...[contributing towards] increased public security, the reduction of crime and the production of social order; the improved effectiveness of criminal justice institutions and preventative programmes; the protection of individual liberty; the rule of law and human rights; combating illusion, dispelling myth, and subjecting responses to crime to the dictates of reason; enhancing well-being and social justice; and so on (pp. 124-125).

While this proposal could be criticized from an abolitionist perspective for its reformist orientation that, if successful in ways that many reformist campaigns have not been, would still leave room for the perpetuation of the prison fiasco (Mathiesen, 1990) but perhaps on a smaller scale, the idea of seeding democratic debate on criminalized issues and punishment through the mobilization of research is a worthwhile pursuit. However, from a practical standpoint it offers little in terms of how to engage the emotional cachet that populist punitive political sloganeering accompanying the introduction of new sentencing measures can elicit. To contribute to a shift in the conversation, a criminologist cannot "simply inform citizens about the 'facts' of crime", but must also engage audiences on an emotional plane (Mopas and Moore, 2011, p. 2). This is what I set out to do making use of the context in which Canadians were living.

As noted in *Chapter I*, this study was being undertaken at a time of economic uncertainty with thousands losing their jobs (see DeKeseredy, 2011, pp. 1-2) and governments running large deficits, in part to inject funds to stimulate the economy. To tap into this uncertainty and concerns over government expenditures, I decided to play what I would later come to know as the “treasury card” (Loader, 2010, p. 361). I sought to accomplish this by publicizing my findings on the costs of new provincial-territorial penal infrastructure and raising the spectre of additional expenditures accompanying further increases in prison capacity should the expansionary trajectory of federal penal policy be allowed to persist. In seeking to connect with audiences through their pocketbooks, I wanted to use money as a way to talk about values as reflected in the services provided to them from state governments such as education and health care that have defined Canada for generations. Specifically, I sought to make the connection between rising prison expenditures and cuts that will be made to other public services that contribute to their well being in the context of budgetary deficits. As I planned the fiscal component of my intervention, the Office of the Parliamentary Budget Officer was in the process of conducting a study on the financial costs of the *Truth in Sentencing Act* (2009) at the request of, then, Liberal Public Safety Critic Mark Holland (2009) who wanted a full costing of the federal sentencing measures being debated in Parliament so that “we can have an informed debate on whether or not these measures are cost-effective and desirable”. With the treasury card already in play, albeit with little in the way of concrete financial figures, I calculated that my findings could serve as a catalyst for shifting the penal policy debate towards a discussion on the costs, both fiscal and human, of the Conservative punishment agenda.

While Loader (2010) argues that this approach does not adequately engage with emotions, I would argue that use of taxpayer dollars is a lightning rod for discussion, including amongst fiscal conservatives who would prefer to see more money in their pockets than being spent on state-led social engineering projects. An argument could be made that imprisonment is one such initiative whose need can be problematized on the basis of evidence that illustrates the negligible impact incarceration has on community safety (e.g. Tonry, 2009), as well as on the basis of studies that have documented the longstanding decline in the volume and severity of police reported 'crime' rates in Canada (e.g. Wallace, 2009). I calculated that in the short term this narrative would put the federal government, who claimed to be beacons of fiscal prudence and responsibility, on their heels by revealing this contradiction in their approach to public policy that a greater role for imprisonment entails.

A second narrative I wanted to contribute to through the publicization of my research findings was related to state secrecy. As noted in *Chapter II*, many governments across Canada had used various techniques of opacity to prevent the disclosure of details related to their penal infrastructure initiatives. The unfinished (Mathiesen, 1974), as an approach to governance, was particularly pronounced at the federal level, with CSC refusing to disclose any details related to their prison capacity expansion plan. This coincided with the Conservatives' refusal to disclose many of the details associated with their sentencing measures. The stonewalling practiced by the federal government was not unique to penal policy issues, but also on matters such as the treatment of detainees captured by Canadian Forces in Afghanistan who were transferred to local authorities (see Curry, 2009).

It was in this context that I sought to tap into sentiments held by some regarding the Conservatives' approach to governance by playing the transparency card. Using this approach to messaging, I sought to highlight state secrecy by sharing my first-hand experience of being stonewalled by the federal government and calling for the release of information related to their penal infrastructure plans. My hope was that by expressing my frustrations in this manner, along with others voicing similar concerns about wanting access to information that in a democratic society fundamentally belongs to its citizens, the figures sought would be disclosed. From there, it would be possible for legislators and taxpayers to make more informed decisions regarding the benefits and costs of the sentencing measures being debated in Parliament that, if allowed to proceed, would likely result in an influx of new prisoners and the construction of additional prison spaces beyond those that I had already identified. Armed with the treasury and transparency cards, it was imperative to use the appropriate vehicles of communication to maximize the dissemination of the messages I sought to convey to the audiences / participants I sought to reach, as I describe below.

Vehicles of Communication

A central objective of this component of my study was to contribute to a shift in the terms of the federal penal policy debate in order to prompt the disclosure of additional details regarding the implications of the Conservatives' punishment agenda and contribute to the creation of a climate where it would appear to be reasonable for Parliamentarians to oppose the sentencing measures they were debating. To achieve this objective it was necessary to identify vehicles of communication to reach intended audiences. For the purposes of this project, newsmaking criminology, supplemented by public education and

policy criminology, was the primary means to achieve this end. These approaches to public criminological engagement are outlined below.

Drawing on Gramsci's (1971) theory on hegemony, Barak (1988, p. 567) argues that "the news and entertainment media represent the primary site through which the ruling class is able to produce and reproduce networks of institutions, social relations, and ideas" that maintain their dominance in the world. As argued by Sim (2009), the prison is among these ideas. It is with this in mind that Barak (1988) sought to develop an approach that would allow criminologists to participate in reframing media coverage on matters related to their areas of expertise. What emerged was newsmaking criminology, an amalgam of approaches that seek to advance replacement discourses "directed at the dual process of deconstructing prevailing structures of meaning and displacing these by new conceptions, distinctions, words and phrases, which convey alternative meaning" (Henry, 1994, p. 289). Henry identifies four approaches to newsmaking criminology, variations of which I sought to incorporate into the contestation component of this study.

The criminologist-as-expert is one approach to newsmaking criminology that involves reacting to emerging stories disseminated through television, radio or newspapers by participating in media coverage primarily as a subject matter expert (ibid, p. 292).³ An inability to retain authorial and editorial control over the stories in which one is participating in is among the limitations of this public engagement model, as one's words can be circumscribed to fit dominant narratives on criminalized issues. When engaged in such a reactionary form of media practice, one can also easily become one talking head pitted against other voices in a manner that is not amenable to the

advancement of replacement discourses, as other perspectives are given comparable weight in coverage (see Mopas and Moore, 2011). Anticipating these pitfalls described by Henry, I planned to agenda-set by regularly disseminating research findings and related commentary by writing and sending blog posts to my intended audiences, including members of the press covering federal penal policy related issues. How such activities shaped news coverage and discussions elsewhere relevant to this study on occasion is addressed in the following chapter.

The criminologist as journalist is a second approach to newsmaking criminology. This form of participation involves becoming an author of news stories instead of being “used as subjects or sideshows within them” (ibid, p. 293).⁴ This practice is also limited in that newspaper article authors or hosts of radio and television programs continue to be subjected “to editorial reconstruction and are limited in their scope to the immediate listening or viewing audience” (ibid). To circumvent these problems it is argued that criminologists need to “claim control of the crime news space themselves” – everything from story titles to accompanying imagery and sounds if applicable (ibid, p. 296). Barak (2007) suggests that blogging is one way this can be achieved. I incorporated this do-it-yourself approach to journalism into the contestation component of this study by repurposing my blog – *Tracking the Politics of ‘Crime’ and Punishment in Canada*. This website originally served as a space where I periodically posted links to news stories relevant to my research interests. For the purposes of this study, I transformed the blog into a portal where I could share my findings and comment on ongoing debates in federal penal policy.⁵

A third method of engaging in newsmaking criminology as replacement discourse is through self-reporting as the subject of a news story (Henry, 1994). Criminologists using this approach reach out to the news media in order to garner press attention for their research findings or events.⁶ It is argued that academics who use such tactics are able to be “the prime, if not exclusive source of the story”, which circumvents the potential for “experts disagree” scenarios and greater depth in terms of the message one is able to communicate (ibid). In undertaking this project, I wanted to organize public forums not only to generate media attention concerning the material I and others would be presenting to contest attempts to increase the use of imprisonment, but also as a means to energize fellow travellers to get more involved in efforts aimed at interrupting the Conservative punishment agenda. These events would also serve as a means to introduce those who may not be familiar with the issues to some of the consequences of placing additional emphasis on imprisonment in Canadian society. As noted by Currie (2007, p. 183), such forums are vital because “if people like us fail to interpret the realities of crime and punishment for a broader public on the basis of what we know, someone else will – on the basis of something altogether different, and probably a lot less honest”. It is with this in mind that I sought opportunities to give public presentations to community groups and speak at events open to a general audience as part of this study.

A final approach to replacement discourse through newsmaking criminology discussed by Henry (1994) is the criminologist as educative provocateur. Using this approach, criminologists challenge portrayals of ‘crime’ and punishment in the media by engaging “journalists through their own press associations and journals” (ibid, p. 314). The goal of such activities is to prompt members of the press to engage in self-analysis of

their own practices, resulting in the transformation in the way news about matters appropriated by the penal system is produced and disseminated to the reading, viewing, and listening public. While I sought to shape media coverage as an educative provocateur, I adopted a different strategy suggested by Greek (1994, pp. 280-281) involving the cultivation of relationships with members of the press as a consultant, albeit an often uninvited and always unpaid one. I attempted to do this by contacting journalists and media personalities covering matters related to this study via e-mail. In these communications, I would take it upon myself to point out inaccuracies in statements made by proponents of incarceration where they existed in news stories and segments. I would also provide suggestions on different questions and topics that could be addressed in future coverage with the goal of fostering more comprehensive coverage of the implications of increasing the use of imprisonment, directing them to relevant studies by academics, published and unpublished government documents or blog posts I had written where appropriate.

Another approach to doing public criminology cited in the literature is undertaking policy work within penal system agencies. Petersilia (2008, p. 339) is one criminologist who has taken part in this form of “embedded criminology”, working within the California Department of Corrections and Rehabilitation as the Special Advisor for Policy, Planning and Research to enhance services to facilitate prisoner re-entry into society. Stanko (2007) is another prominent scholar who has served in a research capacity within the penal system as a researcher for London’s Metropolitan Police in an effort to help the police force be more responsive to the needs of the communities they served. Unlike Petersilia and Stanko, I did not have the experience and

profile that would open the door to being hired as a senior advisor for a penal system agency. I also did not have the desire to contribute to reforming the institution I had the most knowledge of – the prison – given the track record of such efforts discussed elsewhere in this study (see *chapters I and III*). With that said, I still sought opportunities to provide policy advice by preparing presentations and briefs about alternative ways penal policy makers and practitioners could envisage and respond to the issues appropriated as their own. Although I was aware that by agreeing to requests to provide policy advice that I would be entering a field rife with neutralization techniques whose deployment could result in being defined in or defined out of penal policy discussions (Mathiesen, 1990), requiring a vigilant navigation in argumentation.

With an idea of how I would approach opportunities to practice public criminology if given the opportunity, the challenge became to achieve visibility so that those I sought to reach would read my blog posts and that I would be given an opportunity to contribute to penal policy debates through newsmaking, providing policy advice and public education. Below, I describe my initial foray into public criminology as part of this study that opened the door to other opportunities to engage publics beyond academia.

An Initial Foray into Public Criminology

As noted in the introduction of this chapter, the prorogation of Parliament near the close of 2009 was a pivotal moment in this study. In response to the use and timing of the parliamentary procedure – which came on the heels of a showdown with opposition parties over whether all Parliamentarians should have access to records on the war in Afghanistan to determine whether or not Canadian soldiers were complicit in torture –

many Canadians joined Facebook groups (Galloway, 2010a), attended rallies (CBC News, 2010a) and wrote letters to their federal representatives expressing their disapproval. While some viewed prorogation as an example of the federal government's disregard for democratic processes and institutions, I saw opportunity, as a number of sentencing measures that would likely further entrench the use of imprisonment had died on the Order Paper (see Law Times, 2010). The Conservative punishment agenda was now on hold until the resumption of Parliament in March 2010.

With research findings on the scope and costs of new penal infrastructure initiatives being undertaken by provincial-territorial governments who, for the most part, did not factor-in federal sentencing measures into their plans, and evidence that CSC had stonewalled my attempts to obtain information on their prison capacity expansion plans, I believed that I was in possession of data that could contribute to a derailment of the Conservatives' "carceral binge" (Gaucher, 2007, p. 2). As indicated in previous sections, I also had a fairly good idea of the messages I wanted to convey, how I was going to communicate them and whom I sought to reach. The challenge, as I saw it at the time, was to light a fire in such a way that the messages I would convey would catch on in a manner that would contribute to the treasury and transparency narratives that were beginning to develop on the federal political scene. Central to this exercise was to catch the attention of my intended audiences.

To achieve this objective, I decided to organize a public forum entitled "Prorogation as Opportunity: Proposing New Directions for Criminal Justice Policy". The event was billed as "a public forum that will assess the current direction of criminal justice policy in Canada", that would "also consider alternatives to costly, ineffective and

unjust measures being adopted in this country that are proven to decrease public safety in other jurisdictions”.⁷ From there I began the process, by contacting potential public forum participants to speak with me on a panel who had been active in opposing Conservative sentencing measures through media commentary, presentations in Parliament and other advocacy work that could generate an audience for such an event. I proceeded to invite Craig Jones (then Executive Director of the John Howard Society), Kim Pate (Executive Director of the Canadian Association of Elizabeth Fry Societies) and Tara Lyons (then Executive Director of the Canadian Students for Sensible Drug Policy). I also asked Eugene Oscapella (Co-founder of the Canadian Foundation for Drug Policy) to chair the panel. All accepted my invitation to participate in the forum.

With the participants confirmed, I then began to publicize the event. First, I attended the 23 January 2010 anti-prorogation rally in Ottawa where I handed out a few hundred flyers to some of those gathered on Parliament Hill. On 26 January 2010 I posted the text from the promotional flyer on my blog, circulating the link via e-mail to various mailing lists I subscribed to, as well as colleagues that had extensive contacts with penal policy makers and practitioners working in the National Capital Region. I also invited Parliamentarians, including the justice and public safety critics of the Bloc Québécois, NDP and Liberal Party, by phone as I calculated that any campaign to halt future prison growth would hinge on their willingness to consistently vote against Conservative punishment legislation. As illustrated by past voting behaviour (see *Appendix IV*) and inconsistent critique of the sentencing measures before them for debate, as well as their willingness to tout their own ‘tough on crime’ credentials, this was far from a given. Unfortunately, all the offices indicated that the Parliamentarians would

likely not attend the gathering. Thus, my ability to reach these audiences would depend mostly on my ability to generate media coverage for the event. Through the newsmaking criminology approach of self-reporting (Henry, 1994), I contacted a few journalists with whom I had had previous contact and pitched the event, and specifically my presentation on the scope of prison capacity expansion, as a story worth covering.

The time had arrived – it was now 4:00pm on 17 February 2010. There were approximately 50 people in attendance that gradually trickled into the basement of the Ottawa Public Library minutes before. Many were familiar faces that I recognized including academics, community activists, as well as officials from CSC and the Office of the Correctional Investigator (OCI). Other faces, I did not recognize. With the knowledge that the material I had compiled had never been synthesized and disseminated publicly, I wanted to enhance the possibility that those present would remember the main messages of my presentation as they left that afternoon, and thus arranged to be the final speaker.

When I prepared the talk, I wanted to leave the audience with the impression that there was a never-ending wave of prison capacity expansion taking place at the provincial-territorial level. I sought to create this sense of overwhelming expansion by beginning my presentation with a review of all the penal infrastructure initiatives that I had identified at that time jurisdiction-by-jurisdiction. I began with initiatives in Newfoundland and Labrador, working my way across the country. As I occasionally peered over my notes to see how the audience was reacting, I saw some heads shaking in disapproval. Wanting to convey the sheer scope of the expansion underway, I summarized the number of projects and the \$2.724 billion dollar price tag I had identified

at that time for building these new facilities and the hundreds of millions more in operational costs.

Having gone over the basic facts I had compiled, I turned my attention to the messages I wanted to communicate, beginning with the transparency card, where I asked those in attendance the following questions:

- 1) What kind of penal expansion will we experience when the provincial, territorial and federal governments will be forced to address rising prison populations that will surely result from recently passed 'criminal justice' legislation?
- 2) What kind of penal expansion will we experience should the 'justice' bills that were set aside prior to prorogation – legislation that had the potential of augmenting the Canadian prison population – be reintroduced in Parliament and are passed?
- 3) What kind of penal expansion will we experience should Parliament pass new youth 'justice' legislation that encourages judges to consider denunciation and deterrence as sentencing principles for our children who are often not equipped to assess the gravity or consequences of their actions?
- 4) What kind of penal expansion will we experience should Parliament pass new youth 'justice' legislation that enhances the ability of judges to sentence our children as adults?
- 5) What kind of penal expansion will we experience once the Correctional Service of Canada announces the "major construction initiatives" they will be pursuing in the coming years?
- 6) If we continue this so-called 'tough on crime' trajectory, will governments decide to keep open or re-open aging and decrepit facilities new institutions were intended to replace?

As I asked these questions, I could see that a senior official from CSC was reacting to my words, although I could not get a sense of what he was whispering in the ear of the person in the seat next to him. Whatever he was saying, he did not look happy.

Having alluded to the need to consider the consequences of the Conservative punishment agenda that had been kept hidden from Canadians, I then played the treasury card in the midst of a fiscal crisis where many governments across the country were running large deficits, I asked those in attendance another series of questions:

- 1) Where will the funds to construct future provincial-territorial prisons and federal penitentiaries come from?
- 2) Will we be forced to cut back funding for core services, like they have in jurisdictions across the United States, to bankroll our relapsed addiction to incarceration, or will we raise taxes, or both?
- 3) If we are to divert much needed funds from our children in schools and our aging parents who on occasion require hospital care, what benefits can we expect in return for our investment in prisons that is supported by solid empirical research?
- 4) If crime rates have been steadily declining for years, why should we continue to support an agenda that will augment the prison population and will result in the construction of new penal institutions, particularly when research has shown that relying more heavily on imprisonment does not reduce crime?

Through these questions I wanted to convey the message that punishment is not something that happens only to the criminalized, but happens to us all in a manner that has wide-ranging impacts, not just in terms of safety in our communities, but also on our collective ability to deliver services that many cherish. In an effort to hit audience members in the pocket book one final time and highlight the broader implications of increasing the use of incarceration I closed with the following remarks:

While I am sure there are many other questions that can and need to be asked, there is no doubt in my mind that we are at a turning point. The prorogation of our Parliament has given us an opportunity to re-evaluate the direction of our country. As our governments look to exercise fiscal restraint, the central question that Canadians, as well as their elected and non-elected representatives of all political stripes, should be asking themselves is “what kind of country do we want to build with the money that is left?”

In answering this question, we need to be reminded that penal expansion is not inevitable but is one choice among many policy options. When we build prisons, we are – in effect – choosing to not build something else. We need to be reminded that for every new prison built funding for a new post-secondary institution, a hospital or a fleet of buses is lost. That the money spent on every new prison guard hired could have been spent on providing ten deserving students’ tuition scholarships or hiring a nurse to deliver home care to our parents and grandparents. That for every person incarcerated, there is often a family and community left behind. Do we want to live in a country that constructs prisons instead of schools,

hospitals, public transportation hubs and the like?

Far from a red herring, at some point we will need our political representatives to exhibit some leadership and address the questions I have put forward today. It is my hope that this will happen before we go 'back to the future' and unnecessarily subject ourselves to the costly, ineffective and unjust experiment of mass incarceration from which our neighbours south of the border are currently trying to extricate themselves.

When I was done my presentation, it felt as if the air had been taken out of the room. I painted quite a grim picture and there was not a lot of energy amongst those in attendance. Perhaps I had spoken for too long, I thought to myself. Or perhaps the avalanche of brick and mortar had surprised and paralyzed those present. After a few rounds of questions to the panellists, the public forum had come to an end.

After I had finished cleaning up the room, I had learned from my colleague Mike Larsen, that the senior official from CSC I had recognized had spoken to a few people beside him following the public forum claiming that the findings on prison construction I presented were inaccurate. Having heard this, Mike intervened and proceeded to ask him what exactly was inaccurate about my presentation, to which there was no response. Hours into the contestation phase of my study and I was already the target of neutralization techniques by a state official who sought to render my work irrelevant to the discussion by attacking my credibility. Despite this, I left the event pleased that I was able to disseminate some of my findings to familiar and unfamiliar faces, and looked forward to more opportunities for contestation that would bring with them personal encounters with the negating component that is central to maintaining the perpetuation of the prison idea. The contacts I made and renewed through the organization of this event, and subsequent media coverage (see Falconer, 2010; MacCharles, 2010; Tibbetts, 2010b)

set the stage for a number of opportunities to contribute to shaping the terms of the federal penal policy debate, which is the focus of the next chapter.

Analytical Signposts

In this chapter, I reviewed the primary objectives and audiences of public criminology outlined by its proponents, arguing that this approach to scholarly engagement can contribute to the reproduction of the prison idea through the commitment of many of its practitioners to penal reform. I also suggested how penal abolitionism transcends these limits and can inform public criminological practice by expanding how criminalized acts and statuses are conceived, as well as encouraging the incorporation of voices that are often marginalized in penal policy discussions. I then outlined my initial approach to public criminology that involved the use of the treasury and transparency cards as a means to shift the focus of the federal penal policy discussion on the costs of increasing the use of incarceration and the need for greater transparency on the implications of such a policy trajectory. The vehicles I sought to use to disseminate my findings and related commentary such as various approaches to newsmaking criminology and policy work to prompt others to raise issues of fiscal costs and state transparency during penal policy discussions they participate in were also described, including the organization of the 17 February 2010 public forum.

With this initial framework for public criminological practice in place, it was necessary to develop an approach to analysis to examine how the reproduction of the prison idea was occurring when proponents of incarceration within the federal government experienced resistance vis-à-vis their efforts to expand the place of imprisonment in Canadian society. A first component of this analysis, which is the focus

of *Chapter V*, focussed on how my interventions were or were not contributing to shifts in the federal penal policy conversation, interruptions in the passage of federal sentencing measures, and new disclosures concerning the implications of the Conservatives punishment agenda, notably the construction of new penal infrastructure. This was achieved through a daily survey of the websites of major news outlets such as CBC and CTV News, the Globe and Mail, the Toronto Star, Postmedia News (formerly Canwest News Service) and Quebecor (also known as Sun Media), as well as the websites of all major federal political parties to identify emerging penal policy discussions at the national level. This activity allowed me to periodically reassess the terms of this debate, which informed new research and subsequent actions. In particular, this analysis enabled the identification of neutralization techniques (Mathiesen, 1990), used by Conservative politicians and other proponents of incarceration to deflect critique in the pursuit of their punishment agenda, that would be subject to discursive deconstruction using replacement discourses (Henry, 1994).

A second component of this analysis, which is the focus of *Chapter VI*, focussed on the challenges I faced in managing the messages I sought to communicate and how they fit with my identity as a penal abolitionist. Here, I am referring to the difficulty of maintaining a message track that is couched in abolitionist language and arguments in a discursive environment where issues are commonly defined in the terms of the penal system. For instance, one could glean a slippage in this message track with the unproblematized use of 'crime and 'criminal justice' in the promotional flyer for the February 2010 public forum, revealing the degree to which I was having difficulty abolishing system-speak within myself. I am also referring to the struggles of negotiating

access to audiences and dissemination gatekeepers who have their own agendas. It is during these negotiations where it was vital to pay attention to Mathiesen's (1974; 1980; 1990; 2004) accounts of the ways critics of imprisonment can be defined in, or absorbed, in agendas that buttress the use of imprisonment and are defined out, or neutralized, as they seek to advance alternative conceptualizations and responses to what is called 'crime'.

In a way, the following chapters each provide a different glimpse into this component of my study and public criminology experiment. On the one hand, there is the front stage, to use Goffman's (1963) terminology on performance, where my interventions in the form of blog posts, media interviews and public presentations, along with their contribution to interruptions in the secretive Conservative punishment agenda, could be seen. On the other hand, there is back stage, where I attempted to manage the messages I sought to convey and my identity in the hopes of prompting others to contest the reproduction of the prison idea, using fiscal costs and transparency as key narratives. While I am highlighting aspects of my praxis in the process, the goal is to make a contribution to knowledge that can inform future work aimed at gradually displacing the hegemony of imprisonment over time.

CHAPTER V: PENAL POLICY (UN)INTERRUPTED

Despite decades of soft on crime policies, Canadians have been deeply concerned about crime, especially about gun, gang and drug violence. So we've taken action to make our streets and communities safer, to stop coddling criminals and to start protecting victims. And people know that we're doing it and they know there's a lot more Parliament still has to get passed, but Canadians expect to live in a country where they don't have to worry when they turn the lights out at night, where they don't have to look over their shoulders when they walk the streets, where they can expect to find their car where they parked it. Now sometimes that means taking the bad guys out of circulation for a while. That's what we're doing. Does it cost money? Yes. Is it worth it? Yes. Just ask a victim.

– Excerpt from a 23 January 2011 speech by
Prime Minister Stephen Harper.

“I'd rather not share that”. Public Safety Minister Vic Toews will not tell the public what the projected costs are of the government's anti-crime bills. Inevitably, Canadians will “share” the costs. But apparently they aren't entitled to know what they are beforehand.

– Excerpt from a 19 May 2010 editorial
in the Globe and Mail.

Introduction

In the previous chapter, I outlined my approach to public criminology informed by penal abolitionist thought that would serve as a framework for action beyond the academy during the contestation phase of this study. These interventions aimed to contribute to a shift in federal penal policy debates towards a discussion on costs associated with prison capacity expansion and the need for transparency where undisclosed, or unfinished, federal penal infrastructure initiatives were concerned. Through this work, it was hoped that participants in these debates, notably Parliamentarians, would take up the cost and transparency narratives in a sustained way, with the resulting pressure contributing to an interruption in the secrecy of CSC's accommodation strategies through the disclosure of

related information such as expenditures. Once such information was included in the public discussion, it was hoped that the Conservative punishment agenda that sought to increase the place of imprisonment in Canadian society would be displaced. Beyond these practical objectives, these interventions were to contribute to knowledge on how the prison idea is being reproduced at this time, through an analysis of the arguments made in support of imprisonment by its proponents, as well as the neutralization techniques used to deflect efforts aimed at displacing the hegemony of incarceration to allow for its perpetuation and expansion. In keeping with the action research approach (Mathiesen, 1974), this knowledge informed subsequent actions, including the generation of replacement discourses (Henry, 1994), with the objectives outlined above in mind.

This chapter contributes to the literatures on public criminology and penal abolitionism through an analysis of some of the interventions I made during the contestation component of this study that centred on the issues of fiscal costs and transparency. The focus of this account is on how these interventions were taken up by audiences and deflected by proponents of incarceration, as well as the policy interruptions that occurred which were analysed and shaped my subsequent interventions. With the treasury and transparency cards frequently in play amongst Parliamentarians and other stakeholders involved in punishment debates by the summer 2010 recess of the 3rd Session of the 40th Parliament of Canada, I detail how debates around these issues were mobilized by opposition parties, along with other concerns, to trigger the 2011 federal election, which led to a majority Conservative government. In light of this development, this chapter concludes with a brief discussion on the contributions and limits of the approach to public criminology practiced as part of this project.

Playing the Treasury and Transparency Cards

Between the 26 January 2010 announcement of the public forum “Prorogation as Opportunity: Proposing New Directions for Criminal Justice Policy” and the federal election that was held on 2 May 2011, I had posted 78 blog entries (see *Appendix X*), participated in 56 media engagements (see *Appendix XI*), gave 19 public presentations (see *Appendix XII*), submitted three reports to penal policy makers (see Piché, 2010a; 2011a; Piché and Knusden, 2010) wrote two commentaries in a public policy and research magazine (see Piché, 2010b; 2011c), and sent hundreds of e-mails to those I attempted to reach to shape the discussions on federal penal policy in which they were involved. Some of these interventions drew little to no visible reaction from those I sought to reach and those I critiqued. Other interventions resulted in shifts in the conversation with audiences taking up message tracks and proponents of incarceration advancing counter-claims to sustain their efforts to expand the use of imprisonment. Below, a few of the interventions in which I participated are described. In combination with other developments, such as the 22 June 2010 release of the Office of the Parliamentary Budget Officer’s (PBO) report (Rajekar and Mathilakath, 2010) on the projected costs associated with the implementation of the *Truth in Sentencing Act* (2009), these forays into public criminology contributed to the creation of a larger discursive climate in which new information on CSC’s penal infrastructure initiatives was disclosed (see Head, 2010) and parts of the Conservative punishment agenda were opposed by other parties.

2010 Federal Penitentiary System Expenditures

As noted in the previous chapter, the presentation I gave during the public forum held in

Ottawa on 17 February 2010 generated media coverage and opened doors to have a dialogue with other advocates, penal system practitioners and officials, members of the media, and federal Parliamentarians. It also allowed for the establishment of a narrative in the media on the costs and trade-offs required to build more prisons as illustrated by the excerpts below:

“We are at a crossroads”, adds Piché. “With the growing budgetary deficits, cuts to government programming will be made. At the same time, we are building more prisons... We must ask ourselves how we want the money that is left to be allocated and what kind of Canada we want to build. Do we want to live in a country that constructs prisons or one that constructs schools and hospitals?” (Falconer, 2010).

Piché, a co-editor of the *Journal of Prisoners on Prisons*, questioned such large expenditures, stressing for the Ottawa forum that research finds “relying more heavily on imprisonment does not reduce crime[”]. “Do we want to live in a country that constructs prisons instead of schools, hospitals, public transportation hubs and the like?” (MacCharles, 2010).

“In the context of fiscal restraint and massive deficits, it makes little sense to create policies... that will require us to build new institutions because we already know prisons don’t reduce crime and they cost a lot of money” (Tibbetts, 2010b).

It should also be noted that those working for federal Parliamentarians sitting in opposition whom I had been in contact with appreciated my bringing their attention to my findings on provincial-territorial prison capacity expansion and related commentary. For instance, in one e-mail a political staffer remarked that “the information that you have forwarded is very interesting, golden in our efforts”.¹ While I was encouraged by my initial exchanges with the offices of the Parliamentarians I had contacted, it became clear that the absence of information on federal penitentiary construction initiatives limited the import of the findings I had released and that more research would be needed if a narrative on the costs of incarceration was to be sustained. Additional work was also

needed to place transparency on matters of federal penal policy, including prison capacity expansion, at the centre of the conversation.

An opportunity to intervene occurred following the 4 March release of Budget 2010 by federal Finance Minister Jim Flaherty (see Department of Finance, 2010a). While the main document did not contain any excerpts that indicated there was an increase in CSC's budget, a review of the Supplementary Estimates by NDP Public Safety Critic Don Davies found that the Conservative government had raised the capital expenditures budget for the agency, which included facility construction costs, from \$230.8 million in 2009-2010 to \$329.4 million in 2010-2011 (NDP, 2010a). This increase represented a 43 percent rise in that segment of the portfolio during that period (ibid). In response to this finding, Davies stated:

They are pushing a US-style approach that is expensive and totally ineffective at bringing down the crime rate [...] At the same time as they are pouring money into prisons, they have failed to invest in priorities to keep communities safe [...] There is not one new penny for crime prevention. There is nothing to put more officers on our streets, or to stop the closure of police detachments in rural areas [...] This budget just goes to show that this government isn't interested in the people and programs who are working to stop crime before it happens (ibid).

What remained unclear following Davies' intervention was what exactly these new funds for capital expenditures were being spent on – new penitentiaries, the expansion of existing facilities or retrofitting older units.

A few days later, a narrative emerged in the media that CSC was indeed planning for a future influx of new prisoners. First, a story was written by Janice Tibbetts (2010a) in the National Post where government officials were questioned about an e-mail from December 2009 written by CSC Commissioner Don Head where he reportedly referenced that the organization was making changes to senior staff to support “major construction

initiatives” in the years ahead. A spokesperson for Public Safety Minister Vic Toews responded that new penitentiaries were not in the works and that the additional funds allocated to federal prisons were being spent on “updating and improving” current institutions (ibid). With the existence of a plan for new prisons refuted, Liberal Public Safety Critic Mark Holland stated: “What this says to me is that they know what they are doing, they know what they are building – they are just refusing to let it go public” (ibid).

The story resurfaced again during an 18 March 2010 segment of CBC’s Power & Politics with Evan Solomon, where the host asked Public Safety Minister Vic Toews about CSC’s “major construction initiatives” and how the federal government planned to cope with an influx of new prisoners resulting from their sentencing measures. Minister Toews responded that he had not seen plans for new federal prisons, and that an increase in the use of double-bunking and expansions to existing facilities were planned to absorb the influx of new federal prisoners. While plans for regional complexes and shorter term accommodation measures remained vague, the Government of Canada was experiencing pressure to disclose details their sentencing laws and related prisoner accommodation strategies.

In anticipation of Toews’ claims that a plan for new federal penitentiaries did not exist, I adopted the educative provocateur approach suggested by Greek (1994) and sent the *Let’s Talk* article, “Modernizing Physical Infrastructure”, written by Don Head (2008), who had become CSC Commissioner on 27 June 2008, to Solomon. I also sent him the *National Report on Requests for Exemptions to Commissioner’s Directive 550: April 1, 2009 to September 30, 2009* (CSC, 2010b). The report showed how many of CSC’s medium- and maximum-security institutions were double-bunking in some cells to

manage overcrowding in these facilities. As noted in the introductory chapter, this practice runs counter to CSC's operational policies and international conventions to which they are signatories (see CSC, 2001; UNHCHR, 1975). When presented with excerpts of these documents on the 18 March 2010 edition of CBC's Power & Politics with Evan Solomon, Toews reiterated that "no new prisons" will be built and that he, nor his predecessors, had ever seen a plan for new penitentiaries (CBC Television, 2010a). On double-bunking, he remarked that it is "not something that is inappropriate or illegal or unconstitutional or violates international standards" (ibid). He then went on to say that "many countries use double-bunking and quite frankly I think in many cases it's appropriate" (ibid). This exchange prompted the Minister's office to release the following statement on 19 March 2010 to the CBC Television (2010b) program:

The Minister's comments in his interview with the CBC just yesterday stand.

Our government is making decisions based on what we need to do in order to make our communities safe. Releasing criminals onto our streets early has a much higher cost than keeping criminals behind bars. In the short-medium term, CSC will be implementing temporary accommodations and increasing capacity in existing institutions.

As the Minister said in his interview with the CBC just yesterday, "(Double Bunking) is not something that is inappropriate or illegal or unconstitutional or violates international standards. Many countries use double bunking, and quite frankly I think in many cases, it's appropriate".

As for building any new facilities, any such decisions will have to go through the normal approval processes. To date, there have been no plans presented to our Government to build new prisons.

In the official responses noted above one could get a sense of how the Conservative government was going to respond to critiques directed their way on questions of cost and transparency related to their punishment agenda. On questions of

new penal infrastructure, officials deployed a technique of opacity that can be called ambiguity, whereby they would make vague references to accommodation measures being pursued by CSC with little in the way of concrete details allowing for the maintenance of unfinished character of emerging penal arrangements. When presented with information that problematized the use of measures such as double-bunking, that although legal as standards to which Canada is a signatory are non-binding but is nonetheless deemed inappropriate by CSC, the response was to neutralize the evidence that contradicted their policy course through denial, negating their existence. In the statement above, one can also see the deployment of a “treasury card” (Loader, 2010, p. 361) by the federal government who argued that incapacitation of criminalized would be less costly and more successful than other measures such as parole despite the fact that research undertaken by their own departments contradicts this statement (e.g. PSC, 2009b). In light of these developments, ongoing research was required to hold the Conservatives to account through attempts to correct the record as a democratic under-labourer (Loader and Sparks, 2011) to resist the reproduction of the prison idea.

On 29 March 2010, a window of opportunity to push this issue opened further when an analysis of the annual Reports on Plans and Priorities of each federal government department by Globe and Mail journalist Bill Curry (2010) in a context of “government-wide restraint” revealed that CSC’s overall budget “is projected to rise 27 per cent from the 2010-2011 fiscal year to 2012-2013, when it will reach \$3.1 billion”. Curry also noted that “4,000 new positions will be created at correctional institutions and parole offices across the country, with estimates of a 25-per-cent increase in employees

during the same period”, while other federal departments reduce in size via retirement or cuts (ibid).

In response to this story, I undertook an analysis of CSC annual expenditures from 2005-2006, the last fiscal year a Liberal government tabled a federal budget, to identify changes in the portfolio’s total budget allocation and staffing since the Conservatives entered office. This analysis revealed that CSC’s overall budget had risen 54 percent from \$1.597 billion in 2005-2006 (CSC, 2006) to \$2.46 billion for 2010-2011 (CSC, 2010c, p. 11). I also calculated that should CSC’s projected budget allocations for 2012-2013 hold, the overall expenditures of the agency would have increased by 95.9 percent since the Conservatives entered office to \$3.128 billion (ibid). CSC’s budget for capital expenditures, which includes facility construction costs, also increased by 138.4 percent from \$138.2 million in 2005-2006 (CSC, 2006, p. 67) to \$329.4 million in 2010-2011 (CSC, 2010c, p. 20), and was set to rise to \$466.9 million by 2012-2013 (TBSC, 2010), up 237.8 percent since 2005-2006. Where other federal government departments were trimming staff, the number of CSC full-time equivalent employees had risen by 11.9 percent to 16,587 since the Conservatives have taken office and was set to increase to 20,706 by 2012-2013, a 39.6 percent increase since 2006-2007.

Having taken on the role of criminologist as journalist via blogging (Barak, 2007) by compiling and posting these findings on my blog on 31 March 2010, I e-mailed the link and a summary of the findings to members of the press, as well as the offices of Parliamentarians in the opposition. I was then invited by Evan Solomon to make an appearance on CBC’s Power & Politics to walk viewers through the Government of Canada’s own budget figures for CSC and then to respond to the reactions of MPs (see

CBC Television, 2010c). After I did my part in my capacity as subject matter expert by raising questions about what these funds could be spent on, Solomon turned the floor over to Conservative MP Shelly Glover, Liberal Public Safety Critic Mark Holland and NDP Justice Critic Joe Comartin. In his first question to the Conservative MP, Solomon asked Glover if she could explain why CSC's budget has risen so sharply "in a time of austerity". In the discussion that ensued, Glover denied the budgetary figures I had presented in an effort to neutralize these findings through ambiguity and the derision of expertise, a tactic that had long been a staple in the Conservatives efforts to expand the use of incarceration (see *Chapter III*):

Glover: Well, there's a cost to protecting the interests of our victims and certainly that cost is being reflected. But I have to disagree with some of the numbers you are presenting Evan. Numbers can be skewed any which way we, you want depending on who's doing it. I will confirm that costs have gone up and we will continue to put money into this system to ensure that victims are protected [...]

Solomon: If these numbers are wrong, can you give us a confirmation? What's the correct figure?

Glover: Well the correct figure depends on what you're talking about. They have gone up. If you're talking specifically about things like renovations and expansions from within, there's a number there. There's increases to salaries, there's increases to numbers of people who are working within the facilities to allow for rehabilitative measures for our inmates because we want to give them the best possible chance to move away from a life of crime. All of those things cost money. So yes there's been an increase, but it's well worth it. I think Canadians expect us to protect their interests and they know there is a cost associated to that.

In response to Glover's statements that reflected a pretence that imprisonment achieves the objectives ascribed to it by its proponents (Mathiesen, 1990, p. 140) and deemed the information that I had presented to be inaccurate, both Holland and Comartin noted that the numbers being discussed were the government's own figures. They also

questioned the need to increase prison expenditures in a time of declining police-reported 'crime' rates. This prompted Glover to disregard evidence (Mathiesen, 1990, p. 140) contradicting government claims that new prisons were needed to address a boom in criminalized conflicts and harms through the misrepresentation of other evidence to neutralize the arguments presented by her colleagues:

Numbers can be skewed in any which way, but I do take issue with the misleading comments made by my colleagues. I worked in this system. I'll tell you straightforward, Canadians are seeing an increase in crime. I don't care what Stats Canada has reported, because they only count reported crime. They do not count unreported crimes and as a police officer I'll tell you, I worked sex crimes for four and a half years. 92 percent of sex crime victims do not report their crime because they don't have faith in the justice system, they are fearing retribution, they really do have a number of reasons for not reporting.

While the phenomenon of unreported 'crime' does exist and is measured periodically by Statistics Canada (see Besserer and Trainor, 2000; Gannon and Mihorean, 2005; Perreault and Brennan, 2010), the figures produced by Glover were not accompanied with a source and her dismissal of studies by Canada's central statistics agency on the rate of police-reported 'crime' led to less than flattering commentaries on the blogs of Maclean's Magazine (see Wheery, 2010) and the Ottawa Citizen (see Gardner, 2010). Most importantly, however, Glover failed to cite the primary reasons that individuals do not report 'crime' according to the most up-to-date information available at that time. For instance, "six in ten violent incidents were not reported to the police because the victim dealt with the violent incident in another way" (Gannon and Mihorean, 2005, p. 13), which is unsurprising given that such incidents most often occur amongst family members and individuals known to those who are harmed (CRCVC, 2006). Contrast this to the explanation offered by Glover, whereby 42 percent of this segment of respondents

“didn’t want the police involved” and 29 percent “didn’t think the police could do anything about it” (ibid) which could be construed as a lack of faith in the penal system, with another 11 percent noting that they “did not report because they feared retaliation by the offender”, and the picture painted becomes more complicated. Here, it seems, that the part of the neutralization strategy was to absorb and transform facts to suit the argument presented to maintain the need for CSC’s ballooning budget.

In another attempt to shift the discussion on Power & Politics away from the fiscal implications of the federal government’s punishment agenda, Glover sought to differentiate her party’s ‘tough on crime’ stance from that of her counterparts, stating:

...let’s not forget that the Liberals have an interest here because, predominantly, prison inmates vote Liberal during elections. Cops vote Conservative. There is a clear interest for the prisoners to be voting for ‘soft on crime’ legislation that the Liberals put forward (CBC Television, 2010c).

After this unsubstantiated remark, the panel was cut short due to breaking news. While I was not able to respond to the arguments raised during the MP panel, some of the costs of the Conservative Party’s punishment agenda were now illuminated for discussion. However, as I reflected on the intervention, it had become clear that the use of populist punitiveness sloganeering would continue to be a part of the federal penal policy debate, requiring efforts to undermine the use of making reference (Mathiesen, 1990, p. 37) to specific individuals and groups (e.g. police officers, victims) that were portrayed as homogeneous in their demands for more incarceration.

2010 Federal Victims’ Expenditures

Days after the increase in CSC expenditures had surfaced, the federal penal policy discussion in Canada became dominated by the revelation that Graham James, a former

junior hockey coach who had been convicted of sexually abusing many of his former players, had received a pardon in 2007 from the National Parole Board² (see Cheadle and Bronskill, 2010). Not only had the story caught fire in the news media, but also on sports media outlets such as TSN (2010). In response to this decision, Dimitri Soudas, then Communications Director and Spokesman for Prime Minister Stephen Harper, stated:

The Prime Minister has asked for explanation on how the National Parole Board can pardon someone who committed such horrific crimes that remain shocking to all Canadians [...] The actions of this convicted sex offender shocked the conscience of a nation – one where the bond of trust between coaches and players in our national game is sacred (Cheadle and Bronskill, 2010).

Soudas also noted that Prime Minister Stephen Harper directed Public Safety Minister Vic Toews “to propose reforms that will ensure that the National Parole always and unequivocally puts the public’s safety first” (ibid).

With victims of James, such as former National Hockey League player Sheldon Kennedy, noting that the decision represented a “slap in the face” (Weese, 2010), the Conservatives promised to address the issue with the introduction of new legislation as part of their stated push to defend the interests of victims of ‘crime’.³ As the Conservatives continued to use of victims “as their stalking horses to expand repressive state police power in a manner that would seem crassly self interested if they did so directly” (Wright, 1998, p. 21), further investigation to ascertain their commitment to meeting the needs of those harmed by criminalized victimization and its aftermath was warranted.

Having become familiar with the Supplementary Estimates for Budget 2010-2011 (Department of Finance, 2010b), I searched the document to examine changes to funding allocated to assist victims of conflicts and harms appropriated by a penal system that

largely excludes them as highlighted by the Graham James pardon decision, not to mention the rest of the penal process leading up to that point (Morris, 2000). While the track record of the federal government in this area included a \$13.3 million commitment in 2009-2010, part of which allowed for the establishment of the first Federal Ombudsman for Victims of Crime, as well as the allocation of an additional \$6.6 million over two years beginning in 2010-2011 to cover costs such as “facilitated access to EI sickness benefits for eligible workers who have lost a family member as a result of crime” (Department of Finance, 2010a), they also made cuts to some portions of this portfolio. For instance, the budget for Grants for the Victims of Crime Initiative dropped from \$850,000 in 2009-2010 to \$500,000 in 2010-2011, a 41.2 percent decrease. The Contributions to the Victims of Crime Initiative also declined from \$7,958,000 in 2009-2010 to \$5,250,000 in 2010-2011, representing a 34 percent drop in funding in this budget line. Both of these funding streams provide support to victims’ service providers.

Once I compiled the figures and posted them on my blog on 6 April 2011, emphasizing the disparity between federal funding for prisons and for victims, taking on the role of educative provocateur (Greek, 1994) I sent the post to those I had attempted to reach, as well as individuals involved in advocacy for services and rights for victims. I had calculated that the findings would demystify the Conservatives’ claim that they are champions of victims and would reveal that they are only interested in siding with certain victims when it supports their incarceration agenda. I also hoped that the figures would illustrate how diverting additional funds into expanding prison spaces diverts money away from other expenditures.

This intervention led to a 6 April 2010 appearance by Steve Sullivan, the first Federal Ombudsman for Victims of Crime, on CBC's Power and Politics to share his thoughts on the rising federal prison budget and the dearth of federal funding for victims (see CBC Television, 2010d). In response to the aforementioned cuts to the Victims of Crime Initiative I had compiled, the Ombudsman noted that the reduction in funds would impact research conducted and services offered by "totally underfunded" community-based victims' organizations. A table contrasting these developments to the massive budget increase for CSC then appeared on screen, leading to the following exchange:

Solomon: Now I know this is an austerity budget, but we've seen statistics saying that there's more money to be spent on putting people in prison, but it looks like, even though there is a slight increase, key programs around victims are being slashed. What does that tell you?

Sullivan: When you're in government it's about making decisions and you have to make choices. So if you spend money on this area that means you can't spend it anywhere else. In this case, we're spending millions of more dollars on building prisons and that's a fairly popular position [...] the public seems to support that. But it also means we're not spending money elsewhere. We can't spend that money in two places, and victims of crime, I got to tell you, the stuff we hear from victims of crime on a daily basis – the problems they have meeting their mortgages, needing counselling, not being able to assist their children who are sexually abused. Building more prisons aren't going to address those problems. And we could put a child treatment centre in every major city in this country. We could build shelters for kids who are selling themselves on the street to come off the streets and try to live a different kind of life. The rates of Aboriginal victimization are so high [...] by spending so much money on prisons we're not spending money on those key needs for victims.

Later in the interview, Sullivan stated that the current legislative push is insufficient noting:

...the needs of victims of crime are very complex. They're not easy solutions. It's not about a tagline about building more prisons or getting tougher on criminals. Their needs are complex and they're very in-depth and they're long-term. I guess what I would be telling the government is,

if you have a pot of money and you have a choice to build more prisons or help more victims, to help more victims.

In response to this statement, Solomon asked: “So as the Federal Ombudsman for Victims of Crime, that’s your message to the Minister [...] put more money into helping victims?” Sullivan then replied: “One of my last recommendations to the government will be to take the money they’re spending on prisons to helping victims”. “Away from prisons towards victims”, the host remarked as Sullivan nodded.

Following the segment with the Ombudsman, Solomon turned to MPs, including Conservative Ed Fast, Liberal Public Safety Critic Mark Holland and NDP Public Safety Critic Don Davies. Fast had the first opportunity to respond to Sullivan’s remarks and stated that the government was pursuing a “balance” between prisons that he claimed kept the public safe from future victimization and providing resources to ensure that the needs of victims are met. He then cited the \$6.6 million increase over two years for victims’ of ‘crime’ as evidence of this balance. In this case, a proponent of incarceration was again making reference (Mathiesen, 1990, p. 37) to perceived demands for punishment by making totalizing claims about what individuals and groups desire, in this case victims. In response, Holland argued that not only are victims under-served by the Conservative agenda but that expanding prisons would undermine safety in Canadian communities in the long run. He proposed, instead, that front-line prevention efforts that would stop “victims from happening in the first place” needed to be implemented. Davies then added: “we need to beef up our funding on crime prevention. We need to also beef up our funding for victims’ groups and also start attacking the causes of crime instead of putting so much money into the after-effects, which is building prisons”. As a result of this discussion where some of the accompanying headlines read “Victimized

Again: Victims' groups underfunded", "Victims Left Behind?", "Tough on Crime, Soft on Support" and "Punishment VS Support", the Liberals and NDP had a talking point to counter the Conservatives approach to meeting the needs of victims that was heavily weighted towards investing resources on incarceration. The aforementioned cuts to certain victims' service providers were raised during debates throughout the balance of the 3rd Session of the 40th Parliament of Canada.

The June 2010 PBO Report

While the narrative on the costs of an expanded use of incarceration had featured prominently in federal penal policy debates, attempts to problematize the federal government's unwillingness to be transparent about their future plans to build penitentiaries had not resulted in the release of detailed CSC infrastructure plans. However, a 27 April 2010 article written by Kathryn May (2010a) regarding the Parliamentary Budget Office's report on the costs of implementing the *Truth in Sentencing Act* (2009) (Rajekar and Mathilakath, 2010), put the Conservative government's unwillingness to disclose the costs of their punishment agenda and related construction initiatives front-and-centre in the debate on penal policy in Canada. In the story, it was noted that MPs and Senators did not have access to government projections regarding the economic costs of this piece of legislation when it was passed (May, 2010a). Further, the article stated that the Parliamentary Budget Officer, Kevin Page, "was stonewalled when he asked the department for information it used to tally the cost of the bill" as CSC Commissioner Don Head refused to disclose the figures which were deemed to be a matter of Cabinet confidence (ibid).

After having read this story, I again took of the role of educative provocateur (Greek, 1994) by e-mailing the journalist on 28 April 2010. In the communication I briefly described my research and offered to comment on future stories if she was pursuing the issue in the future. Over the course of the day, e-mails were exchanged and I sent her a draft of a report I intended to submit to the FPT Heads of Corrections the following month that provided an overview of prison expansion from coast-to-coast-to-coast (see Piché, 2010a). When we eventually discussed the government's lack of transparency regarding the punishment file over the phone that afternoon, I directed her to a 14 April 2010 blog post describing the stonewalling I experienced in trying to access records on how CSC was implementing the physical infrastructure recommendations made in the organizational review undertaken by Sampson *et al.* (2007). I also followed-up on our conversation by writing a blog post that day noting CSC's recent transparency record by highlighting the grade of "F" the agency had received from the OIC (2010) for their failure to adhere to the *Access to Information Act* (1985). This intervention informed the publication of a 9 May 2010 story in the *Ottawa Citizen* (see May, 2010b) that examined the transparency drift in the federal government on a variety of issues, including penal policy. In response to a question by May on why Canadians should be concerned about the non-disclosure of the costs of the Conservatives' 'tough on crime' bills, I noted: "Given the culture of secrecy that exists even if parliamentarians want to consider the cost, they don't have access to information. Without information we can't make decisions in a democratic society" (ibid).

On 27 April 2010, another news story broke that figures from a forthcoming report by the Office of the Parliamentary Budget Office of Canada projected the costs of

one bill – the *Truth in Sentencing Act* (2009) – to be between \$7 billion and \$10 billion for federal and provincial-territorial governments (Canadian Press, 2010a). This report again put Minister Toews on the defensive as he was asked about the costs of the bill that were previously not released by the Conservatives and CSC who cited Cabinet confidence. In his response he noted: “[w]e’re not exactly sure how much it will cost us. There are some low estimates, and some that would see more spent – not more than \$90 million” (ibid). With their minister facing media scrutiny, e-mails began circulating amongst Public Safety Canada (PSC) officials regarding the PBO report. In one e-mail dated 28 April 2010 I obtained via ATI (PSC, 2010), the following was noted:

As stated in the voice message I left you, PCO [Privy Council Office] informed me that the Parliamentary Budget Officer will be releasing – most likely – next week a report as what [sic] the Government substantially underestimated the costs of implementing the 2 for 1 sentencing law, possibly by billions, which is significantly more than the \$90 Million set aside by Government for this legislation.

As well, the Parliamentary Budget Officer will report that contrary to what the Government originally claimed, it will be the Provinces and Territories that will carry the bulk of the costs for this legislation.

Stories about this issue are already appearing in the news [...]

I was also told that the Bureaucrats may share the blame as what [sic] they did not make appropriate analysis and provided inadequate cost estimates for this legislation.

Mark Holland (LIB, M.P. Ajax-Pickering) did raise the issue today during Question Period in Parliament.

PCO may request information and briefing material next week as this issue unfolds.

I remain available to discuss further at your convenience.

That same day, Toews revised the cost of the *Truth in Sentencing Act* (2009) to \$2 billion over five years, while also repeating that new penitentiaries were not on the agenda as the

influx of prisoners would be managed through the expansion of existing facilities and increasing the use of double-bunking (Tibbetts, 2010c). However, no specific details were provided. In addition to the use of ambiguity, the Minister deployed the technique of opacity of denial in response to a question about the costs of other sentencing measures by stating: "I'd rather not share my idea on that. They will come out in due course" (CBC News, 2010b). Toews added: "Our government is prepared to pay the cost in order to keep dangerous offenders in prison [...] We actually believe that dangerous criminals should not be on the streets" (ibid). Here again, the Conservatives were advancing incapacitation as a means to achieve safer communities.

In response to the story the NDP (2010b) released a statement where they noted that the Conservatives' "own estimates for a single piece of legislation rose by more than 2000% overnight". Don Davies, the Public Safety Critic for the party, also argued:

Billions if not tens of billions will be dumped on the provinces, whose correctional systems are already bursting at the seams [...]

Just this morning, I met with Correctional Officers from provincial institutions right across the country. They told me horror stories about conditions in their prisons: triple-bunking, complete lack of treatment, widespread disease, and dangerous conditions for guards and offenders.

The federal government is taking this crisis and turning it into a disaster (ibid).

Discussions on the downloading of costs from the Conservative punishment agenda onto the provinces and territories did not end there.

During a 29 April 2010 segment of CBC's Power and Politics, Rick Bartolucci, then Ontario Minister of Community Safety and Correctional Services, appeared on the show to discuss the province's registration practices for those convicted of sexually-

related harms (see CBC Television, 2010e). With the rumoured figures from the forthcoming PBO report circulating, the conversation shifted:

Solomon: [...] the Parliamentary Budget Officer, Kevin Page, in the week ahead will come out with estimates about the costs of the Government's proposed get tough on crime changes. According to what we're hearing, early releases, the cost will be billions of dollars in terms of prisons and correctional services, the brunt of which will fall on the shoulders of the provinces, frankly, people like you. What are you hearing from the Feds about the costs of these changes to the correctional service because of the tough on crime legislation that your province will have to pay for?

Bartolucci: That question is a question that has been asked around the Federal, Territorial and Provincial table. It'll be one that will be continued to be asked around the table. We agree with the federal government with regards to legislation. It is important that we have the safest possible communities, but that does come with a price. And so what we're asking of the federal government, what we've asked for in the past at Federal-Provincial-Territorial meetings, and what we will continue to ask for is some assistance financially so that we can implement the legislation as effectively as possible, as expeditiously as possible, in order to ensure that across Canada we have the safest communities possible.

While Prime Minister Harper had stated during the 2008 federal election campaign that his government would work with other jurisdictions to fund additional prison spaces (see Whittington, 2008), the fact that the provinces and territories called for some of the legislative measures such as the elimination of credit for time served awaiting trial and sentencing during their meetings with the federal government (see Government of Newfoundland and Labrador, 2008), placed them in a position where it would be difficult to obtain assistance.

In response to the rumours of potential penal downloading, Public Safety Minister Vic Toews insisted that longer sentences resulting from *Truth in Sentencing Act* (2009) would result in "some reduction for the provincial government given the shift of individuals out of the provincial facilities and into federal facilities" (Scofield, 2010).

Reporter Heather Scofield of the Canadian Press also noted that the Minister “insists that the price of the change is well worth paying to keep criminals off the streets” (ibid).

Liberal Public Safety Critic Holland disagreed noting:

There’s only one taxpayer, and at the end of the day if provinces are getting billions dumped on them, with no support, obviously it’s going to create a system that’s near the breaking point and push it right to the edge [...] This is clearly a situation that presents a huge public safety risk, because we’re just basically doing crowd control in the prisons [...]

The government is sprinting forward to play politics with a system that is going to have profound implication for the corrections systems [...] and for the treasury [...] Let’s at least know what we’re getting ourselves into, so we can have an honest debate (ibid).

With the projected costs of the federal sentencing measures for provinces and territories beginning to surface, I wrote a blog post on 29 April 2010 that discussed the emerging conflict over who should pay for these expenditures. Among the journalists whom I sent this post to was Globe and Mail journalist Gloria Galloway (2010b), who later wrote an article noting that “[s]ix out of 10 provinces surveyed [...] said they are worried that the new tough-on-crime laws will pose a major financial burden. The remaining four said they simply did not have enough information to determine the costs they are facing”. This narrative was also the central theme of discussion of a 6 May 2010 segment of *The Current*, a national radio program that I appeared on as a subject matter expert (see CBC Radio, 2010). My preliminary findings on the scope and costs of prison capacity expansion in Canada, and the burden that would likely be placed on provincial and territorial prison authorities as a result of federal legislation were among the issues that were touched upon.

Sensing a potential rift between provincial-territorial and federal governments that could be used to slow the implementation of sentencing measures, I took on the role of

policy advisor (Stanko, 2007; Petersilia, 2008), albeit not an embedded one, completing an unsolicited report entitled *An Overview of Prison Expansion in Canada* based on the proposed revisions by prison officials from across the country. In the study submitted to the FPT Heads of Corrections, I outlined facility construction initiatives being undertaken by each prison system and concluded that other policy options were possible, and indeed, needed given the ongoing fiscal crisis (see Piché, 2010a). This foray into the realm of policy advising resulted in an invitation to speak at the 30 May 2010 meeting of the Provincial-Territorial Heads of Corrections. The Chair of this meeting asked that I emphasize policy alternatives that could be pursued to manage the influx of prisoners resulting from federal sentencing legislation.

During my presentation, I suggested that prison agencies could increase their use of “community-based alternatives such as parole”. I also noted that various levers within the penal system could be activated to absorb change such as encouraging “police officers to utilize greater discretion in dealing with the public”, having prosecutors “alter how they manage their case loads” and signalling to judges to “exercise more leniency when deciding on whether or not to allow someone to post bail and make similar provisions during sentencing”. I added: “another approach to mitigate the cumulative impacts of federal punishment legislation would be to encourage your ministers to call for a moratorium on such initiatives”.

While none of the proposals above were discussed in the question and answer period that followed my presentation, one of the heads of ‘corrections’ did note that even with new facilities coming online, his province was likely not be able to safely accommodate an increase in his province’s prison population which would require that

they keep open outmoded institutions new prisons were intended to replace. Whether this issue and penal downloading led to any pronounced change in the discourses of provincial-territorial governments when communicating with their federal counterparts behind closed doors is unknown. However, they did have a report they could produce to the Government of Canada that attests to their recent investments in new facilities, which could be used to lobby against further measures that would increase the rate of imprisonment and place pressure on jurisdictions to, again, expand their prison spaces.

Having written and presented my prison expansion report to prison officials from across the country, I turned my attention towards contributing to the debate that would emerge following the release of the forthcoming PBO report, which had been delayed. With its release quickly approaching, I again took on the role of educative provocateur (Greek, 1994) by posting a blog entry on 18 June 2010 where I listed key debates that would likely emerge following the release of the estimates. Again, wanting to emphasize the issue of government transparency, I wrote the following:

No matter the figures presented by Kevin Page – the Parliamentary Budget Officer – on Tuesday, Minister of Public Safety Vic Toews will reiterate that his number crunchers have pegged the cost of implementing Bill C-25 at \$2 billion over five years. This is a far cry from the \$6 billion to \$10 billion price tag the PBO has reportedly come up with, which begs the question: given the discrepancy, whose numbers will we trust?

Shall we trust the budget figures compiled by an independent watchdog who reportedly consulted outside experts to review the study's methodology and findings or those of a Government who squandered a budgetary surplus, didn't see a recession coming, failed to initially acknowledge that we were even in the midst of a recession (or a 'technical' one) and hasn't offered Canadians a plan on how to excavate us out of our current structural budget crisis? Whose numbers will we trust? Those of the PBO, who will release the study's methodology and figures next week for the public to see and examine or those of the Conservatives who, based on past practice, will likely never release the methodology used to project their figures or a full

cost estimate to the public so that democratic debate can take place because they would “rather not share” those costs with Canadians?

Also wanting to connect with my intended audiences on a personal level in a manner that would illustrate broader impacts of expanding the use of imprisonment, I also noted the following:

I’m 28 years old and will be paying taxes in this country for years to come. I also intend to have children at some point and want them to live in a safe society. I do not want to have to tell them when they are my age and still paying the last years of the mortgages for the prisons being built today that I stood by silently as my political representatives obscured the facts to pursue policies that made our streets less safe, and diverted funds away that could have been used to improve the health and quality of retirement life of their grandparents. I do not want to have to tell them that we knew what would come of increasing our reliance on incarceration based on the experiences of our neighbours to the south, but we chose to ignore history. These are stories I hope I never have to tell my kids. How about you?

In response to the post, I received e-mails from some members of the press who consulted me for background information in preparation for news coverage related to the PBO report.

The report entitled *The Funding Requirement and Impact of the “Truth in Sentencing Act” on the Correctional System in Canada* (Rajekar and Mathilakath, 2010) was released by the PBO on 22 June 2010. In this study, the authors estimated that the federal penitentiary system would require an additional 4,189 prisoner beds at a projected construction cost of \$1.8 billion, with an additional \$618 million needed each of the next five years to manage the influx of new prisoners. Whereas total prison expenditures in 2009-2010 were \$4.4 billion, with the federal share representing \$2.2 billion and the provincial-territorial share representing \$2.15 billion, the projected total prison expenditures in 2015-2016 as a result of the implementation of one federal ‘tough on

crime' bill was pegged at \$9.5 billion, with the federal share representing \$4.18 billion and the provincial-territorial share representing \$5.23 billion.

During the press conference where the PBO report was released, Kevin Page put the issue of transparency on the agenda by again noting that CSC did not provide his office with their estimates concerning the implementation of the *Truth in Sentencing Act* (2009). In response to the projections, Minister Toews proceeded to deploy the neutralization technique involving the derision of expertise by asking if Page did “not get any of his information from Correctional Services Canada, he must be making this up, correct?” (Tibbetts, 2010d). He also reiterated that the government’s estimate for the piece of legislation was \$2 billion (see Canadian Press, 2010b; CTV News, 2010; Smith, 2010) and that “there will be additional units built in existing facilities... but there is no need for additional prisons at this time” (Tibbetts, 2010d, CBC News, 2010c). However, Toews did not substantiate his statements by publishing the methodology CSC used to estimate the costs of the sentencing reform. Unconvinced by the Minister’s line of argumentation, editorials from major Canadian newspapers (e.g. Globe and Mail, 2010; Toronto Star, 2010) urged the Conservatives to be more transparent about the costs of their sentencing legislation.

In response to the PBO report, opposition parties also issued statements. For instance, in a press release by Liberal Public Safety Critic Holland (LPC, 2010), he noted:

Instead of leaving Parliament in the dark, the government should have been up front with Canadians about the costs – and not just for this one bill, but their entire tough-on-crime agenda. They need to come clean on the total cost – including to the provinces – and where they get the money from [...]

The costs cannot be dumped on taxpayers and the provinces. The Conservatives must sit down with the provinces and territories to address their very legitimate concerns about how these initiatives are going to be funded [...]

If this is the cost of just one of their crime bills, I can't even begin to imagine how much the 13 bills currently on the legislative agenda will cost taxpayers.

In a press release from New Democrat Public Safety Critic Davies (NDP, 2010c), similar concerns were also noted:

The analysis shows that just one crime bill will cost taxpayers \$5 billion over the next five years [...] That doesn't account for the impact on provinces, which will be billions more [...]

We've come a long way from the government's initial assurance that this Bill would cost only \$90 million, and have little or no impact on the provincial and territorial prison systems [...] The government is quickly losing all credibility on the crime file [...]

This comprehensive report is a clear indictment of the government's approach on crime policy [...] Spending on crime prevention is going down. The mental health crisis in our prisons remains untreated. But the government can find \$5 billion for prisons [...]

The government lacks transparency. It lacks credibility. And its approach to crime is the most expensive and least effective way to keep our communities safe.

As a result of a culmination of information on the fiscal costs of imprisonment emerging in 2010, the treasury and transparency narratives had become a central theme within the federal penal policy debate.

In the midst of this discussion, CSC Commissioner Don Head (2010) disclosed additional details related to the agency's accommodation measures moving forward in an editorial entitled "Prisons are ready for the rush", where he stated:

We've carefully examined this legislation and expect that, as a result, we will receive an increased number of approximately 3,400 offenders over the next three years.

Fortunately, CSC is well-positioned to meet this challenge and build on our effective corrections expertise.

The government is providing the necessary funds to address this anticipated growth in the offender population and ensure CSC can continue to deliver on its public safety mandate.

There will be an increase in shared cell accommodation and the addition of over 2,700 spaces across our penitentiaries to handle this population growth.

We are also working on a long-term plan that takes into account the need to replace some penitentiaries that have stood the test of time for many decades and no longer meet the requirements of a modern correctional system.

While not a full interruption in the unfinished approach to penal infrastructure employed by the federal government under the Conservatives, it was the first time specific details regarding the number of additional prisoner beds associated with CSC's short term prison capacity plans were disclosed. It was also the first time CSC had publicly stated that it was going to be building new penitentiaries since it pulled its webpage on "Quick Wins" for "Physical Infrastructure" the previous summer (see *Chapter II*). This acknowledgement was significant in so far as the Government of Canada was no longer in a position to publicly claim that it would not be in the business of building new institutions at some point in the future. What remained to be seen, at that time, was whether this admission would lead to the disclosure of additional details that could allow for a more fulsome public discussion on whether or not this policy direction was one indeed worth pursuing, or if the secretive Conservative punishment agenda would be allowed to persist by opposition parties who had more seats in Parliament and the ability to trigger an election.

The March Towards the Dissolution of the 40th Parliament of Canada

In the previous section, I describe how I contributed to the emergence of costs and transparency as central narratives in the federal penal policy conversation as reflected in media coverage. How such narratives were taken up as talking points by the Liberals and NDP was also documented. I also examined how the Conservatives maintained the unfinished character of their punishment agenda in the face of pressure to disclose information through the use of techniques of opacity such as denial and ambiguity. Neutralization techniques deployed by the Conservatives to counter arguments raised by their critics including the misrepresentation of facts, the derision of expertise and making reference to perceived demands for incarceration outside of their government. The following section details how Parliamentarians struggled over setting the terms of the federal penal policy debate. In particular, the emphasis of analysis is focussed on how the treasury and transparency cards were played by members of the opposition, notably the Liberals, and deflected by the Conservatives and other proponents of incarceration following the release of the June 2010 PBO report (Rajekar and Mathilakath, 2010) until the election of a Conservative majority government on 2 May 2011.

Prisons, Planes and Neutralization

In the lead-up to the fall sitting of the 3rd Session of the 40th Parliament of Canada, the Liberals – who had served as the official opposition since 2006 when the Conservatives won their first minority mandate – had sought to monopolize on the PBO’s multi-billion dollar projections associated with the implementation of the *Truth in Sentencing Act* (2009) and the costs of other key government programs such as the purchase of F-35

fighter jets, which the Liberals had originally initiated. For instance, at the conclusion of the Liberal summer caucus meetings, Michael Ignatieff, then leader of the party, noted:

The priorities of this government are prisons and planes. Is this what Canadians want from their government right now in the middle of a \$54-billion deficit?

[...] We think Canadians' priorities right now are child care, retirement security, post-secondary education. Basic things that are going to guarantee economic security and defence of our public health-care system (CBC News, 2010d).

While their main opponents in Parliament at that time attempted to distinguish themselves from the incumbent government by using a treasury card, the Conservatives deployed neutralization techniques to recast the terms of the federal penal policy debate they had largely dictated during their time in office. The arguments advanced to bolster the hegemony of the prison idea included: 1) that the costs of 'crime', notably to victims, dwarf many times over expenditures associated with imprisonment; 2) that the preponderance of unreported victimization, unlike declining rates of police-report 'crime', demonstrates the need to expand prison capacity; and 3) that new prison construction is a form of economic stimulus. Below, vignettes for each of these narratives, their reception in the media, as well as the interventions I made and replacement discourses (Henry, 1994) I attempted to advance to counter Conservative penal policy talking points are examined.

A first neutralization technique deployed by the Conservatives when their stance of penal policy was critiqued for being costly was to point to the costs of 'crime'. For instance, following the release of the PBO report, Public Safety Minister Vic Toews made reference to a Department of Justice Study (Li, 2005) to support his claim that the "cost of crime to Canadians is approximately \$70 billion a year and the cost of

incarcerating dangerous repeat offenders is warranted in that context” (Harris, 2010). Although there is a factual basis to this argument, in that the Department of Justice did release a study that estimated the cost of criminalized victimization to Canadians to be \$70 billion (Li, 2005),⁴ the claim made by Minister Toews operates under the pretence (Mathiesen, 1990, p. 140) that incapacitation through incarceration reduces criminalized victimization in the long term, and thus, results in a cost savings. This connection is not supported by the government’s own statistics that show that the longer someone is in prison the more likely they are to come into conflict with the law once released (see PSC, 2009b). This being the case, an expanded use of prisons would not result in a decrease in the costs of criminalized victimization, but would instead add to the \$13 billion spent on the penal system beyond the figures noted in the 2003 Department of Justice study. Having highlighted this point in a 3 August 2010 blog post, I attempted to reach my intended audiences via e-mail. However, the argument presented was not taken up.

With the Conservatives continuing to receive questions about the costs of their punishment agenda, Toews (2010b) continued to defend his party’s punishment agenda in a 12 August 2010 editorial in the National Post on similar terms, arguing:

Our approach toward corrections will require us to expand capacity within existing prisons. This is a small price to pay to ensure dangerous criminals don’t create new victims or terrorize previous ones. We want to keep offenders, particularly dangerous repeat offenders, off the streets, and we are prepared to pay the cost in order to do that. It does cost money to deal with serious criminals. But failing to do so comes with significant costs as well, and not just in dollar terms.

The Truth in Sentencing Act was passed to ensure that convicted offenders serve a sentence that reflects the severity of their crimes. Under the previous system, a violent criminal sentenced to nine years in prison could be on our streets in three years if he or she spent two years awaiting trial. In at least one case, a convicted terrorist was released one day after being sentenced.

The provinces and police supported our efforts to end credit for time served – efforts the Ignatieff Liberals tried to block. We disagree with the Liberals' view that dangerous criminals should be released onto our streets early just to save a buck.

As it stands, a drug trafficker or white collar criminal sentenced to 12 years could be released into the community on day parole in just two years. Canadians find this unacceptable, and we hope our legislation will pass as soon as Parliament reconvenes in the Fall.

Such statements highlight the belief that incapacitation leads to a reduction in 'crime', which had been popularized in the United States by politicians and academics such as James Q. Wilson (1975) who, along with other conservatives have more recently argued for a shift away from such policies (Wilson, 2011).

One intervention that problematized penal policies rooted in the logic of incapacitation that had an impact on federal penal policy discussions was the content of a 7 January 2011 editorial in the Washington Post by Newt Gingrich and Pat Nolan (2011). In the piece, the two prominent Republican politicians who had long been proponents of incarceration noted:

Our prisons might be worth the current cost if the recidivism rate were not so high, but, according to the Bureau of Justice Statistics, half of the prisoners released this year are expected to be back in prison within three years. If our prison policies are failing half of the time, and we know that there are more humane, effective alternatives, it is time to fundamentally rethink how we treat and rehabilitate our prisoners.

Gingrich and Nolan also highlighted the fact that many prominent conservatives had become signatories to the Right on Crime campaign that promotes a decrease in the use of imprisonment on fiscal, ethical and practical grounds.⁵

In Canada, a number of members of the press took note of this campaign (e.g. Ivison, 2011a), questioning why the federal government was insisting on measures,

including mandatory minimum sentences, when some staunch Republicans in the United States had repudiated such an approach. As noted in the introduction, this American initiative was also a topic of discussion in Parliament, including during a 3 March 2011 meeting of the Standing Committee on Public Safety and National Security where Republican politician and lawyer Asa Hutchinson (2011) who, when asked about the incarceration record of his country, noted: “We have made some mistakes and I hope you can learn from those mistakes” (Galloway, 2011a; see also Payton, 2011). The Conservatives and other proponents of incarceration such as Carleton University Sprott School of Business professor Ian Lee (2011) have attempted to neutralize the threat such an example posed by noting Canada’s relatively low incarceration rate in comparison to the United States, along with the derision of expertise that does not support policies that would see an increase in the use of imprisonment. Such commentary has been given a platform in newspapers such as those run by Postmedia News and Quebecor (see Goldstein, 2011; Gunter, 2011 Lilley, 2011a), who through their coverage of victimization and penal policy have often, although not always (e.g. Ivison, 2011a), made the case for the perpetuation and expansion of incarceration.

A second argument used by proponents of incarceration to neutralize critics who question the logic of investing additional taxpayer dollars towards prison expansion, particularly in the context of decreases in the volume and severity of police-reported ‘crime’, has been to point to the levels of unreported victimization. As noted previously in this chapter, Conservative MP Shelly Glover deployed this argument during a segment on CBC’s Power & Politics (see CBC Television, 2010c). Former Treasury Board of Canada President Stockwell Day made similar claims during a 3 August 2010 press

conference, where he was providing journalists with an update on Canada's economic recovery and fiscal austerity measures, in response to a question from CBC journalist

Terry Milewski:

Milewski: Mr. Day, you told Theo [another journalist] a moment ago that the government doesn't want to send confusing signals to Canadians and to markets about its commitment to cutting the deficit. At the same time during a time of declining crime rates you want to blow \$9 billion on new prisons. If that is not a confusing signal, what is? Why do you expect to be taken seriously as a deficit fighter if you're prepared to do that despite the absence of any need?

Day: We're very concerned about the increase and amount of unreported crimes that surveys clearly show are happening. People are simply not reporting the same way they used to [...]

Milewski: Are you suggesting that the declining crime rate is a myth and that the statistics are not reliable?

Day: I'm saying one statistic of many that concerns us is the amount of crimes that go unreported. For whatever reasons, people are simply not reporting. Those numbers are alarming [...] (CBC News, 2010e).

As Day did not initially reference a study that supported his claims and that the federal government had recently been critiqued by a number of statisticians, professional and voluntary associations, and others over their decision to cancel the mandatory component of the long-form census administered by Statistics Canada (see Proudfoot, 2010), a media frenzy ensued.

Speaking at a news conference from the same room minutes after Day made his remarks to the press, Liberal Public Safety Critic Mark Holland took the opportunity to further point out the apparent absurdity of his colleague's claim, stating: "He said statistics on unreported crime were extremely high and worrisome. Well, what statistics? They're supposedly unreported crime" (CBC News, 2010e). As the day progressed and stories poking fun at Day's assertion that more prisons were needed to address unreported

'crime', the government sent reporters links to the Statistics Canada study by Gannon and Mihorean (2005) that discussed changes in unreported victimization trends from 1999 to 2004 based on the 2004 General Social Survey (see O'Malley, 2010; Taber, 2010). While the study did show an increase in these rates during the period studied, Warren Silver – an official with the Canadian Centre for Justice Statistics, a branch of Statistics Canada – argued that the victimization data was not comparable to police-reported 'crime' figures "since it only surveyed eight types of crimes as opposed to the hundreds of crimes investigated by police" (De Souza, 2010). He also noted that the unreported 'crime' figures were a "good complementary data source that we can put together with the police to get a better picture of crime [...] I know that a lot of people want to compare one data set to another – the police-reported [data] versus the victim-reported [data] [...] I think it's important to say they're different kinds of things in themselves" (ibid).

Having not properly framed an already poor argument, the Conservatives had, with few exceptions (e.g. Ivison, 2010), failed to neutralize questions about the economics of imprisonment in the context of a fiscal crisis raised by members of the press. Subsequent attempts by proponents of punishment, including former Alberta prosecutor Scott Newark (2011), to use these statistics to support their contention that the rate of 'crime' is actually increasing in Canada were also contested in the media (e.g. Greenspan and Doob, 2011a).

With the federal penal policy debate often focussed on whether what is commonly called 'crime' was increasing or decreasing, instead of what could be done to prevent victimization and meet the needs of those affected by it, I attempted to refocus the

discussion on the latter during a 3 March 2010 presentation to the Standing Committee on Public Safety and National Security where I noted:

Irrespective of whether ‘crime’ – reported or unreported – is going up, down or remains stable, no one’s disputing whether something should be done. What is being disputed, however, is how scarce criminal justice resources should be spent to meet the needs of the victimized and criminalized in a manner that is effective and provides the best value-for-money for taxpayers.

Despite this and subsequent attempts to reframe the discussion, the cherry picking of Statistics Canada data continued with Lee (2011) coming to the defence of Newark in a report published by the MacDonald-Laurier Institute that received coverage in Postmedia News and Quebecor newspapers. While it is important to contest misinformation where it exists through factual argumentation, this example highlights the need for criminologists to heed the advice of Mopas and Moore (2011) by finding ways to challenge how individuals feel about the threats they face on an emotional level.

A third neutralization technique used by proponents of incarceration to deflect critiques about the costs of prison expansion has been to frame such projects as economic stimulus programs that create short term jobs in the construction sector and long term jobs in prisons, along with related economic activity resulting from the employment of locals. The use of this treasury card, which has been studied in the United States (e.g. Christie, 2000; Herivel and Wright, 2003; Welch, 2003; Gilmore, 2007; Herivel and Wright, 2009), is not new within the Canadian context (see CPS, 1977).

While press releases announcing the construction of new units being built on the grounds of existing penitentiaries as part of CSC’s short term accommodation strategy have not featured this trope to sell prison capacity expansion to host communities, the federal agency has claimed that the projects will generate economic benefits using other

means of communication. For instance, an e-mail from CSC to its community partners dated 19 August 2010 noted:

There will be an increase in shared accommodation and the addition of over 2,700 spaces across our institutions over the next three years to handle the population growth. The construction of these new living units will also mean construction jobs for the local community, and new hiring at the facility where the units are ready to be staffed. This is an important part of ensuring tangible economic growth for the communities located around our institutions.⁶

Conservative MPs, CSC staff and municipal officials have touted the economic virtues of these projects when fielding questions about the penal infrastructure projects. At the 31 August 2010 announcement of new units at Drumheller Institution and Bowden Institution in Alberta, Correctional Officer Hanly noted that not only will the new space “enhance our ability to keep our population separated and isolated [...] It’s really good for the town of Drumheller. They’re our major partner. What’s good for us is good for them” (Zickenfoose, 2010). Bryce Nymmo, the Mayor of Drumheller, added that the initiative is “wonderful for us here. Our population count includes the prisoners. When you get various amounts of money from the provincial government, it depends on your population” (ibid). He also remarked that the “addition of not only the prisoners but the people working there will have a lot to do with more money coming to our town” (ibid). Bowden Institution Warden Dave Pelham contributed to this narrative, remarking: “It’s going to give us more flexibility to manage the populations. It’s an economic boost for the local economy”. Similar remarks were also made by Mission, British Columbia Mayor James Atebe who welcomed the announcement of the \$15 million expansion to Mission Institution made by Stockwell Day on 30 August 2010 (see CSC, 2010d), noting

that the “economic multiplier effect is good for the community. The \$15 million, once invested, will have a trickle effect in terms of jobs and services” (Toth, 2010).

On the surface, the economic case in favour of prison expansion may be attractive to localities that are looking to attract long term employers, as well as increase their ability to raise funds through larger populations and workforces. With CSC and other proponents of incarceration claiming that new penal infrastructure would result in “tangible economic growth”,⁷ I took on the role of educative provocateur (Greek, 1994) by writing a blog post on 19 August 2010 that I forwarded to my intended audiences where the following questions were raised:

Has CSC undertaken a review of the impacts of establishing new facilities or expanding existing institutions on host communities to substantiate their claim that their expansion agenda will ensure “tangible economic growth”? If so, can the report be released to Canadians who are bankrolling these initiatives? If not, on what basis is CSC making these claims?

Two months later, an Order of Paper Question (Q-469) was tabled by federal Liberal Public Safety Critic Mark Holland (2010a, p. 1) in the House of Commons that asked whether “a review of the impacts on host communities of expanding existing facilities [has] been undertaken by CSC” and “what evidence does CSC have to support their claim that the prison expansion plan will ensure “tangible economic growth””. In a 6 December 2010 reply tabled by Minister of Public Safety Vic Toews (2010c, p. 2), the following response was provided in writing:

Since the announced institutional expansions will be occurring within the existing perimeters on CSC-owned land, a review of the impacts on host communities was not undertaken.

[...]

Given the level of funding that will be expended in the communities, there will be an increase in terms of construction jobs for the community in addition to new hiring at the facility when the units are ready to be staffed. This is an important part of ensuring tangible economic growth for the communities located around CSC's institutions.

This admission by Toews illustrated that the economic benefits touted by proponents of federal penal infrastructure initiatives were not substantiated by evidence. In order to disrupt the reproduction of the prison idea through promises of economic stimulus, I highlighted the information above during public presentations in January 2011 (see *Appendix XII*) that followed recent penitentiary unit announcements in Kingston, where 6 new penitentiary units totalling 484 prisoner beds are being built, and Montreal, where 5 new units totalling 388 new prisoner beds are being erected in nearby communities including Cowansville, Laval and Sainte-Anne-des-Plaines. As part of these interventions, where I took on the role of public educator (Currie, 2007), I also shared findings from studies in the United States that have shown that promise of economic activity associated with prison construction and facility jobs are often unfulfilled (e.g. Huling, 2002; Hooks *et al.*, 2004; Glasmeier and Farrigan, 2007; Mosher *et al.*, 2009) to challenge assumptions that imprisonment is economically profitable.

While the presentations drew sizeable audiences and were examples of self-reporting (Henry, 1994) in that they were publicized by alternative media outlets such as CFRC Kingston (see also Stevens, 2011), these interventions were limited in their reach given the scope of what amounted to a penal pork-barrelling campaign by the Conservatives. Coupled with the fact that there are no Canadian studies that exists that could either support or refute claims made by proponents of carceral stimulus theories, there is a void of research and advocacy on this topic that needs to be addressed if the use

of this treasury card by supporters of prison construction is to be validated or displaced by replacement discourses (Henry, 1994) informed by scholarly research.

Denial, Ambiguity and a Majority Conservative Government

As noted previously, the release of the PBO report (Rajekar and Mathilakath, 2010) not only resulted in the costs of the Conservative punishment agenda becoming a central issue on the federal political scene, but also contributed to an emerging narrative about the lack of transparency with which the government was advancing its penal policies, as well as other initiatives. In an effort to neutralize questions about transparency, CSC released details about the costs and number of prisoner beds they would be establishing as part of their short term accommodation strategy to absorb the influx of new prisoners resulting from the *Truth in Sentencing Act* (2009). However, the costs of the bills before Parliament and CSC's long term accommodation strategy were not disclosed. With the denial of information that left the consequences of Conservative penal policies unfinished, members of the opposition resorted to parliamentary procedures to force the integration of information held by CSC and Cabinet into the realm of Parliament. Below, key developments during the fall and winter sittings of the 3rd Session of the 40th Parliament of Canada involving struggles over access to the costs of government measures that were at the centre of a debate on parliamentary privilege that triggered the 2011 federal election where the Conservatives obtained a majority are discussed. In particular, an emphasis of analysis is placed on the techniques of opacity used by the Conservatives to maintain the secretive aspects of their approach to penal policy that contributed to the reproduction of the prison idea. While I did continue to make

interventions during this period these contributions are not highlighted, as the developments below were not shaped by my efforts in a visible way.

A few weeks after Parliament resumed its business following a summer break, Liberal Public Safety Critic Mark Holland placed a number of questions related to the Conservative punishment agenda on the Order Paper (Q-470) on 19 October 2010 for Minister of Public Safety to answer. In one series of questions, Holland (2010b, p. 1) asked:

...(a) how many additional prisoners are projected to be housed in Correctional Service of Canada institutions over the next ten years, broken down annually; (b) what is the projected cost associated with building new infrastructure to absorb the influx of these additional prisoners over the next ten years, broken down annually; and (c) what is the projected costs associated with operating and managing these additional prisoners over the next ten years, broken down annually?

In another series of questions (Q-471), Holland (2010c, p. 1) requested details associated with CSC's implementation of the infrastructure component of the agency's "Transformation Priorities" that included plans for regional complexes to replace existing facilities in response to recommendations made by Sampson *et al.* (2007).

It should be noted that when questions are placed on the Order Paper the Ministry in question has 45 days to respond to the questions orally or in writing. Failure to do so results in the matter being referred to the appropriate standing committee for a meeting to consider the dispute (Parliament of Canada, 2009a). While respecting the timeline, Minister Toews (2010d, p. 1) proceeded to deny releasing details regarding the consequences of implementing the majority sentencing measures noted in Holland's (2010b) requests, asserting: "various Bills remains [sic] subject to a Cabinet Confidence and is not yet publicly available". The minister did, however, provide details associated

with the implementation of *An Act to amend the Controlled Drugs and Substances Act* that was before Parliament, stating: "...to effectively manage the increased workload that will arise if Bill S-10 is passed, CSC has been approved for \$23.3 million in funding over the five years and an ongoing cost of \$6.4 million" (ibid, p. 2). In response to the query about regional complexes, Minister Toews (2010a, p. 1) noted: "There are currently no approved plans for the construction of regional complexes or the closure of existing institutions. CSC is currently developing its Long Term Accommodation Strategy and Investment Plan for consideration in March 2011". While this response did provide information related to the timeline of the initiative, like other government pronouncements on its penal policy plans, it left considerable ambiguity around the consequences of its implementation.

In the intervening weeks, the Standing Committee on Finance also took up the issue of the costs of the Conservative punishment agenda, requesting the projections associated with 18 pieces of legislation before Parliament over five years, along with financial information related to corporate profits and tax rates on 17 November 2010. However, with no information forthcoming, Liberal Finance Critic Scott Brison tabled a question of privilege⁸ in the House of Commons on 7 February 2011. Brison explained why such a motion had been tabled:

Parliament has a clear obligation to hold the government to account and scrutinize their spending plans. Withholding this information impedes Parliament's ability to fulfil its duty to scrutinize the estimates, and that is a breach of the House's privilege. That's why I am asking the Speaker to look into this matter [...] When it comes to the cost of justice bills, this information would have been part of the Memorandum to Cabinet for each bill, but the Access to Information Act makes it clear that the background information for these bills are not a Cabinet confidence once the bills are introduced in Parliament (LPC, 2011a).

Brison then concluded that the “government’s refusal to provide that information constitutes a breach of the House’s privilege and a contempt of Parliament” (ibid). Noting that “efforts to hold the government to account have been unduly frustrated by the government itself”, Brison stated that he was “prepared to move an appropriate motion if, Mr. Speaker, you find a prima facie [at first face or first sight] question of contempt” (House of Commons, 2011a).

With a ruling by the Speaker on this matter pending, the Conservatives tabled a number of documents in the House of Commons that were said to provide the information outlined in Brison’s question of privilege, including an Excel sheet outlining approximately \$650 million of federal expenditures associated with their penal policy measures (Galloway, 2011b). While some federal and provincial politicians questioned the logic of increasing prison expenditures at this time (see Akin, 2011a), others challenged the comprehensiveness and validity of the figures provided. For instance, Brison stated that “[w]e asked for a breakdown of costs, and the government continues to stonewall us by giving us unbelievable figures with no backup [...] We need to have the real facts and figures” (Galloway, 2011b). Also glaring in its absence were the costs of these measures to the provinces and territories (see Galloway and Howlett, 2011).

The following week, the shortcomings of the government’s stated attempt to comply with the requests for information on significant expenditures was confirmed in a report submitted to the Finance Committee on 25 February 2011 by the PBO (2011a). The report pointed to the ambiguousness of the information provided by the government regarding the costs of the penal policies tabled in the ongoing parliamentary session that did not include the “analysis, key assumptions, drivers, and methodologies behind the

figures presented” (ibid, p. 2). Moreover, it was noted: “basic statistics such as headcounts, annual inflows, unit costs per inmate, per full-time equivalent (FTE) employee, and per new cell construction have not been made public” (ibid). The PBO also affirmed the need for the disclosure of the information that had been withheld by the government to ensure Parliamentarians could “fulfil fiduciary obligations under the Constitution” and “discharge of its fiduciary duty to the Canadian people to properly control public monies” (ibid, p. 1).

With the PBO’s independent analysis, the Speaker of the House of Commons and Liberal MP Peter Milliken was asked to rule on Brison’s question of privilege. In his ruling, the Speaker noted the following:

While the Chair [the Speaker] does not judge the quality of documents tabled in the House, it is clear from a cursory examination of the material tabled that, on its face, it does not provide all the information ordered by the committee.

While the Chair finds this in and of itself unsettling, what is of greater concern is the absence of an explanation for the omissions. At the very least, based on the indisputable right of the committee to order these documents, this is required. Only then can the House determine whether the reasons given are sufficient or satisfactory.

[...]

The Chair has reviewed the debates on this question, and while initially cabinet confidence was cited as a reason not to produce any of the documents, despite this, the government saw fit to partially comply with the committee order and a tabling of some material did eventually take place. Since then, no further reasons have been given as to why the balance of the documents should not or will not be tabled.

It may be that valid reasons exist. That is not for the Chair to judge. A committee empowered to investigate the matter might, but the Chair is ill-equipped to do so. However, there is no doubt that an order to produce documents is not being fully complied with, and this is a serious matter that goes to the heart of the House’s undoubted role in holding the government to account.

For these reasons, the Chair finds that there are sufficient grounds for finding a *prima facie* question of privilege in this matter (House of Commons, 2011b).

With this ruling and another regarding the validity of testimony given by Minister for International Cooperation and MP for Durham Bev Oda regarding the altering of a document that triggered the de-funding of aid organization KAIROS, the “Harper Government” was now sporting “two black eyes” (Iverson, 2011b) for its unparliamentary conduct. These issues would now move to the Standing Committee on Procedure and House Affairs, where the committee composed of four government and five opposition MPs would determine if the Conservatives were in contempt of Parliament on these matters.

The hearings of the Standing Committee on Procedure and House Affairs where it would be determined whether or not the Government of Canada was in contempt of Parliament began on 16 March 2011. Among the witnesses that appeared before the committee were Minister of Public Safety Vic Toews and Minister of Justice Rob Nicholson, who were flanked by Deputy Ministers from federal departments that would be impacted by the implementation of their penal policy measures. Minutes before their appearance, binders were submitted to the committee containing hundreds of pages of background information related to the bills introduced in the parliamentary session that was in progress. The package was said to be a supplement to the Excel sheet outlining the federal costs of these proposals tabled in Parliament on 17 February 2011. With only a few minutes for committee members to review the contents of the binder, the proceedings resumed.

In their opening remarks, both ministers claimed that the tabling of the Excel sheet in February 2011 represented an effort to comply with the Finance Committee's request and that the additional information provided to the Standing Committee on Procedure and House Affairs minutes before their appearances represented another attempt to meet the demands for disclosure by opposition MPs (see House of Commons, 2011c). As the ministers pointed to the size of the binder they had submitted as a sign of their compliance with the requests for disclosure made by parliamentary committees, members of the opposition questioned the absence of costs for some bills, as well as the exclusion of capital and provincial-territorial expenditures associated with the measures. In response, the ministers argued that such details were not explicitly outlined in the requests for information made to their departments, and thus, were not included in their submissions to Parliament. In other words, if MPs wanted that information they needed to ask the right questions. Further, the ministers argued that the provinces and territories were all onside with their legislative agenda, a claim troubled by concerns over the costs of the implementation of the sentencing measures expressed by provincial-territorial governments in the media (e.g. Galloway, 2010b; 2011c; Galloway and Howlett, 2011). The following day, the information asymmetry (Snell and Sabina, 2007) between what was sought by members of the opposition and what was disclosed by the government remained as the ministers insisted that they had complied with the demands of the committee (see House of Commons, 2011d).

With the minority Government of Canada and members of the majority opposition at an impasse, another report by the PBO (2011b, p. 2) weighed in on whether

Parliamentarians had the necessary financial information specifically related to penal policy proposals to exercise their fiduciary responsibilities, noting:

- Additional information has indeed been provided to parliamentarians when compared to the GC's [Government of Canada] tabling of documents on February 17, 2011;
- Based on the GC's assessment, four of the proposed bills are not expected to have a fiscal impact owing to their procedural nature;
- The FINA committee request and the Question of Privilege contained multiple references to breakdowns of costs by capital, operating and maintenance and other costs. The information provided includes virtually no reference to capital expenditures (e.g. new cell construction, refurbishment, recapitalization, capital asset replacement). [sic ;]
- There remain significant gaps between the information requested by parliamentarians and the documentation that was provided by the GC which will limit the ability of parliamentarians to fulfil their fiduciary obligations.

With this report in hand, the opposition MPs sitting on the Standing Committee on Procedure and House Affairs (2011) issued a report on 21 March 2011 determining that the ruling Conservatives failed to provide relevant information requested by them, and thus, were in contempt of Parliament. In response to the conclusion reached by their colleagues in the opposition, Conservative members sitting on the committee attempted to neutralize their critics issuing a dissenting report arguing that the Liberals, NDP and Bloc “have ignored the substance of the evidence provided by the Government and by the witnesses who appeared. The report tabled by the committee is simply a piece of partisan gamesmanship that diminishes the important work of Parliament” (ibid, p. 18).

With the opposition having reaffirmed the primacy of Parliament and the need for its members to have access to relevant financial data prior to voting on legislative measures, along with their informal rejection of the 2011-2012 budget tabled by Finance Minister Jim Flaherty on 22 March 2011 (see Government of Canada, 2011), the stage

was set for the tabling of a non-confidence motion. In the days leading up to the vote, the Conservatives claimed that the finding of contempt by a committee dominated by the opposition was contemptuous of the Canadian people who were portrayed as wanting the federal budget to be debated, voted on and passed, instead of triggering an election over what was characterized as trivial matters of parliamentary procedure. The opposition parties responded by stating that they could not trust a budget tabled by a government who had contempt for Parliamentarians and Canadians by not disclosing the full costs and background information related to the F-35 fighter jet programme, corporate tax cuts and penal policy measures.

At the first opportunity, then Leader of the Official Opposition Michael Ignatieff tabled the following non-confidence motion on 25 March 2011:

That the House agrees with the finding of the Standing Committee on Procedure and House Affairs that the government is in contempt of Parliament, which is unprecedented in Canadian parliamentary history, and consequently, the House has lost confidence in the government (House of Commons, 2011e).

With 156 MPs agreeing with and 145 MPs opposing the motion, the minority Conservative Government of Canada had lost the confidence of the House of Commons. Following the vote, Prime Minister Stephen Harper, who effectively characterized the matter as trivial and unimportant to Canadians in the weeks leading up to the demise of his government (Bradshaw and Ibbitson, 2011), visited Governor General David Johnson on 26 March 2011 to dissolve Parliament. The Prime Minister's request was granted and the 2011 federal election campaign began.

In the weeks that followed, the penal policy component of this political battle took on a slightly different tone than previous campaigns where the Conservatives, Liberals

and NDP touted their ‘tough on crime’ credentials (see Larsen and Piché, 2009). The Conservatives continued to engage in populist punitiveness (Bottoms, 1995) with promises to put “the rights of victims and law-abiding citizens ahead of the rights of criminals” (CPC, 2011, p. 2). Among the commitments made was a pledge to reintroduce the penal policy measures that had not been passed before what was characterized as an “unnecessary election” (ibid, p. 50).

In what can only be described as a baffling approach to campaigning, the Liberals sought to differentiate themselves from the Conservatives by using PBO projections compiled by Rajekar and Mathilakath (2010) to criticize the penal policies of the recently deposed government, yet omitted how they would avoid incurring the costs themselves if they were in office (see LPC, 2011b, p. 54). Perhaps in an effort to deflect the ‘soft on crime’ branding the platform included the following: “No one disagrees that criminals must be punished. But more prisons alone will not make our communities safer and stronger. That approach has failed in the U.S. Evidence and experience suggest it will take much more than prisons” (ibid). With a gaping hole in their argumentation, members of the press began to ask questions about whether the Liberals would revisit Conservative sentencing measures. In a 4 April 2010 interview, Liberal Mark Holland responded: “I don’t see anything right now that we need to go back and undo” (Murphy, 2011). Along with others (e.g. National Post, 2011), I criticized the logic of this statement, raising a number of questions in a blog post that I sent to my intended audiences, including: “what would a Liberal government do to curb the prison growth associated with the Conservative punishment bills that were passed in the last five years that is likely to occur?” When questioned about this matter on the campaign trail on 8

April 2011, then Liberal leader Michael Ignatieff responded “We’re gonna review all of these. There will be substantial savings” (Lilley, 2011b). However, without having noted a penal policy review in their platform, the Liberals had undermined their credibility on the issue.

For their part, the NDP had their plan for “safer streets” that included “prevention”, “protection” and “prosecution” as three of its pillars (NDP, 2011a). Proposed measures included raising federal funds for prevention from \$65 million to \$100 million, as well as hiring 2,500 additional police officers (NDP, 2011b, p. 16). They also proposed to “create new, stand-alone offences for home invasions and carjackings”, while also pledging, like the Conservatives, to “allow citizens to detain criminals within “a reasonable amount of time”. Anti-gang programming and additional resources for mental health in federal prisons were other initiatives touted by the NDP. Judging by the platforms of the major federalist parties, the prison idea was alive and well despite many months of the federal penal policy discussion having often focussed on the costs of incarceration and related issues of transparency.

On 2 May 2011, the Conservatives won 166 seats with 39.6 percent of the popular vote and now had a majority in the House of Commons. The NDP, with 30.6 percent of the popular vote, won 103 seats and became the official opposition, while the Liberals were reduced to 34 seats having managed to secure 18.9 percent support from voters. After years of strong electoral showings by the Bloc Québécois only 3 of its members had been elected to Parliament, while the Green Party secured its first seat via election with its leader Elizabeth May winning the riding of Saanich-Gulf Islands in British Columbia. Going forward, the Conservatives would now have the freedom to implement

their penal policy measures in a transparent or secretive manner without having to secure support from opposition parties during the 41st Parliament of Canada. In this context, perhaps only a groundswell of public opinion can contribute to a tempering or interruption in the federal government's approach to penal policy and its efforts to further entrench the place of the prison idea until the next election.

Conclusion

In this chapter I outlined how I put into practice my initial strategy for public criminology and how it evolved during the contestation component of this study in response to emerging developments, discourses and information related to federal penal policy that were the subject of analysis that informed action on the ground, including the dissemination of replacement discourses (Henry, 1994). I also discussed how the treasury and transparency narratives shaped developments in Parliament as the opposition parties triggered an election where the Conservatives earned a majority government. A number of lessons can be drawn from this experiment informed by action research (Mathiesen, 1974).

A first series of lessons pertains to the broader objective of this project, which aims to understand how the prison idea is being reproduced in Canada at this time. As noted in a number of examples above, the Conservatives maintained their populist punitive rhetoric in the face of criticism about the costs and secrecy associated with their punishment agenda. With an emphasis on incapacitation, deterrence, denunciation, and proportionality, buttressed by making reference to external demands, real or perceived, from Canadians, law enforcement officials, victims, and others for an expanded role for incarceration, these narratives proved difficult to displace in a sustained manner.

While under attack, the Conservatives and other proponents of incarceration (e.g. Flanagan, 2010; Newark, 2011; Lee, 2011) deployed a number of neutralization techniques such as the derision of expertise and disregard for disquieting evidence. The use of such tactics forced critics of imprisonment to spend much of their time correcting the record, rather than staying on message and advancing arguments to undermine the place of incarceration.

As some of the fiscal consequences of the Conservative punishment agenda became visible to Canadians, the treasury card, which I had used to tap into anxieties about a fragile economy, was also used in support of measures such as the construction of new federal penal infrastructure. When used by proponents of incarceration, this strategy included references to the costs of what is commonly called ‘crime’ in support of the notion of incapacitation. Loader (2010, p. 362) warns of this pitfall:

Success depends on citizens coming to the conversation as taxpayers rather than, say, as fearful victims, or potential victims, or as individuals and social movements in solidarity with victims. If the latter turns out to be the case, the public may simply retort that this is a price that can and must be paid, or else demand that the necessary cost savings are made by making prisons more austere or cutting back on educational or drug treatment programmes.

In one poll commissioned by the National Post of 1,097 Canadians in February 2011, 57 percent of respondents “said the [federal] prison expansion program, estimated to cost at least \$2-billion, is a worthwhile initiative” (Fitzpatrick, 2011). The other 43 percent of respondents stated “it is unaffordable” (ibid). Based on this poll, one could conclude that the Conservatives had been successful at convincing many of the need for new penal infrastructure.

Another pitfall associated with the treasury card identified by Loader (2010, p. 362) is that certain segments of society may be “persuaded that government investment in prisons is a (Keynesian) route out of recession” (ibid). This is the case in some communities in Canada whose political representatives have either sought and / or supported the establishment of new penal infrastructure as a means to stimulate local economies. The promise of economic activity associated with prison construction and facility jobs, although often unfulfilled (see Huling, 2002; Hooks *et al.*, 2004; Glasmeier and Farrigan, 2007; Mosher *et al.*, 2009), is another narrative that requires a considerable amount of effort to problematize and deconstruct. This was the case when the Conservatives announced dozens of new units to be built on the grounds of existing penitentiaries where the message of economic salvation through the plundering of human beings travelled to a number of communities, generating trails of mostly uncontested publicity.

Beyond these finishing discourses advanced in support of imprisonment and to negate alternative ways of thinking about and responding to criminalized issues, the Conservatives did successfully employ an unfinished approach to penal policy allowing for the perpetuation and expansion of incarceration. While they were forced to shift away from the use of denial in the public sphere concerning some of their prison capacity expansion initiatives associated with their legislative measures other techniques of opacity, notably ambiguity, were used. As a result, the totality of the consequences of their punishment agenda, such as the expenditures associated with CSC’s long term accommodation strategy, remained out of the view in moments where different choices about the future of imprisonment in Canada could have been made.

A second series of lessons that can be taken from this experiment in public criminology has to do with the pitfalls that can be encountered when focusing one's analysis on political rhetoric. The following is a cautionary note about the consequences of getting caught up in the conversation, in this case the federal penal policy discussion as covered by news outlets that are mostly national in scope. Earlier in this study, it was noted that many punishment scholars have the tendency to focus on the rhetoric of politicians and discourses circulating in the media about penalty (Carrier, 2010). Where theorizing prison expansion is concerned, there are consequences in analysis such as ignoring developments within prison bureaucracies. This tendency also has consequences for the practice and analysis of public criminology.

When one spends a significant amount of time following media coverage, as well as preparing for and getting involved in numerous public engagement activities, the focus of analysis can veer towards the broader conversation in which one is engaged. As a result, less emphasis – both analytically and practically – may be placed on how this discussion translates into parliamentary votes on sentencing measures one is trying to generate opposition against. I encountered this pitfall as I failed to adequately engage with the fact that some of the Conservative punishment bills tabled during the 3rd Session of the 40th Parliament were passed with the cooperation of one or more of the parties.⁹ While I eventually shifted my attention towards the analysis of voting behaviour, some opportunities were missed to challenge opposition parties in cases where their rhetoric was not reflected in their votes in Parliament. This inconsistency – particularly that of the Liberals who had sought to distinguish their plan for Canada from Conservative spending on jets, prisons and corporate tax cuts – was noted in my public presentations

and some of my blog posts in March and April 2011. The issue was also raised by a number of journalists during and in the months prior to the 2011 federal election (e.g. Coyne, 2011; National Post, 2011), a glaring contradiction that arguably helped to propel the Conservatives to a majority government or at the very least did not hinder their efforts.

Another common analytical pitfall amongst a number of punishment scholars that applies to the public engagement phase of this project is the lack of problematization of the role the rehabilitative ideal and other benevolent-sounding discourses play in the reproduction of the prison idea (Mathiesen, 1990). As noted by Moore and Hannah-Moffat (2005), discourses couched in such progressive language are still punitive. In seeking to contribute to an interruption in the Conservative punishment agenda and the secrecy with which it was being implemented, I missed a number of opportunities to problematize reformist argumentation advanced by Parliamentarians in the opposition that left a place for punishment, albeit on a lesser scale. I also failed to problematize opposition visions of social control that involved calls for greater investments in ‘crime prevention’, principally through the hiring of more police officers which had often been touted by the NDP, which inflates the impact the penal system can have on community safety, while also limiting our understanding of how criminalized conflicts and harms can be avoided. As will be discussed more in the following chapter, I even allowed myself to be defined in by contributing to such narratives through the advancement of similar arguments. The use of figures showing comparably scarce resources being allocated to programming for prevention and prisoners in comparison to ballooning budgets for human warehousing under the Conservatives that could trouble common sense

understandings of how community safety is achieved amongst those who identify as progressives in my own argumentation was tempting. In deploying these numbers, I had become complicit in the reproduction of the prison idea – “a kindler, gentler machine-gun hand” (Young, 1989), but a machine-gun hand nonetheless. In the process, I contributed to the undermining of some of the practical gains that had been made through the use of treasury and transparency cards, such as the disclosure of new information about federal penal infrastructure initiatives and decisions by opposition parties to block the passage of certain pieces of legislation.¹⁰

Among the important lessons learned through this experience of doing public criminology is about the place accorded to opposing arguments in media coverage. Henry (1994) talks about how print, radio and television news is often structured in a manner that pits individuals of competing viewpoints against one another. This set-up gives the impression that all sides are being featured in stories so that consumers can decide for themselves who they want to believe or side with. Here, arguments supported or unsupported by evidence are illuminated. While the latter is often the object of critique in subsequent news stories and editorials, they circulate nonetheless. To be clear, I am not arguing for the suppression of opinion, more specifically the silencing of those who advocate for more incarceration. What I am pointing to is a lesson that many know to be true, yet need to be reminded of from time to time: an argument substantiated by evidence is not necessarily the argument that will carry the day (Tonry, 2010). This is not to say that public criminology ought to be abandoned. Rather, it is about acknowledging the small, but important role criminologists can play as democratic under-labourers (Loader and Sparks, 2011) who can work in a myriad of ways to shape debates

about penal policy, as well as correct misinformation where it exists, to make room for other ways of seeing and responding to criminalized issues when the next “turning point” (Mathiesen, 2008, p. 62) emerges.

CHAPTER VI: REFLECTIONS ON PRACTICE

Abolitionism is a stance. It is the attitude of saying “no”. This does not mean that the “no” will be answered affirmatively in practice. A “no” to prisons will not occur in our time. But as a *stance* it is viable and important.

– Mathiesen (2008), p. 58, original emphasis.

Introduction

Previous experiential accounts of public criminology have reflected on the challenges of extra-academic engagement. Greek (1994, p. 271) offers a number of suggestions on how to prepare for media engagements to avoid “mistakes”, ranging from what one wears to what one says and how, that undermine credibility and take away from the messages one is trying to convey. Martel (2004) has commented on how epistemological divides between qualitative researchers and gatekeepers in the media who privilege quantitative data impact one’s ability to disseminate findings. Mopas and Moore (2011, p. 3) have emphasized the need for criminologists involved in public engagement “to accept people’s fear and anger as legitimate reactions to crime and redirect these emotions towards more productive ends”. Both Stanko (2007) and Petersilia (2008) have documented the challenges of working within the penal system as criminological researchers to effect change, notably the importance of clear and simple language to influence policy. With a small, but growing, literature on public criminology there are a number of other lessons that have been enumerated.

In the conclusion of the previous chapter I contributed to this body of knowledge by reflecting upon how my public criminology activities contested, but also contributed to, the reproduction of the prison idea. The analytical pitfalls encountered during the

contestation phase of this study and the impacts on practice were also discussed, along with the place of evidence in the federal penal policy debates. In the following pages, I extend this analysis by reflecting upon how the pursuit of relevance to legislators, penal policy makers, media outlets and the like, that is a central objective of public criminology, can undermine one's ability to avoid being defined into the dominant narratives that contribute to the reproduction of the prison idea which Mathiesen (1974; 1980; 1990; 2004) warns about. I also consider how this pursuit of relevance can be undermined by an abolitionist identity that needs to be carefully managed to avoid being defined out of the debates one is trying to contribute to.

This chapter begins with a discussion on how I undermined my own attempts to maintain a message track that debunks the ontological reality of 'crime', does not accept the use of imprisonment as a response to complex conflicts and harms, and resists demands for the provision of alternatives to incarceration that are couched in the logic of the penal system. From there, I examine some of the situations that emerged during my forays into public criminology requiring that I carefully manage my identity to avoid being defined out to establish and maintain communication with both proponents and opponents of incarceration, and gain and sustain access to dissemination channels. Unlike accounts of public criminology that discuss how the dynamics of the university limit one's ability to make extra-academic contributions (e.g. Currie, 2007), I reflect upon how my position as a doctoral student facilitated such work. I conclude by critically examining the limits of the approach to public criminology adopted in this study and offer ways forward on how publics can become further involved in criminological research and action.

Maintaining an Abolitionist Message Track

As noted in *Chapter I*, the use of language is consequential in how the world is interpreted, including how one comes to understand acts and statuses that are deemed ‘criminal’, which, in turn, circumscribes possible responses. The prison, as a dominant idea, is often the prescribed response (Sim, 2009). Thus, a first immediate task of penal abolitionists is to advance an alternate way of comprehending what is appropriated by the penal system and its corollaries. For Hulsman (1986), this involves critiquing the ontological reality of ‘crime’. For Mathiesen (2008), this involves rejecting the use of imprisonment as a tool of the state. It also means avoiding the provision of alternatives to incarceration whose descriptors and / or practices can easily be incorporated into the penal system, further buttressing repressive arrangements (Mathiesen, 1974). As a matter of public criminological practice, taking these signposts into consideration prompts reflection on whether or not one is challenging or contributing to the reproduction of the prison idea. More specifically, it pushes one to consider the extent that one is contributing to a shift in the terms of the penal policy conversation and how this discussion is changing the messages one is trying to communicate. Below, I provide examples of how I contributed to the reification of ‘crime’, along with the use of imprisonment and the penal system. I also discuss how such pitfalls can be avoided.

Critiquing and Reifying the Ontological Reality of ‘Crime’

With roots in law, psychology, psychiatry and sociology, criminology emerged as a discipline tasking itself with the generation of knowledge on the causes of ‘crime’ to bolster efforts to control it (Taylor *et al.*, 1973; Cohen, 1988). In taking ‘crime’ as its central object without problematizing the process through which a variety of different

acts and statuses are deemed 'criminal', and whose management has been appropriated by the state (Christie, 1977), Hulsman (1986) argues that many criminologists have failed to acknowledge that 'crime' does not exist in and of itself. The same critique can be made about how 'crime' is commonly discussed in society more broadly. This is not to say that the harms and conflicts that are called 'crime' do not have real effects, but rather, calls for a conceptualization that allows for other ways of understanding these issues. In acknowledging this, Hulsman argues that it is the task of the scholar then to reject the ontological reality of 'crime' and to deconstruct the term.

In my interventions, I have attempted to do this by using scare quotes to indicate that 'crime' is, like other terms, an essentially contested concept (Gallie, 1956) that is not a fact of nature, and by pointing out that the label reduces our ability to understand these complex conflicts and harms. However, there are other ways the use of scare quotes can be interpreted (e.g. sarcasm). More importantly, without an accompanying explanation, the significance of using such a discursive device can be lost or not seen as a necessary component of the message. For instance, in a number of blog posts that have been quoted in newspaper articles, the scare quotes were removed from the word 'crime':

...relying more heavily on imprisonment does not reduce crime (MacCharles, 2010).

In the context of fiscal restraint and massive deficits, it makes little sense to create policies [...] that will require us to build institutions because we already know prisons don't reduce crime and they cost a lot of money (Tibbetts, 2010b).

In these instances, part of the intent of the message I sought to communicate was effaced. These are but a few examples of where my interventions were subtly altered in a manner that allows for their seamless integration into mainstream penal policy debates. It should

be noted, however, that I also self-censored by removing scare quotes from the term ‘crime’ in the first flyer for the 17 February 2010 public forum¹ to appeal to a wider spectrum of individuals and groups. In these and other instances, I undermined the long term objectives pursued as part of my advocacy for the prospect of short term gains in the form of what I thought would be larger audiences. In retrospect, I should have not made this unnecessary compromise in favour of consistently using wording such as “complex conflicts and harms in our communities that we call ‘crime’” as a replacement discourse not only to illustrate the social construction of the term, but also to create a space where alternative responses to such issues could be considered.

Another way in which I have sought to problematize the use of ‘crime’ has been to avoid using terms employed by the system to describe those with whom the law is in conflict such as “criminals”, “offenders” and “inmates”. As noted by Horii (1994) and Huckelbury (2009), when such system-speak is mobilized these terms contribute to the dehumanization of individuals in ways that create the social distance needed for others in society to accept their poor treatment. At times, I have contributed to this dehumanization. For instance, in one interview a reporter asked what I thought about increasing the use of double-bunking inside federal penitentiaries, to which I responded: “As much as we try to dehumanize and demonize convicted criminals, it doesn’t make that kind of treatment right” (Czekaj, 2010). Recognizing the slippage in my words, I subsequently attempted to restate my point using other terms (e.g. the criminalized, those in conflict with the law), which were excluded from the article. It is in instances such as these that a key challenge of putting abolitionism into practice emerges: to abolish system-speak within yourself.

The Difficulty of Saying “No” in Practice

When faced with an unjust situation or arrangement there are three possible responses. A first response is to engage in justification, to explicitly support the injustice that one is bearing witness to or participating in it, while denying the pains of those victimized as a result of the state of affairs (see Cohen, 2001). A second reaction is to tacitly support what is taking place through silence, whereby individuals remain mute “despite disagreement” or fail to recognize that “attitudinal and behavioural subordination to political standpoints which are regarded as authoritative” has transpired (Mathiesen, 2004, p. 9). Another response is to take an abolitionist stance, an “attitude of saying “no”” (Mathiesen, 2008, p. 58), and actively oppose injustice. In the public criminology activities I have participated in, I have striven to take the third way listed above, actively participating and initiating discussions with the aim of undermining the reproduction of the prison idea. Where this becomes difficult is when opportunities to critique the penal system on its own terms present themselves.

Following the Second World War, successive reports by Gibson (1947) and Fauteux (1956) led to implementation of many of the recommendations outlined by Archambault (1938) who proposed the introduction of programs under the guise of rehabilitation into the federal penitentiary system. This was to be accomplished through the hiring of professionals and the creation of programs to achieve this end. It has been argued that the rehabilitative ideal further legitimated the use of imprisonment (Mathiesen, 1990), allowing for its perpetuation on these and other terms in spite of evidence that prisons were far from ideal places for such work to take place (Sim, 2009). While I reject the prison on this basis and the fact that rehabilitation discourses legitimate

the perpetuation of imprisonment, there are glaring contradictions within CSC expenditures that trouble claims made that the Conservative government is concerned with the provision of programming for prisoners in the pursuit of public safety. For instance, the Correctional Investigator of Canada, Howard Sapers, has noted that recent federal sentencing measures are exacerbating a situation where there are already waiting lists for health, mental health and other programs (see OCI, 2010):

My concern is that the correctional service is already under duress, it is already very challenged to live up to its mandate. It has a dual mandate: safe custody and eventual return. And of course, we hope as taxpayers, as Canadians, that the return, happens in a way the people have a chance to reintegrate – that they're no longer going to be caught up in conflict with the law. So that dual mandate has to be met. My concern is that if we continue to burden the correctional service with more and more numbers, more and more admissions, and we don't give the service, the resources, the space, the people, the dollars they need, they're not going to be able to live up to that mandate (CBC Television, 2010f).

This state of affairs has generated an opportunity to critique the Conservative punishment agenda by using the logic of the penal system itself.

To appeal to those who believe there is a place for imprisonment and subscribe to the rehabilitative ideal, I raised this argument that has been made by Sapers on several occasions (e.g. OCI, 2009, p. 23), including in a 25 May 2010 presentation at the Annual General Meeting of Maison Decision House in Ottawa where I noted:

Stuffing more people into our penitentiaries will also exacerbate a situation where, according to Howard Sapers – the Correctional Investigator of Canada – there are already long waiting lists for programming in federal penitentiaries that prisoners may need to safely reintegrate into society. The Office of the Correctional Investigator (OCI) has also repeatedly denounced the fact that only 2 percent of CSC's budget is dedicated to programming [...] This being the case, what is the logic behind adding more prisoners to an already overburdened system? It's certainly not a concern for public safety that is driving this bus into walls of brick and mortar.

In seeking a halt in prison growth in the short term I have also touted community-based custody arrangements that, at the federal level, cost approximately one-eighth of the amount spent on incarcerating an individual in a penitentiary (OCI, 2010, p. 6). I have also promoted prevention initiatives that, according to Waller (2006, p. 33), saves taxpayers \$7 that would otherwise be spent on incarceration for every \$1 spent on preventing victimization from occurring in the first place. By framing alternatives in a manner that reifies 'crime' as an object of intervention, alternatives become ripe for absorption by the penal system (Mathiesen, 1990, p. 39). For instance, successive Conservative governments, like others before them, have been able to maintain the general thrust of their penal policies that see hundreds of millions of dollars spent on incarceration (e.g. CSC, 2011a), while allocating a few million here and there on prevention initiatives to demonstrate that they are taking the advice of their critics (e.g. Fedio, 2011; CPC, 2011, p. 55). This absorption of ideas, which amounts to window-dressing, has done nothing to reduce the use of imprisonment by the Conservatives, contributing to net-widening through the incorporation of so-called alternatives to prison (Cohen, 1985), which have led some abolitionists to call for the abolition of the penal system itself (e.g. Hulsman, 1986).

While the short term objective behind such statements was to encourage others to oppose or question an increase in the use of imprisonment, they do nothing to challenge penal necessity. Moreover, they can be used to divert additional resources towards the penal system, further entrenching the place of retribution through imprisonment, which judging by CSC's ballooning budget is exactly what is being done. To avoid such a pitfall requires a reframing of the discussion that puts into question the use of the penal

system as “a symbolic universal organizer of the hierarchy of general goods” (Scheerer, 1986, p. 19), rather than catering to demands for simple solutions to complex issues. Calling for the diversion of funds spent on the penal system towards education, employment, housing and social services that promote well-being and help meet the needs of individuals who currently form the so-called changing prisoner population in Canada is one approach I adopted that has been used by other abolitionists such as Pate (2008). With the availability of other arguments that could be used to contest the persistent prison, the larger lesson to be taken from this experience is that just because an argument is there for the taking does not mean that it is an argument that should be made, particularly if it is easily malleable by those who wish to sustain flawed arrangements one is seeking to displace.

Managing Identity

Another significant challenge encountered during the contestation component of this study relates to the management of my identity as an abolitionist and critical scholar. Drawing on his action research work with the KROM, Mathiesen (1974, p. 33) notes that the first action and subsequent actions result in limits, whether discursive or physical, being imposed as a result of “the very reactions of the environment (that is, of the established system) to your action” as “possibilities of choice” narrow. When at these crossroads, particularly when in competition with the penal system and its proponents, he argues that it is vital not to present oneself as a ‘reformist’ that is only interested in limited change, which negates the possibility for further gains and elevates the risk of cooptation in a way that further consolidates penal power. He also cautions against appearing to be a ‘revolutionary’ that is only interested in total change, as such actors are

invariably dismissed by potentially reformist allies and opponents alike. For the actionist it is vital to avoid this choice “between ‘revolution’ and ‘reform’” as it “constitutes a hopeless dilemma” (ibid). In the section below, I discuss key moments where questions about my normative stance were raised by some I sought to engage that if not managed properly could have led to me being defined out of the penal policy discussion I was attempting to shape.

You Are (Not) an Abolitionist

As an individual who has gone on record as being a penal abolitionist, a major challenge I faced during this study was to manage the meaning around this label to appear credible to those who share the abolitionist stance and to appear reasonable to those who are not so inclined. This became particularly challenging as my work received attention in the news media where words can be taken out of context.

This challenge emerged from the beginning of my advocacy against prison capacity expansion and federal sentencing measures. In my first public presentation on 17 February 2010 where I released preliminary findings from my doctoral dissertation, I had made my notes available on my blog. In the post, I wrote that there were “at least 22 new ‘bigger and better’ provincial-territorial prisons at various stages of completion in Canada”. I used scare quotes to make visible my problematization of this claim made by many prison authorities in their penal marketing campaigns (e.g. announcements, press releases, web pages) to legitimate their decisions. However, this point was lost in an article published in the Toronto Star (see MacCharles, 2010), which quoted this passage in my blog in quotation marks in a way that readers could interpret that I thought these new prisons were not only bigger, but actually better. One such reader was a board

member of an abolitionist organization, who based on this quote, asked a fellow board member and friend of mine “which side of the fight” I was on. My friend assured his colleague that I was an abolitionist and that the passage of my presentation was taken out of context. In retrospect, this incident should have led to the adoption of stricter messaging discipline that limited the use of scare quotes in situations where their usage could be easily misconstrued.

Whether or not I was perceived as a penal abolitionist also had an impact on my relationships with those who became key anonymous sources of information about relevant developments from within the penal system. For instance, in a conversation with one of my informants,² I was told that my research, which had been featured in a few newspapers, was raised during a discussion with a colleague. The informant stated that during this conversation, the colleague claimed that I was a penal abolitionist. The informant proceeded to ask me if this was true. Not wanting to compromise my ability to obtain information in the future, but also not wanting to lie to someone who had been candid with me during our previous discussions, I stated that I had published articles on penal abolitionism in scholarly journals and that my normative position is that I believe prisons should only be used to incapacitate the ‘dangerous few’. I also noted that as a scholar, my primary responsibility is to generate accurate findings to inform penal policy discussions and that if data emerges that runs counter to my current politics that my viewpoint would evolve accordingly as it has during my life. In response, the informant expressed appreciation for my candour and the research I was doing. In the months that followed, the informant continued to provide me with information, believing that “it should be a matter of public record anyway”.

Following this discussion, I deemed it necessary to neutralize potential developments where my abolitionist stance could be misconstrued by adding a Frequently Asked Questions side bar on my blog and listed “Are you a penal abolitionist?” as one of the questions. I used this platform again to clarify my normative stance, stating:

A penal abolitionist is an individual who pursues the long-term goal of a world without prisons and carceral controls where conflicts and harms in our communities are to be dealt with in a constructive manner that meets the needs of all parties involved. Given the multiple failures of imprisonment and our prisons system (a.k.a. criminal justice system), I do believe this objective is one worth pursuing and fighting for. However, I recognize that there will be a small number of individuals that require incapacitation, which are referred to by some abolitionists as “the dangerous few”. I suppose this would make me a penal minimalist, where incarceration is positioned as a response of last resort. Ultimately, it is not by removing individuals from our communities that safety is achieved – it is by envisioning conflicts as opportunities to build community.

In clarifying what I meant by penal abolitionist at the time, I believed that informants who had previously provided me with information would continue to do so. I also calculated that I would not be barred from opportunities to communicate my findings and related commentary beyond the academy and my blog. In the four months that the passage above remained as a component of my blog,³ not once was I denied opportunities to obtain information from sources who had previously disclosed details related to prison capacity expansion or to disseminate knowledge, which, in my view, speaks to the success of this technique. With that said, I was critiqued by a professor at a conference for using this device who stated that “to say that you are willing to imprison the dangerous few is not an abolitionist statement”.⁴ Similar concerns were raised by members of a prisoners’ group who were serving life sentences that I have met a number of times in the past few years who reminded me that proponents of incarceration use the

same argument – the ‘dangerous few’ – to legitimate their imprisonment. I was also reminded by Kim Pate in a seminar at Carleton University where we had both been invited to speak that those abolitionists and others often identify as the ‘dangerous few’ often have histories of institutionalized violence whereby they entered so-called disciplinary institutions such as prisons as non-violent and were transformed by the experience for the worse, leading to the commission of brutal acts.⁵

Admittedly, I still grapple with this question today. In particular, I remain struck by a comment made by a student when I was giving a guest lecture and noted my support for the notion there could be one small prison in Canada that could house the ‘dangerous few’ who charged: “if someone had advocated for the eradication of slavery with the exception of one plantation it would still exist in the United States today”.⁶ While I conceded the point at the time, affirming the student’s intervention, upon further reflection I could have affirmed the student’s intervention in a different way by noting that such arguments had been made that resulted in the creation of the Thirteenth Amendment in the United States Constitution that allows for the slavery of prisoners (Davis, 2003). Given that the ‘land of the free’ has enslaved millions of prisoners over the years, this legacy of minimalist argumentation should serve as a catalyst for discussion amongst penal abolitionists who make use of the ‘dangerous few’ argument to consider the pitfalls of (not) deploying this message. This example also highlights the need for abolitionist action to be an ‘unfinished’ project (Mathiesen, 1974) that is always concerned with the identification and analysis of new repressive measures that replace old arrangements that informs anti-repression work on the ground.

Anti-conservative?

As a critic of the sentencing measures tabled by successive Conservative federal governments, I have had to neutralize questions regarding political bias, and whether I was officially involved with opposition parties by members of the press. Such questions have been expressly asked to determine whether or not I should be viewed as a credible commentator on prison issues in media coverage.

One example of identity management in action occurred following a post I had written on the Conservative punishment agenda in which I critiqued the misrepresentation of Statistics Canada figures on police-reported ‘crime’ and victimization. The blog post, which shall not be identified to protect the anonymity of the other party involved, prompted one member of the media who had been making use of my research to send the following e-mail:

Hey,
Good post and a good summary. One thing that I would suggest as you make your way into mainstream media – if you are too partisan and editorialize then you are easier to dismiss and simply anti conservative. The facts straight up tell a powerful tale. If you want to be a prison and crime watch dog, I would suggest staying right in the middle by pointing out hypocrisies on all sides. That way you can [...] [have] genuine credibility on this that people can trust. Raising the question: are you affiliated with any party?

In response to this query, I wrote an e-mail in response the same day with the subject heading reading “No Political Affiliation” where I sketched out my personal biography, which includes publications that critique parties of all political stripes for engaging in populist punitive politics (see Larsen and Piché, 2009; Piché and Larsen, 2010). I also

justified my targeting of the Conservative Party because of their willingness to obscure the facts and even their own budget figures in support of their political aspirations.

This e-mail seemed to appease the concerns of this member of the media who responded: “Your work has been hugely helpful [...] let’s talk about your ongoing research here as it is really driving some interesting news”. In being proactive about defending my record and clarifying my views with dissemination gatekeepers in the manners described above, I have been able to avoid being defined out of their realm of activities.

Dynamics of the University

To the degree that the university remains or has ever been a public institution, post-secondary education is a public good. Such a sentiment has been echoed in response to Burawoy’s (2005a) call for public sociology during his presidential address at the Annual Meeting of the American Sociological Association in 2004 by Ericson (2005, p. 369) who argues: “All sociology entails public knowledge. There is no such thing as ‘private’ sociology in the sense of self-referential practitioners who do not actively seek to publicize their ideas and research”. Currie (2007) has made a similar observation about academic criminology, noting that scholars in the discipline are public intellectuals in so far as the university remains a place where they educate students. In recent years, it has been argued that the public character of the university has been increasingly under attack in Canada and elsewhere in the world as a result of declining government financing (Giroux and Myrsiades, 2001) and the emergence of corporatization within academic institutions guided by the logics of economic rationalism and managerialism (Hil and Robertson, 2003). These developments and long existing structural dynamics of the

university related to faculty career advancement have impacts on the ability to engage in scholarly activities beyond the academy which have been documented by some practitioners of public criminology. In the following section, I outline some of these barriers to public engagement and how my experience as a doctoral student points to the possibilities for such work within the corporate university.

'Relevant' Knowledge in the Corporate University

With universities being envisaged as and operated like businesses, administrations have placed considerable pressure on departments and researchers to produce knowledge that is relevant to stakeholders beyond the university and academia. For teaching, this has meant developing more courses and programs geared specifically towards the training of students for emerging industries and government agencies, including those within the penal system (Huey, 2011). Research agendas within universities have also been affected, with the production of knowledge often being subservient to the interests of those who fund studies that can have impacts on the dissemination of findings and related commentary to extra-academic audiences.

One prominent example that illustrates the potential consequences of the corporatization of the university on academic freedom and the constraints it places on those wishing to engage in public criminology stems from the recently renewed 5-year \$4 million contribution made by the Royal Canadian Mounted Police (RCMP) to the Institute for Canadian Urban Studies, a unit of Simon Fraser University's (SFU) School of Criminology. In the wake of a report released by the Vancouver Police regarding the mistakes that were made in the case against Robert Pickton, who was found guilty of murdering women who were sex workers in the city's Downtown Eastside, there has

been widespread critique of the role played by the RCMP in investigating the case. The Director of the School of Criminology, Robert Gordon, has been a vocal critic of the national police force on this issue, going as far as to call for an end to contract policing by the RCMP in British Columbia. In response to his comments, RCMP Deputy Commissioner Gary Bass wrote an e-mail to Gordon that was copied to multiple other parties where he suggested:

...you should be much more careful in speaking on issues where you have no direct personal knowledge or where you may not be getting accurate information fed to you [...] The on-going bias you display against the RCMP [...] have caused many to ask why we would want to continue to be in that partnership given this apparent lack of support from the head of the department...

When asked about the e-mail by Victoria Times Colonist columnist Katie Derosa (2010), Gordon responded that this was clearly “a thinly veiled threat about the funding”. Derosa also asked Bass to respond to this claim made by Gordon, who responded: “We have no intention of pulling away from that contract. We have a great relationship with SFU [...] There’s no intention to muzzle him” (ibid).

Research and funding arrangements between academic criminologists and government agencies are not something that is unique to SFU. For instance, Carleton University’s Institute of Criminology and Criminal Justice established a partnership with CSC. According to CSC Commissioner Don Head (2009), the objective of the initiative is:

...to provide CSC’s Evaluation Branch and its university partners the opportunity to mutually advance knowledge and expertise in the area of evaluation by:

- providing independent, credible and timely information on the performance of CSC’s policies and programs;
- maintaining an appropriate evaluation capacity, tailored to the needs of CSC; and

- meeting the evaluation standards of appropriate government, professional and academic bodies.

Conversely, the program will benefit Canadian universities by:

- providing students and faculty members the opportunity to apply academic expertise in a practical setting;
- building upon the learning, experience and employment opportunities for students; and
- sharing knowledge and information through joint meetings, symposiums and conferences.

It will also help CSC meet its commitments as part of the Transformation Agenda by providing valuable information about its initiatives and progress.

- And it will contribute to public service renewal by creating a pool of qualified candidates to be considered for long-term succession planning.

The partnerships described above are also not new as some of the first academic units in criminology across Canada, including the Centre of Criminology and Sociolegal Studies at the University of Toronto, the École de criminologie of the Université de Montréal and the Department of Criminology at the University of Ottawa, received start-up grants from the Government of Canada with the understanding that they would train future professionals who would work in the various branches of the penal system.

The examples above are indicative of the continuation of criminology's role from conception as a servant to the penal system (Taylor *et al.*, 1973; Cohen, 1988). Couple this with the corporate university and you have the creation of "a market in crime control research and practice [that] has strip-mined the discipline's broader intellectual integrity and academic prestige" (Chancer and McLaughlin, 2007, p. 159). Under this scheme where research funding is "increasingly contingent upon the 'relevance' of the research questions" of funders, it is argued that academics are transformed into entrepreneurs and consultants who are willing to sell their expertise and provide off-the-shelf evaluation

packages to those who bid for their products (Hogeveen and Woolford, 2006). In a work environment that promotes and supports the imperatives of government and industry, rather than those of learning and knowledge sharing, “the idea of the university as a public good” is threatened (Calhoun, 2005, p. 359).

While the situation is often portrayed as grim, the corporate university can also be put to use by scholars that wish to challenge the hegemony of the prison and penal system in manners that facilitate public engagement. One opportunity that exists lies in the push by universities to market their institutional brands through the publicization of the ideas of the scholars they employ. Professors and students who are called upon as experts in media coverage is one example of publicity that universities welcome. As it is in their interests for their employees and students to be effective communicators and to have their work featured in extra-academic contexts, many universities do offer media training to their staff and have setup units to help promote work being done within their institutions.

As a doctoral student at Carleton University I have been afforded such opportunities to develop my communication skills. Like others, such as Greek (1994) who have developed relationships with media relations’ offices within universities, I have been able to establish contacts with additional members of the media, allowing me to reach audiences that may have otherwise not been aware of my work. There are of course drawbacks to the mass promotion of ideas by one’s university. For instance, academic institutions have publicized commentary offered by scholars on issues for which they have never received any academic training and are, therefore, not familiar with the research in the particular area in question. With that said, the place of the university is not to silence one view, while illuminating another. It is for individuals

involved in debates to contest arguments made by scholars who offer themselves as experts on numerous topics, including those outside the purview of their discipline.

Recognition in the Corporate University

Another way the corporatization of the university negatively impacts the prospects for extra-academic engagement related to workload expectations that come with a 'do more with less' entrepreneurial ethos. In such a climate, Burawoy (2005a, p. 15) argues that it becomes difficult for academics to escape the "cocoon of professionalization" to produce knowledge in forums outside the university:

The original passion for social justice, economic equality, human rights, sustainable environment, political freedom or simply a better world, that drew so many of us to sociology, is channelled into the pursuit of academic credentials. Progress has become a battery of disciplinary techniques – standardized courses, validated reading lists, bureaucratic rankings, intensive examinations, literature reviews, tailored dissertations, refereed publications, the all-mighty CV, the job search, the tenure file, and then policing one's colleagues and successors to make sure we all march in step (ibid, p. 5).

Similarly, Mopas and Moore (2011) argue that newsmaking criminology, one amalgam of approaches to public criminology, is also limited by the demands of academic life, noting:

...the preparations necessary to succeed at newsmaking criminology are not light. Cultivating a deep knowledge of the inner workings of the news media, honing journalistic skills and developing good connections all require time and resources that are scarce for most academics and which, as Currie (2007) points out, require investments in time and energy that do nothing for the individual scholar's career and advancement. Indeed, promotion is not granted based on numbers of media or public appearances.

According to Currie (2007, p. 180, original emphasis), these pressures steer criminologists towards conducting academically publishable original research instead of "making *sense* of the mass of research we generate, through analytical and synthetic

work, and *disseminating* that work to a broader and potentially more efficacious audience than ourselves”. As a consequence, the potential reach of even the most useful findings “will be like trees falling in the forest with nobody to hear them” (ibid, p. 182).

With recognition structures within universities identified as a barrier to public engagement, scholars such as Ericson (2005, p. 372) argue that scholarly research can only “be a public good if the primary institution through which it operates, the university, affords its practitioners enabling conditions in which to advance knowledge”. For Currie (2007, p. 187), such conditions would include acknowledging contributions in the broader community within the reward structures of post-secondary institutions while maintaining recognition for those who choose to make the bulk of their contributions in research or teaching.

Reflecting on this public criminology experiment undertaken as a doctoral student, I have a different outlook regarding the possibilities for extra-academic engagement within current university structures. First, an argument can be made that if graduate students have the funding required to spend the time necessary to do their research within the constraints that exist in their lives, which I was fortunate to have, some of this time can be dedicated to advocacy in ways that can be incorporated into their research design. This experience can be used to build one’s research program and vita in ways that promote career advancement including publications. Such work can be used to build connections to those who decide on matters such as penal policy and the individuals who are impacted by them. Above all, such work does have the potential to alter the course of events, which on its own is worth the price of admission even when the outcomes are not what one would hope. And at the very least, these activities do translate

into the production of knowledge, which is what scholarly discovery is about. These points are not made to negate calls for shifts in reward structures within universities to promote public engagement, but rather to identify the possibilities to seize available spaces to pursue such work.

Beyond the barriers to public criminology discussed above, it is equally important to note that there exists a professional culture within the social science where public engagement is often chastised (Currie, 2007, p. 180). In the debates about public sociology, Burawoy (2005b, p. 75) observes that extra-academic engagement is a tough sell as many take the view that “a public display of the findings or theories of sociology, especially in conservative times, risks delegitimizing the discipline in the eyes of foundations, government agencies, and others who provide the funds that support the leading departments of sociology”. Concerns with reputation and funding maintenance are coupled with condemnation for public advocacy in a field where the ideal of objectivity remains largely intact “as if their own professional sociology carried no political stakes of its own” (ibid). Thus, it is argued that “the success of public sociology will not come from above but from below”, which requires proponents to convince their colleagues of the merits of such work (Burawoy, 2005a, p. 25).

Those who participate in public criminology can attest to resistance to the idea of engaging communities outside of our professional world from colleagues who either denounce such activities for the reasons outlined above or do not wish to jump on board due to the belief that their efforts will not produce any measurable gains. For instance, some professors – who were not on my supervisory committee – discouraged me from engaging in such work during my doctoral studies. With a dissertation to write, I was

told that I needed to avoid “distractions”. While I always appreciate such well-intentioned advice, these comments ignore the very reason I have chosen to be an academic – to conduct research on imprisonment and punishment that informs action on the ground that resists the reproduction of the prison idea. Take the freedom to engage others outside of academia and I would lose my desire to be an academic. This compromise in the pursuit of expediency was not something I was willing to do, nor was it necessary – one can undertake academic work on doing public criminology after all if given the space to do so. The university ought to be a milieu that promotes the creation of such space, rather than stifle it in the name of practicality.

Conclusion

In this chapter, I have reflected upon the challenges I encountered in trying to shift the terms of the penal policy debate with an emphasis on how the quest for relevance in these discussions impacted my message track in a manner that contributed to the reproduction of the prison idea. I also discussed how I managed to avoid being defined out of relationship building, information gathering and dissemination opportunities by defining my identity, rather than letting myself be defined by proponents of imprisonment in a manner that would contribute to my exclusion from penal policy discussions. How I experienced the dynamics within the university that can limit the possibility for extra-academic engagement was also examined, noting that graduate students who have the necessary support may be better positioned than faculty members to engage in advocacy as part of their research activities within current university structures.

One question that I have pondered as I wrote this dissertation is: what is ‘public’ about my public criminology interventions? As noted in *Chapter IV*, this project set out

to use a number of approaches to public engagement to reach opposition MPs, members of the press, penal policy makers and practitioners, advocates for those impacted by criminalization and victimization, as well as the general public, to shift the terms of the federal penal policy debate towards focussing on the costs and lack of transparency associated with the Conservative punishment agenda. The broader objective of these interventions was to interrupt sentencing measures that would likely contribute to an increase in the number of prisoners, which would in turn drive demand for prison capacity expansion beyond what had already been identified at earlier stages in my study. While this goal was not accomplished, it is not what was not achieved that ought to be the main lesson that can be derived from this experience, but rather how the contestation component of this study, like other public criminology interventions, was not undertaken.

Penal abolitionists criticize the penal system for its propensity to simplify complex conflicts and harms under the rubric of 'crime' (Hulsman, 1986), appropriate these issues as its own (Christie, 1977), and addressing them through the violence of incarceration (Scruton and McCulloch, 2009) and other forms of punishment (Pepinsky, 2007). While those who engage in public criminology often seek to contribute to the deconstruction of these matters (Barak, 1988) through the injection of replacement discourses (Henry, 1994), it is often limited to dissemination. Like the penal system, such an approach to extra-academic engagement appropriates criminalized issues as its own, often excluding those directly affected that it presumes to be struggling for. It is, as Ruggiero (2010) suggests, criminology from above. As with other developments in the discipline that have seen greater emphasis placed on accounts from below through ethnographic and feminist research, perhaps public criminology could benefit from a

similar movement whereby public engagement becomes more about working with those beyond academia who are often rendered voiceless, including the many victims of the criminalization process and punishment, and less about treating them as just another audience to reach through the dissemination of findings. It has been done before (e.g. Mathiesen, 1974). It is perhaps time to revisit what is meant by public in public criminology as a means to expand the possibilities of practice, the production of knowledge and what can be achieved through its application.

CHAPTER VII: CONCLUSION

Politics is a matter of boring down strongly and slowly through hard boards with passion and judgment together. It is perfectly true, and confirmed by all historical experience, that the possible cannot be achieved without continually reaching out towards that which is impossible in this world.

– Weber (1919), page 255.

The Prison Idea in a Finishing and Unfinished State

This study began with the premise that the prison is a dominant idea of our time that shapes how we conceive and respond to the conflicts and harms that are commonly called ‘crime’ (Sim, 2009). Like other hegemonic ideas, the perpetuation and further entrenchment of the repressive arrangements the prison engenders requires its proponents to engage in ideational reproduction to reaffirm and defend its legitimacy. For its opponents, the task is to chip away at the perceived legitimacy of this exclusionary and pain-inflicting structure like termites organizing and swarming together in an old wooden house slowly chewing away towards its implosion (Anonymous, 2010). In the context of a significant increase in prison capacity that, if allowed to persist, will provide the space for an expanded use of incarceration, the aim of this research project has been to understand how the prison idea is being reproduced at this time to inform action aimed at contributing to a halt in this trend.

The analytical framework of this study was primarily informed by penal abolitionism and the work of Mathiesen (1974; 1980; 1990; 2004) that directed my attention towards an examination of the discursive devices and processes deployed by state actors, as well as other proponents of incarceration, to maintain and further embed penal hegemony. More specifically, this analysis focussed on the finishing tendency of

the state that promotes imprisonment and neutralizes other ways of conceptualizing and addressing criminalized issues. I also extended this work through an examination of the unfinished tendency of the state that leaves many of the consequences of ongoing penal policy measures unknown and outside of the integrative democratic community, which has generated knowledge that has allowed for a more fulsome debate on the merits of punishment agendas, whether couched in benevolent, managerial and / or punitive terms.

In working towards an understanding of the reproduction of the prison idea, action research (Mathiesen, 1974) played a pivotal role in that much of the knowledge on the specific finishing and unfinished tendencies of state governments was derived from actions taken to access, understand and contest efforts to create a greater space for incarceration in Canada. Drawing on this approach, each step of the project informed the next practical action taken, with the knowledge obtained forming the basis for subsequent action often in the form of media interventions where replacement discourses (Henry, 1994) were articulated. These three components of the project – access, understanding and contestation – were primarily informed by the access to information, critical criminology and the sociology of punishment, and the public social research literatures respectively. In this concluding chapter, I briefly review the main findings of this study as they relate to each of these components of the project and how I contributed to the literatures above. From there, I outline an agenda for research and action moving forward in the pursuit towards a world without prisons, penalty and carceral controls.

Access

A central feature of accounts of prison expansion in critical criminology and the sociology of punishment in which the abolitionist perspective is situated, albeit at the

margins, is the tendency to rely on publicly available information. This is also the case across most work in the social sciences that examine the policies and practices of state governments (O'Malley *et al.*, 1997; Hier, 2012). The texts relevant to this study, which include published government reports and press releases, are usually heavily vetted prior to their public distribution. As was made visible in the research I have undertaken, the reliance on published documents has a number of important consequences that limit our understanding of the reproduction of the prison idea.

A first analytical pitfall concerns the scope of prison capacity expansion. For instance, had I limited my study to the analysis of penal infrastructure announced by provincial-territorial governments, 10 of the 22 new prisons that are at various stages of completion, in addition to new prison projects that were later cancelled in Labrador and Nova Scotia, would have not been identified during the initial data collection phases of this study. By deploying a multi-methods approach that moved beyond the front stage of prison capacity expansion involving informal and formal information requests, this study was able to excavate a number of initiatives that will significantly increase the number of prisoner beds in Canada. In so doing, this project adds to a growing body of access to information literature that highlights the usefulness of incorporating ATI / FOI requests to develop an understanding of shifts in the penal system and its corollaries (e.g. Larsen and Piché, 2009; Piché and Walby, 2010; Walby and Monaghan, 2010).

In bringing the access to information and public criminology literatures into conversation, I also showed how informing state officials that one is 'going public' with information obtained through a number of means including ATI / FOI, can prompt the disclosure of additional information about their penal infrastructure initiatives. Further,

this study demonstrated how findings about state government secrecy can play a significant role in public discussions on the need for transparency that places pressure on officials to disclose previously unpublished information. The release of CSC's short term accommodation following months of sustained pressure regarding the prison construction plans associated with the sentencing measures tabled by the Conservative Government of Canada is one such example.

A second analytical pitfall associated with the focus placed on published texts in studies that examine prison expansion in a given jurisdiction is that the role that the policing of criminological knowledge (Martel, 2004) by state officials plays in the reproduction of the prison idea is often left unexamined. Here I am referring to techniques of opacity (Larsen and Walby, 2012) deployed by state actors that limit what can be known about the policies and practices of government, allowing their consequences to remain hidden and outside the purview of democratic debate in a manner that facilitates their implementation. The denial of information was the most consequential of these techniques highlighted in this study. Identifying the unfinished tendency of the state and its role in the development of initiatives, including the construction of new prison spaces, is particularly vital for abolitionist researchers who wish to contribute to a halt in the expansionary trajectory of penalty in some jurisdictions, which requires action aimed at contesting state secrecy. This study on prison capacity expansion has extended abolitionist theory by placing the emphasis of analysis on not only what is said in support of the perpetuation and further entrenchment of imprisonment, but also on the tactics used by state officials to deflect attempts to know

the scope and ramifications of their initiatives that, if disclosed, could undermine their implementation.

Understanding

The most largely cited and most influential studies in critical criminology and the sociology of punishment that set out to explain the growth of imprisonment (e.g. Young, 1999; Garland, 2001; Pratt, 2007; Simon, 2007; Wacquant, 2009) are those that place a considerable emphasis of analysis on political rhetoric and media representations (Carrier, 2010). While such works offer valuable insights that help inform how developments in incarceration can be understood, they largely ignore the justifications for increasing the use of incarceration and the capacity to punish within prison bureaucracies. As a result, continuities in the objectives pursued through imprisonment, notably rehabilitation, that contribute to the reproduction of the prison idea are often overlooked in these studies of the 'punitive turn' (Bottoms, 1995).

By contrast, studies that do not subscribe to the 'punitive turn' thesis in favour of an analysis of the intensification of punishment and the role played by the rehabilitative ideal in the expansion of confinement (e.g. Hannah-Moffat, 2001; Sim, 2009), are not given the attention they arguably deserve. As a consequence, incarceration projects pursued in the name of rehabilitation are often not acknowledged as being punitive (Moore and Hannah-Moffat, 2005), while those couched in punitive terms are contrasted to initiatives pursued in a romanticized rehabilitative past (Matthews, 2005) whose discursive virtues were most often not implemented in practice (Sim, 2009).

In taking the later approach to work towards an understanding of how the prison idea is being reproduced at this time in Canada through the establishment of new penal

infrastructure, while also incorporating an analysis of unpublished documents produced by state officials involved in developing these construction projects, this study challenges the common sense that pervades dominant accounts of prison expansion in critical criminology and the sociology of punishment. Of note, is the finding that most provincial-territorial prison spaces that have been recently erected or are in the process of coming online were not justified by state officials within prison bureaucracies and external advisors on the basis that such facilities were needed to cope with an influx of new prisoners resulting from populist sentencing measures introduced by the federal government since 2006. Instead, many of these proponents of incarceration identified the following reasons for establishing new and larger penal infrastructure: 1) new prison spaces are needed to alleviate facility overcrowding associated with a longstanding increase in remanded prisoners; 2) a 'changing' prisoner profile requires the creation of new infrastructure to support the provision of 'modern' approaches to facility security and programming; 3) existing institutions are inadequate to meet the security and programming objectives of prison agencies in an efficient fashion and need to be replaced. These arguments formed the "supportive component" (Mathiesen, 1990, p. 137) of these initiatives as they were tabled by prison officials and external advisors to politicians for consideration.

These findings make at least two important contributions to the critical criminology and the sociology of punishment literatures that examine the perpetuation and growth of imprisonment. First, I have shown that bureaucratic actors played a key role in advancing arguments in support of new penal infrastructure in Canada, particularly at the provincial-territorial level. Had the analysis in this study been limited

to an examination of political rhetoric and debates in the media on penal policy matters, as is the tendency amongst prison scholars (Carrier, 2010), one could conclude that the ongoing expansion of prison spaces was solely in response to federal sentencing measures. Clearly, prison expansion is also driven in part by a set of bureaucratic factors. Second, by focussing on the justifications advanced by unelected state officials and appointed advisors in support of prison capacity expansion, I have shown how progressively-couched objectives that have animated similar developments in previous times (see, for example, Garland, 1990) remain part of the ideational structure that legitimates the further entrenchment of imprisonment. This finding stands in sharp contrast to the work of prominent scholars studying developments elsewhere who largely attribute the growth of imprisonment to the emergence of an unprecedented rise in punitiveness (see Young, 1999; Christie, 2000; Garland, 2001; Pratt, 2007; Simon, 2007).

This study was also concerned with examining the “negating component” (ibid) of the state’s finishing tendency that forecloses other ways of conceptualizing and responding to criminalized conflicts and harms. As noted by Mathiesen, this component of penal perpetuation involves the use of “neutralization techniques” to deflect critiques and the implementation of alternative approaches to addressing the issues appropriated by the penal system in a way that would threaten the status quo of its operations (ibid, p. 37). The following neutralization techniques used by prison officials and external advisors at the provincial-territorial level noted in this study include: 1) the absorption of human rights concerns associated with overcrowding to justify the construction of new prison spaces rather than reducing the number of prisoners as a mitigation strategy; 2) deeming alternative approaches to custody as being impossible to implement under the pretence

that prisons provide public safety; 3) the postponement of the implementation of alternatives to incarceration as evidenced by the lack of related announcements in most provinces and territories where such courses of action are proposed; and / or 4) deeming that alternatives to incarceration are required alongside the establishment of new penal infrastructure. These negating arguments, along with those made in support of prison capacity expansion noted in the previous paragraph, worked together to reproduce the necessity of the prison as an institution in these jurisdictions. If unsuccessfully contested, these sites of exclusion and pain will ensure that the issues and persons that are currently dealt with through the lens of criminalization and punishment will be subjected to state-sanctioned violence in the years, decades and perhaps even centuries ahead.

Contestation

The purpose of this study's examination of the discourses and processes animating the reproduction of the prison idea was to inform efforts to contest the expansionary trajectory in penalty seen in Canada today. This aspect of the project, which was principally informed by the literature on public criminology that explores how criminologists can affect change beyond academia, provided an opportunity to examine what approaches to extra-academic engagement could contribute to a shift away from the 'tough'-'soft' pendulum that had polarized the federal penal policy conversation in an effort to undermine the reproduction of the prison idea.

In the debates on public criminology, many of the contributions place an emphasis on interventions that involve direct engagement with audiences outside the classroom, university and discipline. Policy work (e.g. Stanko, 2007; Petersilia, 2008), participating in the media as an author, expert or subject of news coverage (e.g. Barak,

1999; Feilzer, 2007), as well as participating in public education (e.g. Mopas and Moore, 2011) are the approaches that are most often the focus of studies on the practice of public criminology. This project is unique in that it incorporates elements of all of these approaches to reach different audiences with the goal of encouraging them in interrogating and talking about federal penal policy in a manner that placed fiscal costs and state secrecy at the centre of engagement. And while I do not want to dismiss the importance of engaging in the activities noted above, it became clear to me that the most significant of the small contributions I made towards shaping the terms of this conversation was through my role as educative provocateur (Henry, 1994; Greek, 1994). Through this strategy I attempted, with some success, to develop contacts with members of the press and others who have an important role in setting the agenda for this discussion. This was accomplished, in large measure, by sending and directing individuals I sought to reach to findings and related commentary posted on my blog. While many of the e-mails I sent often did not generate a response, on occasion some of the messages articulated in my blog posts were taken-up in the argumentation and questions about the Conservative punishment agenda articulated by those I sought to reach.

Interventions like the 6 April 2010 blog post on cuts to portions of the federal victim's budget which was contrasted to massive increases in CSC expenditures sent to those I sought to engage is one such example. As a result of this intervention that formed the basis for discussion on a segment of CBC's Power & Politics with Evan Solomon, Steve Sullivan, then federal Ombudsman for Victims of Crime, debunked the Conservative argument that increasing the use of imprisonment is tantamount to meeting

the needs of victims (see CBC Television, 2010d). With this information and accompanying statement from Sullivan the debate was enriched and more of a reflection of the complexity of the issues at hand. Opposition MPs were also in a better position to contest the imposition of federal sentencing measures introduced in the name of victims, adding nuance to an often-polarized debate.

In relation to the main objective of this study, the analysis of the discursive outcomes of my forays into public criminology and the larger debate encompassing them provided an opportunity to examine how the reproduction of the prison idea was occurring through the responses of proponents of incarceration, notably those of senior CSC officials and federal Conservative politicians. It is during this facet of the project that the interplay between the finishing and unfinished tendencies of the state was most visible. On the one hand, these actors deployed techniques of opacity such as ambiguity and the denial of information in order to keep many of the consequences of sentencing measures and related penal infrastructure plans hidden from opposition MPs and their constituents at times when other futures were possible. On the other hand, these actors deployed a wide-variety of neutralization techniques, some of which have been documented by Mathiesen (1990), to deflect criticism of their prison expansion efforts including: 1) making reference to demands for punishment from other segments of Canadian society (e.g. law enforcement officials and victims); 2) deriding and disregarding evidence and expertise that contradicts their position on incarceration; 3) advancing incapacitation through imprisonment under the pretence that it enhances public safety and saves money of prospective victims in the long term; 4) advancing unsubstantiated arguments about the economic benefits associated with the construction

of new penal infrastructure to absorb future prison population growth; and 5) absorbing ideas, such as prevention that are often presented as alternatives to reactionary penal measures, in a piecemeal fashion, while maintaining the expansionary trajectory of penalty.

The findings based on the contestation component of this study also highlight the pitfalls of doing public criminology. For instance, the pursuit of relevance to public opinion and public policy formation is touted by some proponents as primary reasons to engage individuals and groups beyond academia (e.g. Chancer and McLaughlin, 2007; Currie, 2007; Clear, 2010; Uggen and Inderbitzin, 2010). However, if one reaches the ambiguous threshold of relevance, it is vital to reflect upon whether one is contributing to a change in the conversation through their interventions that undermines the perpetuation of the prison idea or if the conversation is contributing to a change within their interventions that contributes to the perpetuation of imprisonment. Based on my experience and informed by abolitionist thought, I would make the argument that public criminology as commonly practiced in a manner that reifies 'crime' and punishment simultaneously undermines the reproduction of the prison idea and its efforts to this end. As such, the potential for public criminology is unnecessarily limited by preconceptions of what is possible in terms of thinking about and responding to criminalized issues, and thus will continue to be limited in its achievements, as the excerpt from Weber (1919) at the beginning of this chapter concerning the possibility of politics suggests.

Moving Forward

With many new prisons and additions to existing facilities at various stages of completion across Canada, along with a federal government that has continued to press forward with

its punishment agenda, research and action in this area of public policy will continue to be vital to the struggle against the reproduction of the prison idea. Building on some of the research findings and lessons drawn from extra-academic interventions outlined in this study, the following section offers suggestions for future research aimed at accessing and understanding the fluid state of imprisonment, and a few suggestions on political action that can be taken in the short term to work towards an interruption in the punishment agendas of provincial, territorial and federal governments.

An Agenda for Research

In this study, efforts were made to excavate the scope of penal infrastructure initiatives and the justifications legitimating these projects that contribute to the reproduction of the prison idea in a concrete way. As the Conservative punishment agenda moves forward in the years ahead, there will be a need to replicate this research. Firstly, such work would help measure the impact federal sentencing measures may have on future prison capacity expansion undertaken by CSC – who has still yet to disclose their long term accommodation strategy that was to be submitted to Cabinet for consideration in March 2011 (Toews, 2010a). Secondly, similar research could again examine provincial-territorial prison capacity expansion to see what impact, if any, the federal incarceration binge is having on other jurisdictions.

Beyond the capacity side of the punishment equation, research is also needed on the impact federal sentencing measures have had, and will continue to have, on prison populations, both federally and at the provincial-territorial level. As noted in a 9 September 2011 article by Sun News Network anchor and columnist David Akin (2011b), there were 14,835 prisoners housed in CSC institutions, representing an increase

of 800 federal prisoners since the *Truth in Sentencing Act* (2009) received Royal Assent on 22 February 2010. This figure is reportedly lower than the influx of new prisoners CSC officials had anticipated over this period, which projected an additional 1,165 prisoners more than have already been incarcerated (Akin, 2010b). The figure is also lower than the PBO estimates that, if averaged out over the five-year period accounted for, projected an influx of 1,257 new prisoners over the first 18-months in relation to this one piece of legislation, which is 457 prisoners higher than the total influx of prisoners CSC has observed. In lieu of these developments, Public Safety Minister Vic Toews stated: “I believed that the ‘Truth in Sentencing’ legislation would not create this huge onslaught of prisoners that the opposition members were talking about, that many in the media were talking about [...] New units will be onstream well in advance of any requirements for additional capacity”. It should be noted, however, that CSC institutions are experiencing significant overcrowding, with double-bunking becoming a more common practice in federal penitentiaries (see OCI, 2011). As with the evaluation of any policy direction, the consequences of the Conservative punishment agenda must also be evaluated over the long term to identify their cumulative impact as more prisoners, serving longer sentences, with fewer chances of being supervised in the community enter federal penitentiaries in the years ahead.

Recent scholarship amongst the small community of researchers in Canada interested in examining prison issues has largely focussed their attention on developments impacting federally sentenced women in the wake of the *Task Force on Federally Sentenced Women* (CSC, 1990). With increases in both the demand and capacity to confine and punish additional research on the consequences of incarceration

will be needed in order to identify the harms and human needs generated through this bolstering of state-sanctioned and legitimized violence. The impact of prison expansion particularly on Aboriginal peoples who are already overrepresented in prisons (Martel et al., 2011) and criminalized women who increasingly find themselves incarcerated (Kilroy and Pate, 2011) are a few areas that require ongoing attention. With more individuals held captive and working inside penal institutions, research on the impacts of incarceration on their families (e.g. Hannem, 2011) and the communities in which they live, as has been done in the United States (e.g. Mauer and Chesney-Lind, 2002; Clear, 2007) will be vital to understanding the impact the Conservative punishment agenda is having beyond prison walls. As many will bear the brunt of a growing role of incarceration in the Canadian context, academic work on the beneficiaries of the windfall of penal pork that has been undertaken elsewhere (e.g. Christie, 2000; Gilmore, 2007) would also shed light on who stands to gain from this approach to human plundering and at whose expense, offering a clearer picture of the interests in play shaping the Canadian carceral landscape.

For those interested in pursuing research projects that are similar to the study I have undertaken, there are a few limitations that could be addressed in order to work towards developing a more comprehensive picture of how the reproduction of the prison idea occurs. One such limitation relates to the access and contestation components of this study and how my attempts to obtain data on new penal infrastructure shaped subsequent information flows within state bureaucracies. Informed by the work of Foucault (1972), Larsen and Walby (2011) use the term 'live archive' to "conceptualize the ongoing production of texts inside government agencies as a dynamic field of organization and

contestation”. One aspect that is instructive about this concept is that it encourages researchers to reflect upon their interactions during the research process, ranging from the moments where negotiations for information are taking place to those where findings are being communicated, which shape the production of new information by state agencies. In keeping with this line of inquiry one could examine how researcher requests for, and dissemination of, government data impacts the way information is produced, circulated and disseminated by state officials. One could also analyze whether such interventions result in the creation of new documents by state officials, including memorandums to affected government ministers and media analyses.

Another limitation in this study that could be addressed in future research is the impact that forays into public criminology have on the penal sensibilities of members of the general public that are reached through such interventions. While I do feel it is vital for researchers who desire to make contributions to penal policy debates beyond academe where warranted, there is a massive gap in research about the impact that experiments in public criminology have on public opinion formation. With the exception of Feilzer (2009), who found that her newspaper columns were often ignored and had little impact on her intended audience, most who engage in these activities operate under the assumption that presence in such debates translates into impact. While the narratives of the fiscal costs and secrecy associated with the Conservative punishment agenda had become a central topic of discussion within the federal penal policy debate, in small part because of my contributions, I admittedly have no idea whether any of my interventions resonated with individuals who would not have already been sympathetic to the arguments and questions I raised. I suspect that most other practitioners of public

criminology are in the same boat. It is with this in mind that public criminology interventions should be accompanied by public opinion research (e.g. Roberts and Hough, 2005) where possible to address this gap in knowledge. Such work would help sharpen the strategies and messages deployed by criminologists in extra-academic settings and help assess to what extent criminologists are contributing to or undermining the reproduction of the prison idea.

An Agenda for Action

Both in discursive and concrete terms, the prison is occupying a larger place in Canadian society. The situation resembles a scene taking place in kitchens across the country every day when individuals wash their dishes with their sinks plugged and taps running. As their sinks fill, with water reaching the banks and about to spill over onto their floors, do individuals pull their plugs to allow some of the water to run down their drains? Do they turn off their taps to cut off the water supply? Or, do they run to their local hardware stores to buy bigger sinks while the water is still running? While no one in their right mind would pursue the later, when it comes to penal policy new and bigger sinks are the option of choice.

For those interested in changing the punitive trajectory, there are concrete steps that can be taken in the short term to halt, reduce and eradicate imprisonment that do not reinforce the presumed necessity of penalty. One such negative reform includes calling for a prison construction moratorium to force jurisdictions to address issues currently appropriated by the penal system in a different manner, as has been done at different times in Canada (e.g. Culhane, 1991) and in other jurisdictions (e.g. Carlen, 1990; Sim, 2009). Such a call to action reminds others that building new prison spaces is not

inevitable but, is as Christie (2000) suggests, a normative choice and that alternative courses of action exist. While some have argued that prison construction is needed to mitigate current prison overcrowding (see *Chapter III*), it needs to be recognized that if such conditions in which many prisoners currently find themselves in have been tolerated for so long, there is no reason to believe that bringing new spaces of confinement online will not eventually lead to the same conditions reproducing themselves later on down the road. Building new prisons, even when pursued on such humanitarian grounds, only promotes the continuation and deepening of inhumane arrangements.

In a context where sentencing measures are being enacted in a stated effort to send more people to prison, the pursuit of a prison construction moratorium must also be accompanied by a punishment legislation moratorium that would stem additional demands for incarceration and prevent the further exacerbation of overcrowding prisoners are forced to cope with. While not noted in previous chapters, I did launch a campaign on 5 May 2010 in the pursuit of such a moratorium (see Piché, 2010b). While the initiative enjoyed limited support largely due to the fact that I did not spend the necessary time to build a broad-based coalition of supporters across advocacy groups, non-governmental organizations and other interested parties, there is no shortage of individuals who oppose the Conservative punishment agenda whose energies could be directed towards such a common cause in addition to the work they do on their own to this end. With the ongoing work of groups such as the Elizabeth Fry and John Howard societies across Canada, along with the campaigns by groups such as Leadnow, in opposition to the recently tabled *Bill C-10: The Safe Streets and Communities Act*, it appears as though collective action in opposition is taking place in a manner not seen

since the days where prominent abolitionists such as Claire Culhane (1991) and Ruth Morris (2000) were alive and actively organizing against state repression.

Beyond demanding a halt to expansionary penal policies, it is vital to call for a broad-based discussion on how issues that are currently dealt with through the lens of criminalization and punishment can be seen in a different light, so that the needs of those impacted can be met in manners that do not foster exclusion and involve violence, as the newly emerged Smart Justice Network has done. More importantly, such a forum needs to take place regardless of whether or not state governments participate in the discussion. While prison officials and their external advisors cite a 'changing' prisoner population composed of more Aboriginals, criminalized women, as well as individuals identified as having mental health and substance abuse issues as a justification for expanding prisons, this state of affairs ought to serve as a catalyst for discussion on how to address the massive gaps in social institutions and other arrangements that seed conflict and harm in society. The prison is not a school, nor is it a hospital, hospice, mental health centre or place of work. As much as it tries to be all these things, it is a site of exclusion and punishment, which undermines any of its other objectives (Carlen, 2002). As argued by Sim (2009), the billions of dollars spent on prisons and the penal system could have a more positive impact on those affected by what is commonly called 'crime' by directly investing these resources into their lives and communities in a manner that bolsters the safety of all.

In keeping with past repression abolishing movements, future efforts to abolish prisons and penalty need to be firmly committed to the pursuit of social justice that seeks to eradicate the fundamental inequities that exist in society that are managed by state

governments through incarceration and other exclusionary apparatuses operating under the guise of inclusion (Davis, 2003). Without such an anchor, the potential to connect with others engaged in repression abolishing work of their own is undermined, negating the formation of solidarity needed to work together to change the world for the better. In working towards impossible possibilities, Mathiesen (1974) reminds us that nothing in this world is permanent and struggle is eternal. In an unfinished world, the possible is only limited by our imagination and willingness to fight for our ideals.

ENDNOTES

Chapter I

¹ For additional details about new penal infrastructure in Canada being established federally, as well as in each province and territory consult Piché (2011b).

² For the purposes of this study, building costs entail the expenditures related to the design, procurement, equipment purchases and construction of new penal infrastructure, as well as financing and maintenance when private-public partnerships for these facets of facility construction are pursued.

³ The province of Newfoundland and Labrador cancelled plans to build a new remand centre in Labrador in June 2011 in a stated effort to divert funding towards programming for prisoners. It should be noted that no funding or estimates regarding the number of new prisoner beds in this facility were disclosed to the public. Plans for one or two new prisons to replace Her Majesty's Penitentiary in St. John's, Newfoundland remain on hold.

⁴ In 2008-2009, it cost approximately another \$71.3 million for the operation of the headquarters and central services of provincial-territorial prison and community supervision agencies, excluding Nunavut (Calverly, 2010, p. 29).

⁵ It should be noted that CSC's budget has been escalating for some time. For instance, within the previous 7 years before the Conservatives were elected, the agency's budget increased 17.3 percent from \$1.362 billion in 1999-2000 (CSC, 2000b) to \$1.597 in 2005-2006 (CSC, 2006) under successive Liberal governments.

⁶ CSC's operational regions include the Atlantic Region (Newfoundland, Nova Scotia, New Brunswick and Prince Edward Island), the Québec Region, the Ontario Region, the Prairie Region (Manitoba, Saskatchewan, Alberta, Nunavut and the Northwest Territories) and the Pacific Region (British Columbia and the Yukon).

⁷ The CSC Review Panel was chaired by former Progressive Conservative Member of Provincial Parliament and Ontario Minister of Corrections Rob Sampson. The panel also included former police officer Serge Gascon, former chair of the National Parole Board Ian Glen, Chief Clarence Louie of the Osoyoos Indian Band, and prominent victims' advocate Sharon Rosenfeldt. Jackson and Stewart (2009) argued that the review was biased from conception, as evidenced by the composition of the panel that made recommendations that closely resembled the sentencing reforms the Conservatives have sought to put in place such as 'earned parole' (see CPC, 2006, pp. 22-25).

⁸ This is also supported by findings of the most recent victimization survey conducted in 2009 by Statistics Canada which found that "about 7.4 million Canadians, or just over one-quarter of the population aged 15 years and older, reported being a victim of a criminal incident in the preceding 12 months. This proportion was essentially unchanged from that reported in 2004" (Perrault and Brennan, 2010).

⁹ Given that previous promises to shift away from imprisonment have often led to the diversion of more individuals into the system through so-called alternatives to incarceration (Cohen, 1985), there is a need to examine whether this history is repeating itself in the United States at this time.

¹⁰ This decision may be reversed now that the prison population has reached an all-time high in England and Wales following the August 2011 riots (Agence France-Presse, 2011).

¹¹ For those interested in challenging the status quo through public engagement in the Canadian context, there is a rich history of involvement in struggles, particularly against imprisonment inside and outside the academy, from which to draw. Such individuals have drawn on abolitionist or non-abolitionist perspectives. There are professors such as P.J. Murphy (1998) and Stephen Duguid (2000) who exposed prisoners to the social sciences by offering university courses inside federal penitentiaries. A number of feminist scholars such as Ellen Adelberg and Claudia Currie (1987), Elizabeth Comack (1996), Joane Martel (1999), Gillian Balfour (2006), Sylvie Frigon (2006) and others have helped to raise the profile of issues faced by criminalized women. Others including Patricia Monture and Margaret Shaw participated in the Task Force for Federally Sentenced Women, while researchers including Tammy Landau, Kelly Hannah-Moffat and Anne-Marie Singh worked for the Commission of Inquiry into Certain Events at the Prison for Women in Kingston (Arbour, 1996; see also Hannah-Moffat and Shaw, 2000). There are also criminologists such as Howard Davidson (1988), Liz Elliott (see Elliott and Horii, 1994) and Bob Gaucher (2002) who have facilitated prison writing through the establishment and management of *Journal of Prisoners on Prisons*. In circulation since 1988, this peer-reviewed journal has connected criminological debates to the inner workings of the carceral by publishing articles primarily written by prisoners, including contributions from Canadians such as Gayle Horii (1988/1989), Rick Sauvé (1988), Peter Collins (2008) and others who made significant contributions to the prison justice movement over the years. The work of Claire Culhane (1991), Ruth Morris (2000), Michael Jackson (2002) and Kim Pate (2008), although not criminologists in name, have made significant contributions to criminological discourse in Canada through their exemplary lives that placed the struggle for social justice at the centre of their advocacy and research.

¹² I have participated in such organizations including the Canadian Criminal Justice Association as a member of their Policy Review Committee since May 2010.

¹³ Here I am referring to legislative measures that were already passed or being debated in the Parliament of Canada in a context where populist proponents of incarceration referred to themselves as being 'tough on crime'. In these debates, opponents were labelled as 'soft on crime' in a way that often muted critiques and marginalized those who raised alternatives.

Chapter II

¹ The use of materials in the public domain is arguably also a consequence of an academic environment in which expedient research is encouraged (i.e. publish or perish), and the time and resources needed to contest information blockades are often scarce due to course and administrative workloads.

² Despite the barriers working against ethnographic and interview-based research in prisons, there are still some who have produced grounded accounts of incarceration during this era of mass imprisonment. Chief among this group are feminist scholars. Beginning with the publication of *Women's Imprisonment: A Study in Social Control* (Carlen, 1983), feminist researchers have sought to address the absence of knowledge on, and the stories of, women in penology (Snider, 2003). By retelling history through the perspectives of women via interviews, studies conducted by Stanko (1985), Adelburg and Currie (1987), Comack (1996), Bosworth (1999), Martel (1999) and others challenge

dominant work in the social sciences, which has mostly understood developments in penalty through the perspectives of male scholars who tend to conduct research almost exclusively about men.

³ See Haggerty (2005) for a detailed discussion on the role of ethics boards and protocols play in the management of risks said to be posed by social science and related consequences for critical claimsmaking.

⁴ I was not expecting to find a great deal of information through this online content search. In my previous experience working in Government of Canada departments I have observed the degree to which government-produced information destined for the Internet can be scrutinized prior to dissemination. For instance, an online series of presentations and activities prepared for police officers to use in primary and secondary school classrooms on drug awareness, and produced by the Royal Canadian Mounted Police deal.org TOOLBOX initiative that I coordinated, was barred from publication by my superiors in 2004. The scholarly evidence-based module with excerpts on harm reduction was not to be published, as it did not reflect the organization's official stance on the matter (see Piché, 2009).

⁵ In response to an ATI request with CSC (file number A-2010-00164) for records concerning the removal of this Transformation webpage, an agency official claimed that the webpage still existed, pointing me to article published in *Let's Talk* magazine written by, then, Senior Deputy Commissioner Don Head (2008) that discussed the modernization of physical infrastructure. This was not the webpage I was referring to in my request.

⁶ The establishment of a prison, as I learned, is often a complex and long term process involving: 1) a needs assessment to determine whether or not to build a new facility; 2) the selection of a preliminary site for its construction; 3) environmental and geotechnical assessments of that site to determine the whether the land is suitable for the construction of such an installation; 4) facility and design procurement; 5) facility construction; and 6) its eventual operation.

⁷ These ATI / FOI requests include: 1) Prince Edward Island Department of Transportation and Public Works; 2) Nova Scotia Department of Transportation and Infrastructure Renewal; and 3) Nunavut Department of Community and Government Services.

⁸ These ATI / FOI requests include: 1) New Brunswick Department of Supply and Services; 2) Saskatchewan Ministry of Government Services; and 3) Ontario Realty Corporation.

⁹ I have yet to receive a response from the Ontario Realty Corporation regarding my FOI request pertaining to the new Toronto South Detention Centre or the South West Detention Centre in Windsor mailed in July 2009.

¹⁰ See *Chapter I*, supra note 3.

¹¹ These ATI / FOI requests include: 1) Nova Scotia Department of Justice; 2) British Columbia Ministry of the Attorney General and British Columbia Ministry of Public Safety and Solicitor General; and 3) Correctional Service of Canada.

¹² These ATI / FOI requests include: 1) Alberta Solicitor General and Public Security; and 2) Northwest Territories Department of Justice.

¹³ These formal information requests include: 1) Prince Edward Island Department of Transportation and Public Works; 2) Nova Scotia Department of Transportation and

Infrastructure Renewal; 3) New Brunswick Department of Public; 4) New Brunswick Department of Supply and Services; 5) Ministère de la Sécurité publique du Québec; 6) Ontario Ministry of Community Safety and Correctional Services; 7) Manitoba Department of Justice; 8) Saskatchewan Ministry of Corrections, Public Safety and Policing; 9) Saskatchewan Ministry of Government Services; 10) Nunavut Department of Community and Government Services; 11) Yukon Department of Highways and Public Works; and 12) Correctional Service of Canada (n=2).

¹⁴ Whether used intentionally by state officials responsible for the management of ATI / FOI requests, the result of delays by those who possess the records or the outcome of a lack of resources allocated by elected politicians to process them, postponement is arguably a technique of opacity authorized within the state system.

¹⁵ These ATI / FOI requests include: 1) Newfoundland and Labrador Department of Justice; 2) Nova Scotia Department of Justice; 3) Ministère de la Sécurité publique du Québec; and 4) Northwest Territories Department of Justice.

¹⁶ These formal information requests include: 1) Ontario Ministry of Community Safety and Correctional Services; 2) Alberta Solicitor General and Public Security; 3) British Columbia Ministry of the Attorney General and British Columbia Ministry of Public Safety and Solicitor General; and 4) Correctional Service of Canada (n=3).

¹⁷ These formal requests include: 1) Nova Scotia Department of Transportation and Infrastructure Renewal; 2) Ontario Ministry of Community Safety and Correctional Services (n=5); and 3) Yukon Department of Highways and Public Works.

¹⁸ This type of information exemption clause was used in processing the following ATI / FOI requests: 1) Newfoundland and Labrador Department of Justice; 2) Nova Scotia Department of Justice; 3) New Brunswick Department of Supply and Services; 4) Ministère de la Sécurité publique du Québec; 5) Saskatchewan Ministry of Corrections, Public Safety and Policing; 6) Saskatchewan Ministry of Government Services; 7) Alberta Solicitor General and Public Security; 8) British Columbia Ministry of the Attorney General and British Columbia Ministry of Public Safety and Solicitor General; and 9) Northwest Territories Department of Justice.

¹⁹ This type of information exemption clause was used in processing the following ATI / FOI requests: 1) Newfoundland and Labrador Department of Justice; 2) Prince Edward Island Office of the Attorney General; 3) Nova Scotia Department of Justice; 4) Ministère de la Sécurité publique du Québec; 5) British Columbia Ministry of the Attorney General and British Columbia Ministry of Public Safety and Solicitor General; 6) Nunavut Department of Justice; and 7) Nunavut Department of Community and Government Services.

²⁰ This type of information exemption clause was used in processing the following ATI / FOI requests: 1) Prince Edward Island Department of Transportation and Public Works; 2) Nova Scotia Department of Justice; 3) New Brunswick Department of Public Safety; 4) New Brunswick Department of Supply and Services; 5) Nunavut Department of Justice; and 6) Nunavut Department of Community and Government Services.

²¹ This type of information exemption clause was used in processing the following ATI / FOI requests: 1) Nova Scotia Department of Justice; 2) Ministère de la Sécurité publique du Québec; 3) Manitoba Department of Justice; and 4) Saskatchewan Ministry of Corrections, Public Safety and Policing.

²² This type of information exemption clause was used in processing the following ATI / FOI requests: 1) Newfoundland and Labrador Department of Justice; 2) Prince Edward Island Department of Transportation and Public Works; 3) Ministère de la Sécurité publique du Québec; and 4) Alberta Solicitor General and Public Security.

²³ This type of information exemption clause was used in processing the following ATI / FOI requests: 1) Newfoundland and Labrador Department of Justice; 2) Ministère de la Sécurité publique du Québec; and 3) British Columbia Ministry of the Attorney General and British Columbia Ministry of Public Safety and Solicitor General.

²⁴ This type of information exemption clause was used by the Ministère de la Sécurité publique du Québec.

²⁵ Request A-2009-00299 was worded as follows: “The Correctional Service of Canada (CSC) is currently evaluating federal imprisonment construction needs. This involves research and the collection of information, as well as analysis regarding offender population forecasts and other measures approved by the Minister of Public Safety and EXCOM. I am requesting all criteria being used for this broad assessment, as well as reports on Transformation priorities held by [names of public servants withheld to protect their privacy], Don Head and members of EXCOM. Time frame: January 2008 - November 2009”. Request A-2009-00300 was worded as follows: “I am requesting all records produced and / or held by the office of the Commissioner, the Research Branch and the Facilities Branch of the Correctional Service of Canada related to research and information collection, as well as analysis being used to develop a plan for federal prison construction needs to be submitted to the Minister of Public Safety in 2010. This would include: A list of all research and information collection, as well as analysis that has taken place for the purposes of this plan; E-mail correspondence pertaining to this plan; Meeting minutes, outlines and PowerPoint decks concerning research related to the plan; Interim reports and deliverables emerging from CSC funded internal and external research related to the development of this plan; Media lines related to the research findings pertaining to this plan; Reports Memorandums or summaries prepared for the Commissioner regarding this research. Time frame: January - November 2009”.

²⁶ Section 18 of the *Access to Information Act* (1985) states: “The head of a government institution may refuse to disclose any record requested under this Act that contains (a) trade secrets of financial, commercial, scientific or technical information that belongs to the Government of Canada or a government institution and has substantial value or is reasonable likely to have substantial value; (b) information the disclosure of which could reasonably be expected to prejudice the competitive position of a government institution [...] (d) information the disclosure of which could reasonably be expected to be materially injurious to the financial interests of the Government of Canada or the ability of the Government of Canada to manage the economy of Canada or could reasonably be expected to result in an undue benefit to any person, including, without restricting the generality of the foregoing, any such information relating to (i) the currency, coinage or legal tender of Canada, (ii) a contemplated change in the rate of bank interest or in government borrowing, (iii) a contemplated change in tariff rates, taxes, duties or any other revenue source, (iv) a contemplated change in the conditions of operation of financial institutions, (v) a contemplated sale or purchase of securities or of foreign or Canadian currency, or (vi) a contemplated sale or acquisition of land or property”.

²⁷ Section 21(1) of the *Access to Information Act* (1985) states: “The head of a

government institution may refuse to disclose any record requested under this Act that contains (a) advice or recommendations developed by or for a government institution or a minister of the Crown, (b) an account of consultations or deliberations involving officers or employees of a government institution, a minister of the Crown or the staff of a minister of the Crown, (c) positions or plans developed for the purpose of negotiations carried on or to be carried on by or on behalf of the Government of Canada and considerations relating thereto, or (d) plans relation to the management of personnel or the administration of a government institution that have not yet been put into operation”.

²⁸ Eugene Oscapella (Co-founder, Canadian Foundation for Drug Policy) was the chair of this panel. Panellists included Craig Jones (then Executive Director of the John Howard Society of Canada), Kim Pate (Executive Director of the Canadian Association for Elizabeth Fry Societies) and Tara Lyons (then Executive Director of the Canadian Students for Sensible Drug Policy).

²⁹ Between the date of my presentation at a public forum in Ottawa on 17 February 2010 and my presentation to the Provincial-Territorial Heads of Corrections at their bi-annual meeting in Ottawa on 31 May 2010, I obtained information about additional prisoner beds and construction related costs associated with the establishment of additions to existing facilities in: 1) Beauséjour, Manitoba (n=3); 2) Saskatoon, Saskatchewan; 3) Kamloops, British Columbia, and 4) Maple Ridge (Alouette Correctional Centre), British Columbia (see Piché, 2010a).

³⁰ Between the date of my presentation to the Provincial-Territorial Heads of Corrections at their bi-annual meeting in Ottawa on 31 May 2010 and my presentation at a hearing of the Standing Committee on Public Safety and National Security (Piché, 2011a), I obtained information about the construction of a new 720-bed prison in British Columbia at a cost of \$200 million. I was also informed that the new Surrey Pretrial Services Centre would have 432 beds, which is 108 beds larger than the previous estimations I was provided with. Further, I was told that 12 fewer beds than projected had been constructed during the first expansion of the Alouette Correctional Centre and 18 more beds than projected were built as part of an addition to the Prince George Correctional Centre. Other variations in construction-related costs for other provincial-territorial facilities contributed another \$19.7 million to the total construction-related costs. Here I am referring to facilities in: Shediac, New Brunswick (-\$4 million); Dalhousie, New Brunswick (-\$2 million); Beauséjour (+\$8 million), Brandon (+\$2.7 million) and The Pas, Manitoba (+1 million); and Kamloops and Maple Ridge (Fraser Regional Correctional Centre and Alouette Correctional Centre), British Columbia (+\$14 million).

³¹ This figure was modified when the province of Newfoundland and Labrador cancelled plans to build a new remand centre in Labrador in June 2011 in a stated effort to divert funding towards programming for prisoners. It should be noted that no funding had been allocated towards the project and estimates concerning the number of new prisoner beds in this facility were not disclosed, and thus did not have an impact on the other totals (i.e. additional prisoner beds, construction-related costs).

³² Adjustments to the number of additions, new prisoner beds and construction-related costs were made when I became aware of the 30 March 2011 announcement of a 32-cell addition to Pine Grove Correctional Centre in Saskatchewan that is estimated to cost \$12 million (Saskatchewan Ministry of Corrections, Public Safety and Policing, 2011).

³³ Further adjustments to the number of prisoner beds were made following the receipt of a 26 September 2011 e-mail from a British Columbia prison official who revised the estimated number of prisoner beds being built at the new remand centre in Surrey from 432 to 324 beds and the new prison in the Okanagan from 720 to 540 beds. Prisoner bed figures were also modified for a second addition to the Alouette Correctional Centre for Women from 208 to 156 beds and an addition to the Prince George Correctional Centre from 24 to 30 beds. A prison official from Alberta also noted in a 2 October 2011 e-mail that a recent decision had been made to close the 734-bed Edmonton Remand Centre once the 1,952-bed New Edmonton Remand Centre comes online. It should be noted, however, that if it is deemed that additional remand spaces are required, the new facility will be able to expand by three pods totalling another 864 beds, which would bring the facility to 2,816 prisoner beds.

³⁴ The total for construction-related costs associated with the establishment of new penal infrastructure was also modified when the Government of Ontario announced the costs to build, finance and maintain the \$336 million South West Detention Centre in Windsor in April 2011 (see Infrastructure Ontario 2011). This figure was also adjusted when prison officials with whom I have been in contact lowered the estimated budgets for constructing the new remand centre in Surrey and the new prison in the Yukon by \$17.5 million and \$4 million respectively via e-mail on 26 September 2011.

Chapter III

¹ According to McKay (2009, p. 1), the “bill amends section 742.1 of the *Criminal Code*, which deals with conditional sentencing, to eliminate the reference to serious personal injury offences. It also restricts the availability of conditional sentences for all offences for which the maximum term of imprisonment is 14 years or life and for specified offences, prosecuted by way of indictment, for which the maximum term of imprisonment is 10 years”. This bill was also introduced in the 3rd Session of the 40th Parliament and was referred to committee at 2nd Reading in the House of Commons, and was killed when a non-confidence motion was passed with the support of all the opposition parties on 25 March 2011. In the 2011 federal election campaign, the Conservatives promised to re-introduce this measure within their first 100 days in office as part of an omnibus bill containing this and other penal policy measures (see CPC, 2011, p. 50). The larger piece of legislation, *Bill C-10: The Safe Streets and Communities Act*, is currently before committee at 2nd Reading in the Senate.

² According to Casavant (2010, pp. 1-2), the “objective of the bill is to tighten the rules governing eligibility dates for parole (that is, day parole and full parole) in the case of offenders serving their first sentence of imprisonment in a penitentiary and who have not been convicted of a violent offence or a serious drug-related offence where a court order has been made concerning parole eligibility. More specifically, the bill provides that these offenders may not be granted[:] day parole after serving one sixth of the sentence, or parole where the National Parole Board (NPB) has no reasonable grounds to believe that they will commit an offence involving violence before the legal expiration of their sentence”. While this bill, which had remained on the Order Paper at 1st Reading in the House of Commons, was killed when the Conservatives prorogued Parliament on 30 December 2009, accelerated parole review was abolished when the *Abolition of Early Parole Act* (2011) was introduced by the Conservatives in the 3rd Session of the 40th

Parliament and passed with the support of the Bloc Québécois.

³ According to Casavant and Valiquet (2010, pp. 1-2), the purpose of the bill is “to limit the credit a judge may allow for any time spent in pre-sentencing custody in order to reduce the punishment to be imposed at sentencing, commonly called “credit for time served”. There are three scenarios: [1] In general, a judge may allow a maximum credit of one day for each day spent in pre-sentencing custody (“custody” in the bill) (clause 3 of the bill, new section 719(3) of the Code). [...2] However, if, and only if, the circumstances justify it, a judge may allow a maximum credit of one and one-half days for each day spent in pre-sentencing custody (clause 3 of the bill, new section 719(3.1) of the Code). [...3] If the person’s criminal record or breach of conditions of release on bail was the reason for the pre-sentencing custody, a judge may not allow more than one day’s credit for each day spent in pre-sentencing custody (clause 3 of the bill, new section 719(3.1) of the Code)”.

⁴ According to Dupuis and Casavant (2009, pp. 1-2) the bill was “designed to improve public safety, notably by: stating explicitly that the active participation of offenders in attaining the objectives of the correctional plan is an essential requirement for their conditional release or any other privilege; expanding the categories of offenders who are ineligible for an accelerated parole review and the categories of offenders subject to continued detention after their statutory release date when they have served two thirds of their sentence (e.g., offenders convicted of child pornography, luring a child or breaking and entering to steal a firearm); extending the length of time that offenders convicted of a subsequent offence must serve before being eligible for parole; increasing from six months to a year the waiting period for a hearing after the National Parole Board has turned down a parole application; authorizing a peace officer to arrest without a warrant an offender who is on conditional release for a breach of conditions; granting the Correctional Service of Canada permission to oblige an offender to wear a monitoring device as a condition of release, when release is subject to special conditions regarding restrictions on access to a victims or geographical areas; and increasing the number of reasons for the search of vehicles at a penitentiary to prevent the entry of contraband or the commission of an offence”. The piece of legislation was also said to also address “the interests of victims, by: expanding the definition of victim to anyone who has custody of or is responsible for a dependant of the main victim if the main victim is dead, ill or otherwise incapacitated; allowing disclosure to a victim of the programs in which an offender has participated for the purpose of reintegration into society, the location of an institution to which an offender is transferred, and the reasons for the transfer; and entrenching in the Act the right of victims to make a statement at parole hearings” (ibid, p. 2). The piece of legislation was referred to committee at 2nd Reading in the House of Commons and died on the Order Paper when the Conservative prorogued Parliament on 30 December 2009.

⁵ This bill was first introduced during the 2nd Session of the 39th Parliament. Having passed 2nd Reading in the House of Commons, the legislative proposal was referred to committee. The measure remained at this stage until the call of the 2008 federal election. It was later reintroduced again during the 3rd Session of the 40th Parliament where it was referred to committee at 2nd Reading in the House of Commons and died when a non-confidence motion passed on 25 March 2011. The Conservatives also promised to re-introduce this measure within their first 100 days in office as part of an omnibus bill

containing other penal policy measures in the 2011 federal election campaign (see CPC, 2011, p. 50).

⁶ Information obtained in a 7 May 2010 informal telephone interview with a senior official from Newfoundland and Labrador Corrections and Community Services.

⁷ Information obtained in an e-mail from a senior official from the Ontario Ministry of Community Safety and Correctional Services dated 2 March 2011.

⁸ This report, entitled Adult Institutional Services Capacity Study, was mentioned in a letter dated 18 June 2009 I received from a senior official from the Ontario Ministry of Community Safety and Correctional Services in response to online information requests CU09-00740, CU09-00741, CU09-00742 and CU09-00743.

⁹ For instance, “[b]etween May 1996 and September 2000 four reports were submitted to Ministers on the subject of inmate population growth across the country” (British Columbia Corrections Branch, 2007d, p. 1). Following this period, other reports examining the potential causes of rising prison populations, and remanded prisoners in particular, were “submitted to FPT Heads of Corrections, to the Justice Efficiencies Steering Committee, and to the Coordinating Committee of Senior Officials” (ibid). In June 2005, the Remand Working Group of the FPT Heads of Corrections “prepared a status report” entitled The Remand Crisis in Adult Corrections in Canada that examined the strategies used by the provinces and territories to manage overcrowding (British Columbia Corrections Branch, 2006b, p. 1). The report also recommended a number of areas that required further attention, including: “Addressing the issue of credit for remand time served at the time of sentencing; Breaking the barriers between corrections and the rest of the justice sector as it pertains to F/P/T processes, data analysis and outcomes; Increasing dialogue between Heads of Corrections and the Heads of Community Corrections, by developing a forum for discussing generic corrections policy issues, and representing a collaborative corrections response to justice issues at the F/P/T tables; Increasing jurisdictional-specific justice-sector dialogue, and sharing potential solutions; and Advancing the justice policy issues to the larger human service sector in order to address the underlying issues of social dysfunction” (ibid, pp. 1-2). This study was approved in November 2005 by the Ministers responsible for justice, who at that time decided to make remand “a standing item on the agenda for their annual meetings” (British Columbia Corrections Branch, 2006c, p. 2).

¹⁰ This excerpt is from page 2 of a letter dated 28 June 2009 I received from a senior official from Ontario’s Ministry of Community Safety and Correctional Services in response to online information requests CU09-00740, CU09-00741, CU09-00742 and CU09-00743.

¹¹ The task force recommended that provincial-territorial governments be responsible for remand and the imprisonment of individuals serving sentences of six months minus a day, while the federal government would be responsible for the imprisonment of individuals serving sentences of six months plus a day. Under this proposed arrangement the provinces and territories would also be fully responsible for community supervision. This recommendation was supported by the argument that the provincial-territorial governments are better connected to other services such as education, employment, housing and health care that prisoners access when they re-enter society.

¹² When the federal government scaled-back their participation in the initiative, the provinces and territories urged the Government of Canada “to consider the results of the

study prior to implementing any recommendations” from the 2007 CSC Review Panel “that have cross-jurisdictional impacts” (Newfoundland and Labrador Department of Justice, 2008b).

¹³ The overall rate and the rate of severity of police-reported ‘crime’ have continued to steadily since the publication of the CFCTFR (see Brennan and Dauvergne, 2011).

¹⁴ As an interim measure the CFCTFR recommended that “the Criminal Code should be amended to provide that credit for time served be set at a fixed ratio of 1.5 days for every day served while awaiting trial. The sentence appropriate for the case should be pronounced in court as well as the number of days the offender spent in pretrial detention. The calculation of the legal sentence would be determined by these two facts” (McCrank *et al.*, 2009, p. 18).

¹⁵ For summaries of the justifications for new penal infrastructure in each province and territory see Piché (2010a; 2011a; 2011b).

¹⁶ Section 9(1) of the United Nations Standard Minimum Rules for the Treatment of Prisoners states: “Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room” (UNHCHR, 1975).

¹⁷ Personal communication with a former senior prison official on 8 November 2010.

¹⁸ The Kingsclear Investigation Report, referred to as the Miller Inquiry Report, was an investigation conducted in 1992 that examined sexual abuse and misconduct at the New Brunswick Training School for youth in conflict with the law in the 1960s, 1970s and 1980s. For more information on the inquiry consult <<http://www.cpc-cpp.gc.ca/prr/inv/kingsclear/rep-rap/index-eng.aspx>>.

¹⁹ The potential for institutional security incidents resulting from “increased pressure on both inmates and correctional staff” associated with overcrowding was raised as a concern by the New Brunswick Community and Correctional Services Branch (2008, p. 28), while such occurrences were said to already be an operational reality in Alberta’s penal institutions in the business case for the new Edmonton Remand Centre (Alberta Infrastructure and Transportation, no date, p. 29). Similar concerns were raised in British Columbia, where “measures that can be used to indicate the success” of the province’s penal infrastructure plan included reductions in the number of “inmate attacks on staff and inmates per year” and “major inmate disturbances” (British Columbia Corrections Branch, 2007e, p. 3).

²⁰ In the Labrador Correctional Centre, “Inuit, Innu, and Métis [...] routinely comprise 94-98%” of the population of the facility and “20% of the total provincial prison” (Poirier *et al.*, 2008, pp. 132-133). In contrast, only “3% of the provincial population” is Aboriginal (*ibid*). Prisoners interviewed during the external review of penal institutions in Newfoundland and Labrador were among those who “expressed [a] desire for more sensitivity to cultural differences and the special needs of Aboriginal inmates” (*ibid*, p. 138).

²¹ A similar trend was noted in New Brunswick, where “aboriginals make up 2.4% of the provincial population” and “now make up 10% of the growing number of adults in custody (averaging about 40 per day and increasing)” (New Brunswick Community and Correctional Services Branch, 2008, p. 66). The official who authored the internal

review of the province's prison system expected this trend to continue as it was noted that Aboriginal peoples "are held on adult remand custody as a proportion of the population at a rate 5.5 times higher than that of non-aboriginals. Aboriginals as a proportion of the general population are held in adult custody under sentence at a rate 4.2 times higher than that of non-aboriginals" (ibid). When assessing the situation of Aboriginal women, the author of the report noted that the "adult custody rates [...] are about twice as high as for male aboriginals, though the actual size of the base number of aboriginal females in provincial custody is very small" (ibid).

²² In Manitoba, members of the public consultation committee urged the government to build a 'healing lodge' for criminalized Aboriginal women. The recommendation was prompted by a perceived "need to see alternative placements for low risk women within the Manitoba Corrections system and one that is culturally based, offering an element of spirituality to the process of healing and re-connecting with the community" (Bruce *et al.*, 2005, p. 7).

²³ Beginning with the premise that the "overall system of justice and incarceration is not culturally relevant" due to the fact that "[s]taffing, facilities and many programs are generally at variance with traditional ways" (McCready Consulting, 2002, pp. 2-3), a report on the Nunavut prison system recommended that new penal infrastructure would contribute significantly to the development of "a system that will be culturally relevant and that will begin to support communities as they grapple with the deep seated social problems that give rise to criminal behavio[u]r" (ibid, p. 1).

²⁴ The report produced as part of the Yukon's 'corrections' consultation noted: "First Nations individuals constitute at least 70 percent of the inmate population at Whitehorse Correctional Centre" (Yukon Correctional Action Plan Implementation Office, 2006, p. 6). It is with this in mind that the report recommended that the new multi-security-level 'healing centre' "reflect Yukon First Nations cultures in design and operation and provide a safe and secure facility for staff, inmates and the public. Its programs should support offender accountability, motivation, rehabilitation, and healing" (ibid, p. 11).

²⁵ In a review of the Prince Edward Island prison system it was noted that new infrastructure was needed to better manage a changing "client profile" or "client mix" (Prince Edward Island Office of the Attorney General, 2008a, p. 3). Among the shifts in its prison populations was a "400% increase in female offenders" (ibid).

²⁶ The internal systemic review in New Brunswick, a province where "[t]here is no dedicated female custody facility for provincially sentenced female inmates in this province and there never has been" (New Brunswick Community and Correctional Services Branch, 2008, p. 64), went into great detail regarding the shortcomings of its penal infrastructure for women. Representing a 10 percent segment of the total provincial prison population that had been increasing in comparison to the number of incarcerated men at the time the report was published (ibid, p. 63), the over-classification of incarcerated women due to the limited availability of space in lower security units was cited as a major challenge going forward. The author of the report noted: "the bulk of the 30-35 adult provincial female offenders in NB [New Brunswick] are housed in maximum security space in the Saint John Regional Correction Center [sic] (SJRCC). Nearly all of these women are incarcerated for non-violent offences related primarily to addiction and the crime that flows from the acquisition and use of illegal drugs. About half of these women are in jail for breach of a probation order or a conditional sentence in the

community, or on remand awaiting trial for similar activities” (ibid, p. 29). Other issues identified in the New Brunswick review included the prevalence of “suicide and attempted suicide”, a mental illness rate twice of that of male prisoners, and a sizeable proportion of women who have young children (ibid, p. 63). According to the report, some of these women spent time in the maximum-security SJRCC “originally designed for male offenders” – a situation that has “victimized and traumatized women” (ibid, p. 29). The report further condemned the state of affairs, noting: “It would be fair to say that many of the women held in provincial custody are some of the most vulnerable women in this province. Jail, particularly in maximum security within a male dominated facility, really is no place to rehabilitate vulnerable, abused, and traumatized women or girls. There is little public dispute on this issue” (ibid, p. 64). It is with this in mind that a recommendation for a new prison for women that would be built in a manner similar to the federal prison for women in Truro, Nova Scotia was tabled (see ibid, p. 29). While the report noted that such a step, involving “research based gender specific programs and staffing” would be “far more effective than current efforts to meet the complex needs of these vulnerable, marginalized, often abused, and sometimes forgotten women” (ibid, p. 35), this proposal has yet to be implemented.

²⁷ In Manitoba, the central push behind the construction of a new prison for women was to meet the gender-specific needs of incarcerated women in the province, which is reflected in the proposed design features, particularly for those housed in maximum-security. It was recommended that such spaces be “inclusive of harm reduction designed rooms, surveillance capabilities, drainage, colour schemes, staffing requirements and specialized approaches in working with these classifications of women” (Bruce *et al.*, 2005, pp. 9-10). The committee also argued that such a prison, which would be located closer to Winnipeg, would promote contact with the members of their families and the communities where they previously lived (Bruce *et al.*, 2005).

²⁸ New prisons ‘closer to home’ were also recommended to help prisoners understand the “need for accepting responsibility for behaviour, for reconciliation between victim and offender, and for involving people who are important to the offender – partner, family and community – in the healing process” (McCready Consulting, 2002, p. 4). A facility for women in the territory was also deemed necessary as it was argued that they “need a ‘safe’ place to open up to healing and for staff and programs to fulfil their particular needs” (ibid, p. 25).

²⁹ In the Newfoundland and Labrador Correctional Facility for Women, where “a high percentage of inmates with a history of psychiatric and psychological disorders” is reported (Poirier *et al.*, 2008, p. 26), specialized space for prisoners who are in crisis on “a daily basis” (ibid, p. 27) is limited as segregation cells are used to warehouse them. The following excerpt is indicative of the issues that arise due to the spatial management of prisoners with mental health issues: “The segregation cells are not isolated from the main living area nor are they soundproof. Therefore, inmates cannot be isolated when psychiatric and security considerations require it. The behaviour of an acting out or distressed inmate can be heard by all the other inmates on the range” (ibid, pp. 26-27). Similar issues exist in prisons for men in the province such as Her Majesty’s Penitentiary, where suicidal prisoners are also placed in segregation cells “with no exterior window and a light that is on 24 hours a day” – a state of affairs that “adds to the psychological stress the inmate is already experiencing” (ibid, p. 89). Such problems, however, are not

simply limited to the treatment of prisoners with mental health issues in HMP's segregation wing, but span the entire facility, as illustrated by the following passage: "Inmate and ex-inmate respondents described a gloomy, tension-filled prison, with a lack of programs and recreational opportunities. They spoke of boredom, of frustrations in getting things done, of their isolation from family and friends, and the often fearful and sometimes violent atmosphere, which at times manifests itself in assaults, desperate self-mutilating behaviour or suicide attempts. A number spoke of fellow inmates with mental disorders who are highly vulnerable, who often have difficulty understanding the rules, have a limited ability to cope and whose unpredictable behaviour has to be tolerated by the inmate community and managed by the prison staff. They live with the uncertainties about what might happen on the inside, and the worries about challenges such as housing, work, and basic survival that they will face on the outside. They realize that there are inadequate mental health services and counselling supports in place to help them deal with these cumulative and particularly unsettling issues [...] The prison is a debilitating environment for anyone who already has limited coping skills and the deplorable conditions at HMP epitomize an unhealthy prison" (ibid, p. 114). In a provincial prison system where the chief psychologist estimates that "approximately 25% of male inmates and 60 % of female inmates have a diagnosis of a mental disorder upon admission to prison [...] including mood disorders such as major depression and anxiety, bipolar disorders, ADHD (Attention Deficit Hyperactivity Disorder), and schizophrenia" (ibid, p. 117), and "three quarters of inmate and ex-inmate respondents admitted problems with or an addiction to alcohol and / or drugs" (ibid, pp. 121-122), a case can be made that criminalization and imprisonment has become a catch-all response in Newfoundland and Labrador to manage a range of complex issues.

³⁰ The situation does not appear to be all that different in Prince Edward Island, where an internal review noted that "[u]pon admission, the most common presenting problems for offenders are substance abuse and mental illness" (Prince Edward Island Office of the Attorney General, 2008a, p. 3). These prisoners, who "who enter the system younger, with significant addiction and emotional/mental health problems" are said to "present a higher risk to use violence, and they have less respect for authority figures" (ibid, p. 7). Following the premise that the "[o]ffender population can no longer be managed as a homogeneous group" (Prince Edward Island Office of the Attorney General, 2008b, slide 9), and the current infrastructure does not allow for the separation of "incompatible" prisoners (ibid, slide 17), proposals for the construction of new prison spaces were recommended to elected officials.

³¹ An internal review of New Brunswick's prison system also highlighted the challenges of managing "our most vulnerable citizens with the highest need, particularly those with serious mental health or addictions issues", when "jail often is [the] only treatment option available" (New Brunswick Community and Correctional Services Branch, 2008, p. 4). The report noted that existing provincial prisons were "ill suited to help many of these New Brunswick citizens make positive change" (ibid, p. 57). As such, it was recommended that decisions about "new custody space, correctional philosophy, programs, partnerships, and finances" (ibid, p. 12) be made with these and other issues such as histories of abuse and poverty of prisoners in mind (see ibid, p. 20).

³² In British Columbia, a number of briefing notes and ministerial summaries noted that the "increase in the number of mentally disordered offenders also adds to the capacity

challenges” (British Columbia Corrections Branch, 2006c, p. 2). This rise in the “criminalization of mentally ill persons”, who were said to compose 22 percent of the provincial prison population at the time, was primarily attributed to “[d]e-hospitalization along with lack of community programming for mental health services” (British Columbia Corrections Branch 2007e, p. 5).

³³ As with other jurisdictions, the construction of a prison in the Yukon was recommended, in part, to facilitate the management of a “diverse offender population that is characterized by a variety of issues that led to their criminality”, including Fetal Alcohol Spectrum Disorder, as well as identified mental health and substance addiction issues (Yukon Corrections Action Plan Implementation Office, 2006, p. 7).

³⁴ In Saskatchewan, panellists from an external inquiry into the August 2008 escape of prisoners at an aging unit of the RPCC describe issues with housing gangs in the jurisdiction’s prisons: “Gangs become a serious management issue within Provincial Corrections facilities. Inmates arriving at RPCC identified as gang members or associates are subjected to a process of generalized segregation as opposed to individualized segregation for cause, punitive or protective reasons. Generalized segregation and non[-]productive time tends to create solidarity amongst those subjected to it and increases their level of anger towards staff. The gang management strategy at the RPCC has been reactive in nature primarily involving non[-]association, strict movement control, and high levels of confinement. There is very little evidence of activity designed to proactively minimize individual and group activity in the violence and criminal activity associated with aboriginal gangs” (Peet *et al.*, 2008, p. 7). For the authors of the report, the issue of gangs and the use of generalized segregation were not simply a matter of institutional security and ‘crime’ reduction, but also an issue of human rights: “This strategy is contrary to the duty to act fairly; it may in fact be in some instances against the Charter of Rights and Freedoms and the “principal of least restrictive measures”. Citizens are sent to prison *as* punishment, *not* for punishment” (ibid, p. 108, original emphasis). With a total prisoner population at the RPCC of 452, 102 of which – or 22.5 percent – “were confirmed gang members or associates belonging to eleven factories” (ibid, p. 22), the panel argued that the “changing inmate profile” is one whereby prisoners “tend to be at higher risk for violence than in the past” (ibid, p. 5). Presented with these findings, the Saskatchewan Ministry of Corrections, Public Safety and Policing (2009, p. 5) concluded that new facilities, in addition to the new Regina Provincial Correctional Centre that had opened in 2008, were needed to address the shortage of “high security” space for prisoners as the current configuration limited “the ability to manage disruptive inmates and gang activity”.

³⁵ Gang membership was also cited in a business case as a justification for building the new ERC, as the Alberta Solicitor General and Public Security (2006c, p. 4) identified a 87 percent increase of prisoners with gang affiliations admitted to the existing ERC and a 179 percent increase of similar prisoners at the Calgary Remand Centre between 2004 and 2006. In the same business case a 45 percent increase in the number of “separate gangs” inside its provincial prisons during this period was noted.

³⁶ In British Columbia, a summary prepared by the Corrections Branch noted that the system capacity pressures face by the provinces prison system were being exacerbated by “the fact that the “offender profile” has become much more hardened, as a greater number of gang-affiliated and violent offenders are being detained for longer periods on

remand status as a result of more vigorous interdiction and prosecution of organized crime in the community” (British Columbia Corrections Branch, 2006c, p. 2).

³⁷ The age of the “new” and remaining operational part of the Toronto Jail that opened in 1958, as well as the age of the Windsor Jail that opened in 1926, was cited as one of the primary factors that led to efforts to replace them with new ‘modern’ institutions (Ontario Ministry of Community Safety and Correctional Services, 2009a; 2009b). In a letter sent from the Ontario Ministry of Community Safety and Correctional Services (2009c, pp. 3-4), it was noted that the new facilities were to be equipped with “state-of-the-art technology” and would be of the “the highest security standards”.

³⁸ The report of the external investigation into the escape that occurred at Unit 3A of the RPCC also remarked on the inadequate infrastructure associated with the age of this portion of the prison complex. Drawing on Kelling and Coles (1996) broken windows theory that posits that the poor physical appearance of neighbourhoods causes disorder and ‘crime’, the panellists noted that on Unit 3A there is paint “peeling from virtually every wall and there are holes and cracks that are in desperate need of repair”, as well as the “prominence of graffiti in many of the cells” (Peet *et al.*, 2008, p. 21). As “Unit 3A epitomizes a disorderly environment and is a breeding ground for disorder and criminal activity” (ibid), and its’ “physical structure, fencing, lighting and electronic systems [...] is not sufficient to compensate for staff errors and failings that may allow for high risk inmates to obtain contraband and to go undetected in their efforts to breach that structure” (ibid, p. 75), the external investigators recommended bringing the unit up to code or replacing it altogether. It should be noted that this was not the first time that the inadequacies with this portion of the RPCC had been raised. In 2004, an infrastructure review by the Department of Corrections and Public Safety and Saskatchewan Property Management Corporation, which led to the construction of a new RPCC on the same grounds, concluded that “Unit 3 could be retained but would not provide good value in the long term” (ibid, p. 20). The Government of Saskatchewan agreed with the past and recent assessment of the RPCC, while also noting that new facilities were needed as the “correctional system’s physical infrastructure is challenged to adequately meet current demands” due to the fact that most provincial facilities had been built prior to the 1980s (Saskatchewan Ministry of Corrections, Public Safety and Policing, 2009, p. 4).

³⁹ According to McCready Consulting (2002) this issue was discussed in a 1998 report entitled *Towards Justice that Brings Peace*, which summarized the proceedings from the Nunavut Social Development Council Justice Retreat.

⁴⁰ My focus on the discourses of prison officials and external advisors, particularly in the second half of this chapter, also comes at a price, as the disconnect between the stated purposes of incarceration legitimating prison capacity expansion and penal practice is left unexplored.

Chapter IV

¹ See <www.jpp.org>.

² On 29 January 2010 Prime Minister Harper appointed five new Conservatives to the Senate and now had a majority of the seats in what is often referred to as the Red Chamber (Office of the Prime Minister, 2010).

³ A recent example of the role criminologists’ play as experts in news stories can be found in a Globe and Mail article by Brown (2011) that features quotes from professors

Rosemary Gartner and Anthony Doob of the University of Toronto, along with Neil Boyd of Simon Fraser University.

⁴ Recent contributions drawing from this approach to newsmaking have been made by Neil Boyd who publishes commentary on his blog (see <www.neilboyd.net>) and editorials for news outlets such as Huffington Post Canada (e.g. Boyd, 2011). Anthony Doob is another criminologist in Canada that has authored a number of op-eds over the years, including most recently in the Globe and Mail (see Greenspan and Doob, 2011a; 2011b; 2011c; 2011d).

⁵ To access the blog visit <www.tpcp-canada.blogspot.com>.

⁶ One criminologist who has taken upon himself to release the findings of work in which he is involved to the media is Scot Wortley from the University of Toronto. Research conducted on the (unofficial) use of racial profiling amongst police officers in Canada (e.g.: Wortley and Tanner, 2003, 2004a, 2004b; Wortley and Marshall, 2005) garnered significant attention from the press and has spurred debate in the policing community and amongst ‘target’ populations. Although it must be acknowledged that other criminologists such as Thomas Gabor (2004) from the University of Ottawa and less enthusiastic representatives from various police departments have also weighed-in on the issue by challenging the findings of research projects in which Wortley is involved. Such exchanges do not support Henry’s (1994) assertion that the criminologist-as-subject is free from “experts disagree” scenarios arising in the public sphere, revealing that journalists and editors still have a significant role in how our research findings are communicated to the public through news forums, especially when they play the ‘balanced coverage’ card. At the same time, the very fact that such debates are taking place demonstrate the need for publicizing criminological research that is critical of the existing social order and its institutions.

⁷ Excerpt from the “Prorogation as Opportunity: Proposing New Directions for Criminal Justice Policy” public forum event flyer posted on 26 January 2010 at <<http://tpcp-canada.blogspot.com/2010/01/public-forum-feb-17-2010.html>>.

Chapter V

¹ E-mail from a staffer for a Parliamentarian in the opposition in February 2010.

² The National Parole Board has been renamed the Parole Board of Canada.

³ Subsequent news reports (e.g. Tibbetts, 2010e) revealed that the government knew about the loopholes in the pardon system that were being criticized as far back as 2007, but decided against proposing new legislation to deal with the issue.

⁴ A newer study by Statistics Canada pegged the tangible and intangible costs of ‘crime’ to total approximately \$99 billion in 2008 (Zhang, 2011).

⁵ For more information on the Right on Crime Campaign see <www.rightoncrime.com>.

⁶ E-mail written by an official from the Citizen Engagement Branch of the Correctional Service of Canada.

⁷ Ibid.

⁸ As specified in the second edition of the *House of Commons Procedure and Practice* manual (Parliament of Canada, 2009b), a question of privilege can be raised when there is grounds to suggest that the rights “that are necessary in order to allow Members of the House of Commons to perform their parliamentary functions” are being violated. When this occurs, it triggers the following process: “Any claim that a privilege has been

infringed upon or a contempt committed must be brought to the attention of the House at the earliest opportunity. Once the Speaker recognizes a Member on a matter of privilege, the Member must briefly outline the complaint, following which the Speaker may choose to hear from other Members prior to deciding if there is a *prima facie* [at first glance] case of privilege (i.e., whether the matter appears to warrant priority or consideration). If the Speaker finds there is a *prima facie* breach of privilege, the Member raising the question of privilege is asked to move a motion, usually requesting that the matter be examined by the Standing Committee on Procedure and House Affairs. If there is a favourable vote in the House on the motion (which can be debated), the matter is examined by the Standing Committee, which may choose to call expert witnesses. The Committee's report of findings and recommendations is presented to the House, and a motion to concur in, or agree to the report, may then be moved".

⁹ Examples of bills passed by all parties in the House of Commons during the 3rd Session of the 40th Parliament include the *Protecting Victims from Sex Offenders Act* (2010), the *Tackling Auto Theft and Property Crime Act* (2010), *Standing up for Victims of White Collar Crime Act* (2011), the *Limiting Pardons for Serious Crimes Act* (2010), the *Eliminating Entitlements for Prisoners Act* (2010), and the *Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act* (2011). The *Abolition of Early Parole Act* (2011) and the *Serious Time for the Most Serious Crime Act* (2011) introduced by the Conservatives were passed with the support of the Bloc Québécois and the Liberals respectively.

¹⁰ Such examples include the Liberals declaring their opposition to *An Act to amend the Controlled Substances Act and to make consequential amendments to other Acts* during the 3rd Session of the 40th Parliament after having supported it when it was introduced in the previous parliamentary session. The legislation would have been enacted had Prime Minister Stephen Harper not prorogued 2nd Session of the 40th Parliament (see Naumetz, 2011).

Chapter VI

¹ See *Chapter IV*, supra note 7.

² Personal communication with a former senior prison official in one of Canada's prison systems on 19 March 2010.

³ During the 2010 parliamentary summer recess, the penal policy debate initially cooled down which provided me with an opportunity to spend time redesigning my blog rather than writing new posts. As part of the redesign, I decided to remove the Frequently Asked Questions content from the website as I had not been criticized for being partisan or an abolitionist for some time.

⁴ This critique was made during a presentation I gave at the Fourth Annual Conference of the Justice Study and Research Laboratory at the University of Ottawa on 15 April 2010.

⁵ This intervention was made by Kim Pate during an undergraduate seminar in Law at Carleton University on 28 March 2011.

⁶ This intervention was made by a student during a guest lecture I gave at the University of Ottawa on 7 March 2011.

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Protecting Victims from Sex Offenders Act (2010).

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Standing up for Victims of White Collar Crime Act (2011).

Tackling Auto Theft and Property Crime Act (2010).

Tackling Violent Crime Act (2008).

Truth in Sentencing Act (2009).

Appendix I: New Provincial-Territorial Prisons

Jurisdiction	Location	Net Capacity Gain	Estimated Construction Costs	Project Phase
NL	Location(s) in Newfoundland to be determined	To be determined	To be determined	On hold
PEI	Summerside	42	\$18.5 million	On hold
NS	Coalburn	164	\$31.3 million	Construction
NB	Shediac	122	\$36 million	Construction
NB	Dalhousie	70	\$20 million	Construction
QC	Sept-Îles	28	\$78 million	Procurement
QC	Roberval	31	\$107 million	Procurement
QC	Amos	84	\$111 million	Procurement
QC	Sorel-Tracy	149	\$143 million	Construction
QC	Percé (re-opening)	46	\$11 million	Operational
ON	Toronto	1,100	\$1.1 billion	Construction
ON	Windsor	175	\$336 million	Construction
MB	Headingley	55	\$60 million	Construction
SA	Regina	211	\$50.3 million	Operational
SA	Saskatoon	427	\$87 million	Procurement
AB	Edmonton	1,218	\$568.5 million	Construction
BC	Surrey	324	\$112.5 million	Procurement
BC	Okanagan region	540	\$200 million	Site selection
NU	Iqaluit	8	\$2.9 million	Operational
NU	Rankin Inlet	46	\$29.4 million	Construction
NT	Fort Smith	27-32	To be determined	Preliminary planning
YK	Whitehorse	87	\$63million	Construction
Total	22-23	4,954-4,959+	\$3.1655 billion +	

Appendix II: Additions to Existing Provincial-Territorial Prisons

Jurisdiction	Location	Net Capacity Gain	Estimated Construction Costs	Project Phase
PEI	Charlottetown	48	\$3.4 million	Operational
QC	Québec	96	\$19 million	Construction
QC	Amos	36		Construction
QC	Trois-Rivières	96		Construction
QC	Sherbrooke	96		Construction
MB	Beauséjour – Phase I	160	\$50 million	Operational
MB	Beauséjour – Phase II	64	\$17 million	Construction
MB	Beauséjour – Phase III	160	\$25 million	Construction
MB	Brandon	80	\$5.7 million	Operational
MB	The Pas	40	\$3 million	Construction
SA	Pine Grove	32	\$12 million	Procurement
SA	Saskatoon	90	\$5.8 million	Operational
BC	Kamloops	50	\$14 million	Operational
BC	Maple Ridge (FRCC)	100		Operational
BC	Maple Ridge (ACC) – phase I	24		Operational
BC	Maple Ridge (ACC) – phase II	156	\$43.5 million	Construction
BC	Prince George	30	\$11.5 million	Operational
Total	17	1,358	\$209.9 million	

Appendix III: Additions to Existing Federal Penitentiaries

Operational Region	Institution	Year Institution Established	Location	Net Capacity Gain	Estimated Construction Costs
Atlantic	Springhill Institution (2 units)	1967	Springhill, NS	192	\$40 million
Atlantic	Atlantic Institution	1987	Renous, NB	96	\$42.5 million
Atlantic	Westmorland Institution	1975	Dorchester, NB	50	
Atlantic	Nova Institution for Women	1995	Truro, NS	18	\$2.5 million
Québec	Montée St. François Institution	mid-1960s	Laval, QC	50	\$10 million
Québec	Federal Training Centre	1952	Laval, QC	96	\$40 million
Québec	Sainte-Anne-des-Plaines Institution	1968	Sainte-Anne-des-Plaines, QC	50	\$10 million
Québec	Cowansville Institution (2 units)	1966	Cowansville, QC	192	\$73 million
Québec	Donnacona Institution	1986	Donnacona, QC	96	
Ontario	Fenbrook Institution	1998	Gravenhurst, ON	96	\$15 million
Ontario	Millhaven Institution	1971	Bath, ON	96	\$32.5 million
Ontario	Bath Institution (2 units)	1972	Bath, ON	192	\$35 million
Ontario	Collins Bay Institution	1930	Kingston, ON	96	\$28 million
Ontario	Frontenac Institution	1972	Kingston, ON	50	\$20 million
Ontario	Pittsburgh Institution	1963	Kingston, ON	50	
Ontario	Beaver Creek Institution	1961	Gravenhurst, ON	50	\$10 million

Prairie	Drumheller Institution	1967	Drumheller, AB	96	\$15 million
Prairie	Drumheller Institution Annex	1967	Drumheller, AB	50	\$10 million
Prairie	Bowden Institution	1974	Innisfail, AB	96	\$15 million
Prairie	Bowden Institution Annex	1974	Innisfail, AB	50	\$10 million
Prairie	Stony Mountain Institution	1877	Stony Mountain, MB	96	\$45 million
Prairie	Rockwood Institution	1962	Stony Mountain, MB	50	
Prairie	Riverbend Institution	1962	Prince Albert, SK	50	\$55 million
Prairie	Willow Cree Healing Lodge	Unknown	Duck Lake, SK	40	
Prairie	Edmonton Institution	1978	Edmonton, AB	96	
Pacific	Mission Institution	1997	Mission, BC	96	\$15 million
Pacific	Kent Institution	1979	Agassiz, BC	96	\$77.5 million
Pacific	Matsqui Institution	1966	Abbotsford, BC	96	
Pacific	Pacific Institution	1972	Abbotsford, BC	96	
Pacific	Ferndale Institution	1973	Mission, BC	50	
Pacific	Fraser Valley Institution for Women	2004	Abbotsford, BC	24	
Total	34	-	-	2,552	\$601 million

Appendix IV: Penal System Bills Tabled in the 39th and 40th Parliaments

39TH PARLIAMENT, 1ST SESSION
(April 3, 2006 – September 14, 2007)

Bill Number	Bill Name	Last Stage Passed (HOC / Senate)	Party Support for Bills (3rd Reading, HOC)
C-9	<i>An Act to amend the Criminal Code (conditional sentence of imprisonment) (2007)</i>	Royal Assent	All
C-10	<i>An Act to amend the Criminal Code (minimum penalties for offences involving firearms) and to make a consequential amendment to another Act</i>	Passed in HOC 1 st Reading, Senate	Conservative NDP
C-17	<i>An Act to amend the Judges Act and certain other Acts in relation to courts (2006)</i>	Royal Assent	Conservative Liberal NDP
C-18	<i>An Act to amend certain Acts in relation to DNA identification (2007)</i>	Royal Assent	All
C-19	<i>An Act to amend the Criminal Code (street racing) and to make a consequential amendment to the Corrections and Conditional Release Act (2006)</i>	Royal Assent	All
C-21	<i>An Act to amend the Criminal Code and Firearms Act (non-registration of firearms that are neither prohibited nor restricted)</i>	1 st Reading, HOC	-
C-22	<i>An Act to amend the Criminal Code (age of protection) and to make consequent</i>	Resolved on Division in HOC 2 nd Reading, Senate	All
C-23	<i>An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments)</i>	Resolved on Division in HOC 1 st Reading, Senate	All
C-26	<i>An Act to amend the Criminal Code (criminal interest rate) (2007)</i>	Royal Assent	Conservative Liberal NDP
C-27	<i>An Act to amend the Criminal Code</i>	2 nd Reading, HOC	-

	<i>(dangerous offenders and recognizance to keep the peace)</i>	Referred to Committee	
C-32	<i>An Act to amend the Criminal Code (impaired driving) and to make consequential amendments to other Acts</i>	2 nd Reading, HOC Committee Report Tabled	-
C-35	<i>An Act to amend the Criminal Code (reverse onus in bail hearings for firearm-related offences)</i>	Resolved on Division in HOC 1 st Reading, Senate	All
C-48	<i>An Act to amend the Criminal Code in order to implement the United Nations Convention against Corruption (2007)</i>	Royal Assent	All
C-59	<i>An Act to amend the Criminal Code (unauthorized recording of a movie) (2007)</i>	Royal Assent	All
S-3	An Act to amend the National Defence Act, the Criminal Code, the Sex Offender Information Registration Act and the Criminal Records Act (2007)	Royal Assent	All

39TH PARLIAMENT, 2ND SESSION
(October 16, 2007 – September 7, 2008)

Bill Number	Bill Name	Last Stage Passed (HOC / Senate)	Party Support for Bills (3rd Reading, HOC)
C-2	<i>An Act to amend the Criminal Code and to make consequential amendments to other Acts (Tackling Violent Crime Act) (2008)</i>	Royal Assent	Conservative Liberal Bloc Québécois NDP (opposed by Siksay)
C-13	<i>An Act to amend the Criminal Code (criminal procedure, language of the accused, sentencing and other amendments) (2008)</i>	Royal Assent	All
C-24	<i>An Act to amend the Criminal Code and the Firearms Act (non-registration of firearms that are neither prohibited nor restricted)</i>	1 st Reading, HOC	-
C-25	<i>An Act to amend the Youth Criminal</i>	2 nd Reading, HOC	-

	<i>Justice Act</i>	Referred to Committee	
C-26	<i>An Act to amend the Controlled Drugs and Substances Act and to make related and consequential amendments to other Acts</i>	2 nd Reading, HOC Referred to Committee	-
C-27	<i>An Act to amend the Criminal Code (identity theft and related misconduct)</i>	2 nd Reading, HOC Referred to Committee	-
C-31	<i>An Act to amend the Judges Act (2008)</i>	Royal Assent	All
C-53	<i>An Act to amend the Criminal Code (auto theft and trafficking in property obtained by crime)</i>	1 st Reading, HOC	-
S-3	<i>An Act to amend the Criminal Code (investigative hearing and recognizance with conditions)</i>	Passed in Senate 1 st Reading, HOC	All

40TH PARLIAMENT, 1ST SESSION
(November 18, 2008 – December 4, 2008)

Bill Number	Bill Name	Last Stage Passed (HOC / Senate)	Party Support for Bills (3rd Reading, HOC)
N/A	N/A	N/A	N/A

40TH PARLIAMENT, 2ND SESSION
(January 26, 2009 – December 30, 2009)

Bill Number	Bill Name	Last Stage Passed (HOC / Senate)	Party Support for Bills (3rd Reading, HOC)
C-14	<i>An Act to amend the Criminal Code (organized crime and protection of justice system participants) (2009)</i>	Royal Assent	All
C-15	<i>An Act to amend the Controlled Drugs and Substances Act and to make related and consequential amendments to other Acts</i>	Passed in HOC Passed in Senate	Conservative Liberal
C-19	<i>An act to amend the Criminal Code</i>	1 st Reading, HOC	-

	<i>(investigative hearing and recognizance with conditions)</i>		
C-25	<i>An Act to amend the Criminal Code (limiting credit for time spent in pre-sentencing custody) (Truth in Sentencing Act) (2009)</i>	Royal Assent	All
C-26	<i>An Act to amend the Criminal Code (auto theft and trafficking in property obtained by crime)</i>	Passed in HOC 2 nd Reading, Senate Referred to Committee	All
C-31	<i>An Act to amend the Criminal Code, the Corruption of Foreign Public Officials Act and the Identification of Criminals Act and to make a consequential amendment to another Act</i>	2 nd Reading, HOC Referred to Committee	-
C-34	<i>An Act to amend the Criminal Code and other Acts (Protecting Victims from Sex Offenders Act)</i>	2 nd Reading, HOC Committee Report Tabled	-
C-35	<i>An Act to deter terrorism, and to amend the State Immunity Act</i>	1 st Reading, HOC	-
C-36	<i>An Act to amend the Criminal Code (Serious Time for the Most Serious Crime Act)</i>	Passed in HOC 1 st Reading Senate	Conservative Liberal
C-42	<i>An Act to amend the Criminal Code (Ending Conditional Sentences for Property and Other Serious Crimes Act)</i>	2 nd Reading, HOC Referred to Committee	-
C-43	<i>An Act to amend the Corrections and Conditional Release Act and the Criminal Code (Strengthening Canada's Corrections System Act)</i>	2 nd Reading, HOC Referred to Committee	-
C-46	<i>An Act to amend the Criminal Code, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act (Investigative Powers for the 21st Century Act)</i>	2 nd Reading, HOC Referred to Committee	-
C-52	<i>An Act to amend the Criminal Code (sentencing for fraud) (Retribution on Behalf of Victims of White Collar Crime Act)</i>	2 nd Reading, HOC Referred to Committee	-
C-53	<i>An Act to amend the Corrections and Conditional Release Act (accelerated parole review) and to make consequential amendments to</i>	1 st Reading, HOC	-

	<i>other Acts) (Protecting Canadians by Ending Early Release for Criminals Act)</i>		
C-54	<i>An Act to amend the Criminal Code and to make consequential amendments to the National Defence Act (Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act)</i>	1 st Reading, HOC	-
C-55	<i>An Act to amend the Criminal Code (Response to the Supreme Court of Canada Decision R. v. Shoker Act)</i>	1 st Reading, HOC	-
C-58	<i>An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service (Child Protection Act) (Online Sexual Exploitation)</i>	1 st Reading, HOC	-
C-59	<i>An Act to amend the International Transfer of Offenders Act (Keeping Canadians Safe) (International Transfer of Offenders)</i>	1 st Reading, HOC	-
S-4	<i>An Act to amend the Criminal Code (identity theft and related misconduct) (2009)</i>	Royal Assent	All
S-5	<i>An Act to amend the Criminal Code and another Act</i>	1 st Reading, Senate	-

40TH PARLIAMENT, 3RD SESSION
(March 3, 2010 – March 26, 2011)

Bill Number	Bill Name	Last Stage Passed (HOC / Senate)	Party Support for Bills (3rd Reading, HOC)
C-4	<i>An Act to amend the Youth Criminal Justice Act and to make consequential and related amendments to other Acts (Sébastien's Law (Protecting the Public from Violent Young Offenders))</i>	2 nd Reading, HOC Referred to Committee	-
C-5	<i>An Act to amend the International Transfer of Offenders Act</i>	2 nd Reading, HOC Referred to	-

	<i>(Keeping Canadians Safe (International Transfer of Offenders) Act)</i>	Committee	
C-16	<i>An Act to amend the Criminal Code (Ending House Arrest for Property and Other Serious Crimes by Serious and Violent Offenders Act)</i>	2 nd Reading, HOC Referred to Committee	-
C-17	<i>An Act to amend the Criminal Code (investigative hearing and recognizance with conditions) (Combating Terrorism Act)</i>	2 nd Reading, HOC Referred to Committee	-
C-21	<i>An Act to amend the Criminal Code (sentencing for fraud) (Standing up for Victims of White Collar Crime Act) (2011)</i>	Royal Assent	All
C-22	<i>An Act respecting the mandatory reporting of Internet child pornography by persons who provide an Internet service (2011)</i>	Royal Assent	All
C-23A	<i>An Act to amend the Criminal Records Act (Limiting Pardons for Serious Crimes Act) (2010)</i>	Royal Assent	All
C-23B	<i>An Act to amend the Criminal Records Act and to make consequential amendments to other Acts (Eliminating Pardons for Serious Crimes Act)</i>	2 nd Reading, HOC Referred to Committee	-
C-30	<i>An Act to amend the Criminal Code (Response to the Supreme Court of Canada Decision in R. v. Shoker Act)</i>	Passed in HOC 1 st Reading, Senate	All
C-31	<i>An Act to amend the Old Age Security Act (Eliminating Entitlements for Prisoners Act) (2010)</i>	Royal Assent	All
C-39	<i>An Act to amend the Corrections and Conditional Release Act and to make consequential amendments to other Acts (Ending Early Release for Criminals and Increasing Offender Accountability Act)</i>	2 nd Reading, HOC	-
C-48	<i>An Act to amend the Criminal Code and to make consequential amendments to the National Defence Act (Protecting Canadians by Ending Sentence Discounts for</i>	Royal Assent	All

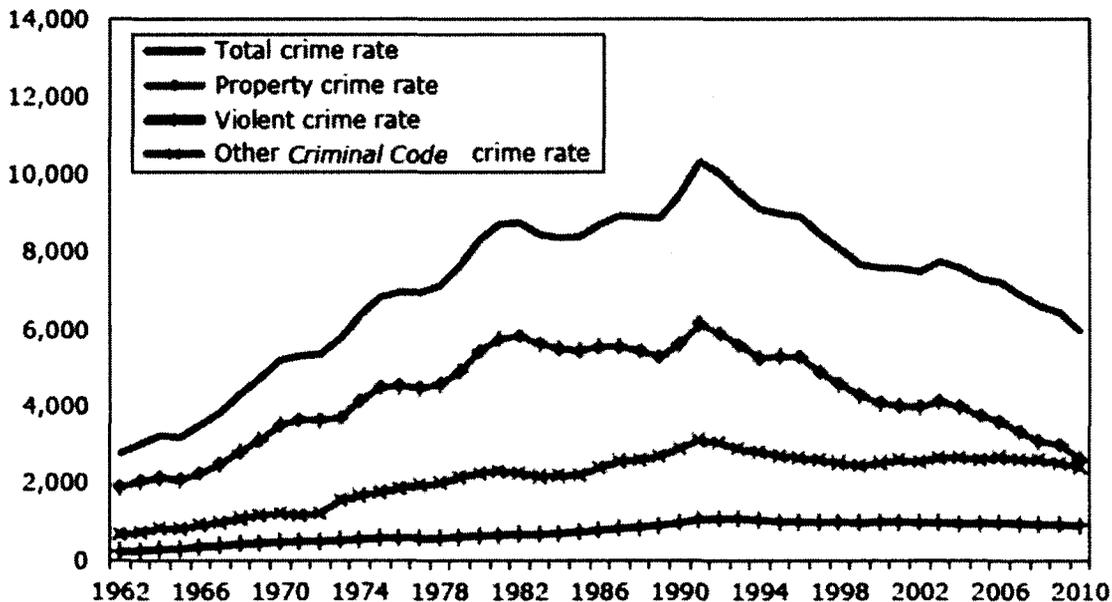
	<i>Multiple Murders Act) (2011)</i>		
C-50	<i>An Act to amend the Criminal Code (interception of private communications and related warrants and orders) (Improving Access to Investigative Tools for Serious Crimes Act)</i>	1 st Reading, HOC	-
C-51	<i>An Act to amend the Criminal Code, the Competition Act and the Mutual Legal Assistance in Criminal Matters Act (Investigative Powers for the 21st Century Act)</i>	1 st Reading, HOC	-
C-52	<i>An Act regulating telecommunications facilities to support investigations (Investigating and Preventing Criminal Electronic Communications Act)</i>	1 st Reading, HOC	-
C-53	<i>An Act to amend the Criminal Code (mega-trials) (Fair and Efficient Criminal Trials Act)</i>	1 st Reading, HOC	-
C-54	<i>An Act to amend the Criminal Code (sexual offences against children) (Protecting Children from Sexual Predators Act)</i>	Passed in HOC 2 nd Reading, Senate	-
C-59	<i>An Act to amend the Corrections and Conditional Release Act (accelerated parole review) and to make consequential amendments to other Acts (Abolition of Early Parole Act) (2011)</i>	Royal Assent	Conservative Bloc Québécois
C-60	<i>An Act to amend the Criminal Code (citizen's arrest and the defences of property and persons) (Citizen's Arrest Act)</i>	2 nd Reading, HOC Referred to Committee	-
S-2	<i>An Act to amend the Criminal Code and other Acts (Protecting Victims From Sex Offenders Act) (2010)</i>	Royal Assent	All
S-6	<i>An Act to amend the Criminal Code and another Act (Serious Time for the Most Serious Crime Act) (2011)</i>	Royal Assent	Conservative Liberal
S-7	<i>An Act to deter terrorism and to amend the State Immunity Act (Justice for Victims of Terrorism Act)</i>	3 rd Reading, Senate	-
S-9	<i>An Act to amend the Criminal Code</i>	Royal Assent	All

	(auto theft and trafficking in property obtained by crime) <i>(Tackling Auto Theft and Property Crime Act) (2010)</i>		
S-10	An Act to amend the Controlled Drugs and Substances Act and to make related and consequential amendments to other Acts <i>(Penalties for Organized Drug Crime Act)</i>	Passed in Senate 1 st Reading, HOC	-

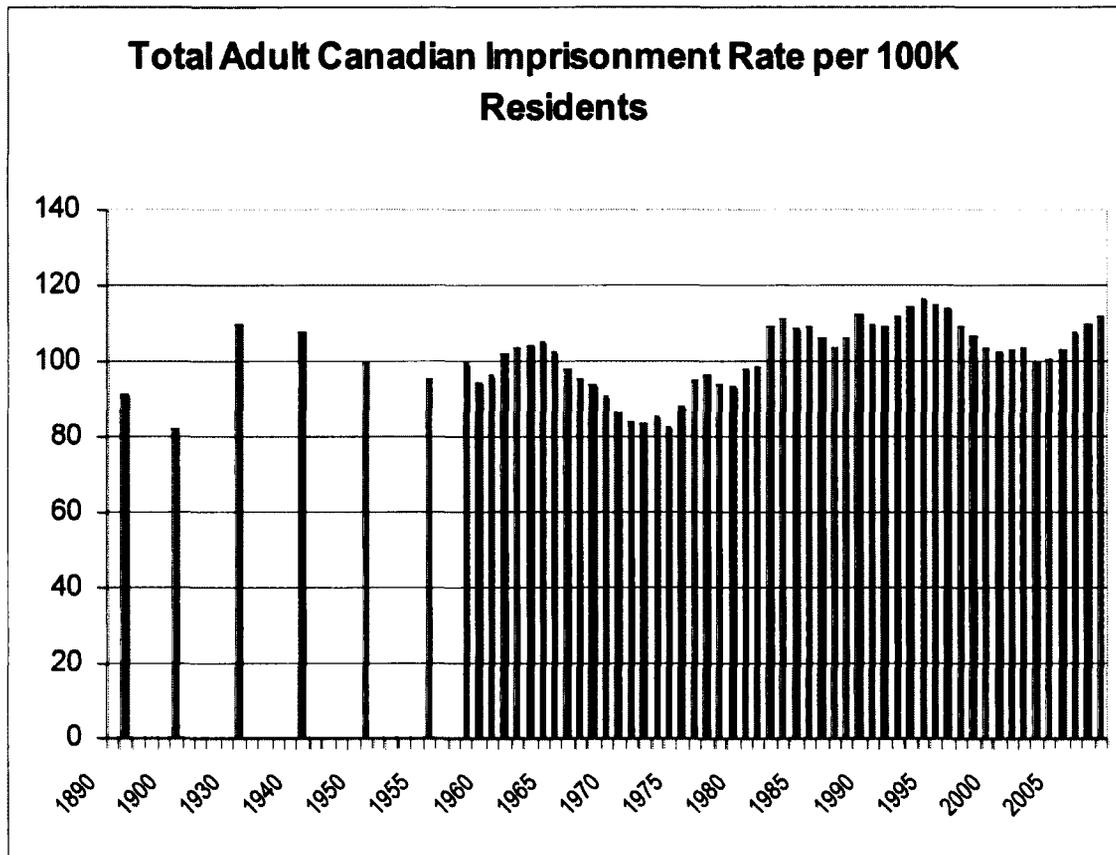
Appendix V: Overall Rate of Police-reported 'Crime' (1962-2010)

* Source: Brennan and Dauvergne (2011), page 2.

rate per 100,000 population



Appendix VI: Rate of Adult Imprisonment in Canada (1890-2008)



* Graph provided by Dr. Anthony Doob, Centre of Criminology and Sociolegal Studies, University of Toronto.

Appendix VII: Informal Information Requests (2009)

Jurisdiction	Date
Newfoundland and Labrador	February 24
Prince Edward Island	February 25
Nova Scotia	February 24
New Brunswick	February 24
Québec	February 24
Ontario	February 24
Manitoba	February 24
Saskatchewan	February 25
Alberta	February 25
British Columbia	February 24
Nunavut	February 25
Northwest Territories	Phone calls not returned
Yukon	February 26
Canada	February 26

Appendix VIII: Formal Information Requests (2009)

Jurisdiction	Agency / Department	File Number(s)
Newfoundland and Labrador	Department of Justice	JUS/10/2009
Prince Edward Island	Office of the Attorney General	AG-09-04
Prince Edward Island	Department Transportation and Public Works	TPW 003/09
Nova Scotia	Department of Justice	JUS-2009-19
Nova Scotia	Department of Transportation and Infrastructure Renewal	TIR-09-24
New Brunswick	Ministry of Public Safety and Solicitor General	No file number
New Brunswick	Ministry of Supply and Services	No file number
Québec	Ministère de la Sécurité publique	70843
Ontario	Ministry of Community Safety and Correctional Services	CU09-00740 CU09-00741 CU09-00742 CU09-00743 AC09-00513
Ontario	Ontario Realty Corporation	No file number
Manitoba	Department of Justice	2009-39
Saskatchewan	Ministry of Corrections, Public Safety and Policing	CPSP0909G
Saskatchewan	Ministry of Government Services	GS01-09G
Alberta	Solicitor General and Public Security	2009-G-0057
British Columbia	Ministry of Attorney General / Ministry of Public Safety and Solicitor General	292-30/PSS-2009-00615
Nunavut	Department of Justice	1029-20-JUS0206
Nunavut	Department of Community and Government Services	1029-20-CGS0613
Northwest Territories	Department of Justice	No file number
Yukon	Department of Highways and Public Works	A-2626
Canada	Correctional Service of Canada	A-2008-00338 A-2008-00339 A-2008-00340 A-2008-00341 A-2008-00342 A-2009-00049 A-2009-00143

Appendix IX: Informal Information Requests (2010)

Jurisdiction	Date
Newfoundland and Labrador	February 12
Prince Edward Island	February 11
Nova Scotia	January 28
New Brunswick	January 28
Québec	February 1
Ontario	January 28
Manitoba	January 28 February 18
Saskatchewan	January 28
Alberta	February 3
British Columbia	January 28
Nunavut	February 3 February 11
Northwest Territories	February 5
Yukon	February 5
Canada	January 28

Appendix X: Related Blog Posts (January 2010 – April 2011)

Date	Blog Post Title
26 January 2010	Public Forum – Feb. 17, 2010
18 February 2010	Add at Least Another \$140 Million: New Canadian Prison Bill is Now Estimated to be \$2.8645 Billion
5 March 2010	43% Increase in Federal Penitentiary Construction Budget: NDP
9 March 2010	Is CSC Planning “major construction initiatives”?
18 March 2010	Double-Bunking, Not New Penitentiaries Moving Forward: Toews
19 March 2010	No New Federal Prisons: Toews Maintains
31 March 2010	Federal Penitentiary Budget Up 54% Since 2005-2006
1 April 2010	What Penal Policy Looks Like When the ‘Facts’ Don’t Matter
6 April 2010	What the Conservative ‘Commitment’ to Victims in Canada Looks Like
6 April 2010	Put the Money Spent on Prisons Towards Helping Victims: Federal Ombudsman for Victims of Crime
14 April 2010	Now You [Don’t] Know and Knowing is Half the Battle
16 April 2010	Leave It to Beaver: Anecdotes and Sensationalism as Basis for Penal Policy
19 April 2010	How to Talk Out of Both Sides of Your Mouth: Ignatieff Critiques and Supports Prison Expansion in the Same Breath
28 April 2010	The Dollars-and-Cents of the Conservative Punishment Agenda: Parliamentary Budget Officer to Release Report on the Costs of Bill C-25 Next Week
29 April 2010	Prison Budget Showdown: Toews vs. Page, Provinces and Territories vs. the Feds
30 April 2010	Dodging Questions 101: A Crash Course by Vic Toews on Transparency
1 May 2010	Exacerbating the Capacity Crisis: Manitoba Attorney General Says Its’ Prisons Are Already Full
3 May 2010	The Need for a Moratorium on Punishment Legislation
4 May 2010	Exacerbating the Capacity Crisis: Add Nunavut to the List of Jurisdictions Unable to Absorb an Influx of New Prisoners Serving Longer Sentences
4 May 2010	Access Denied: Changing Face of Corrections Report Remains Hidden From Canadians
5 May 2010	Open Letter: Join the Canadian Punishment Legislation Moratorium Campaign
12 May 2010	A Prison in my Backyard: The Need for an Alternative
13 May 2010	The Big House is Not on Fire, At Least Not Yet: Baffin Correctional Centre Poses a Safety Risk says Ex-Fire Marshall
21 May 2010	‘Crime’ and Punishment Bills Represent 32% of Government Legislation Tabled This Parliamentary Session

22 May 2010	Show Me The Money: Provinces and Territories Want Feds to Cover the Costs of the Punishment Agenda
30 May 2010	Conrad Black Critiques CSC's Roadmap From Within the 'Belly of the Beast'
1 June 2010	My Offer to the Canadian Taxpayers Federation
6 June 2010	Annual Releases from CSC (2004-2005 to 2009-2010)
6 June 2010	Response from the Canadian Taxpayers Federation
7 June 2010	NDP Throw Their Hat Into the Ring of Headline Justice
16 June 2010	Provinces Left Holding the Bag: Prison Overcrowding Leads to Labour Disputes and Violence
18 June 2010	Story Lines to Watch for: PBO Report on Projected Costs of Bill C-25 to be Released on Tuesday
22 June 2010	We Are Not Alone: Ireland and UK Facing Similar Challenges When it Comes to Prison Expansion
22 June 2010	"The Funding Requirement and Impact of the 'Truth in Sentencing Act' on the Correctional Service of Canada": PBO Report on Bill C-25 Released
23 June 2010	CSC Commissioner Don Head Responds to PBO Report on Bill C-25 Implementation Costs
20 July 2010	Volume and Severity of 'Crime' Down Again: Statistics Canada Study
28 July 2010	Ottawa Prison Justice Day Event
1 August 2010	Looking to Cash-in on the Punishment Agenda: Minister Blackburn Lobbies for a Federal Penitentiary in his Riding
3 August 2010	'Unreported Crime' and the \$70 Billion Price Tag: Existing Phenomenons that Require Explanations, Not Obfuscation
6 August 2010	2010 Prison Justice Day Events Across Canada
6 August 2010	Report: CSC Expanding 35 Institutions
11 August 2010	Is More Double Bunking in DSC Penitentiaries Inevitable
18 August 2010	64.5% of CSC Facility Expansions in Conservative Ridings: A Case of Penal Patronage?
19 August 2010	Questions I Have Regarding CSC's E-mail on "Institutional Enhancements" at Springhill Institution
30 August 2010	If Your Narrative Does Not Fit, You Must Exit
4 September 2010	"Prisons and Planes" vs. "the Real Priorities of Canadians": The Need for Broader Engagement
8 September 2010	The Conservative Punishment Agenda: A Recipe for More Deaths in Custody?
7 October 2010	Who is Toews Speaking For and What is the Basis For His Claims?
8 October 2010	How Many Prisoners Is It Again Commissioner Head?
22 October 2010	"...there just isn't enough data for us to do that": CSC Commissioner Claims That Prisoner Influx for S-10 is Not Known
30 October 2010	Cumulative Impacts of Punishment Legislation Not Discussed at October FPT Meeting?

7 November 2010	So-called 'Public Safety' Laws Account for 39.7% of Federal Government Bills Tabled This Parliamentary Session
8 November 2010	Overcrowded Prisons Pose a Risk to the Safety of Prisoners, Staff and Communities: Correctional Investigator of Canada
12 November 2010	Politics First: Ads and Legislation in the Name of Victims
12 November 2010	Add Two More Units at Stony Mountain and Rockwood
1 January 2011	2010 Year-in-Review
10 January 2011	The Punishment Gravy Train and Penal Pork Barrelling Begins Early in 2011
19 January 2011	Kingstonians Get a Glimpse Into the 'Back Stage' of Penal Infrastructure Marketing
25 January 2011	Church Council on Justice and Corrections Launches "Prison Facts – The Co\$ts" Campaign
2 February 2011	Reintegration For Those Who Can Pay
7 February 2011	Do Parliamentarians Have the Right to Know the Costs of the 'Conservative' Punishment Agenda?
14 February 2011	The Running Federal Punishment Tab: 34 Penitentiary Units Announced to Date
16 February 2011	With a Penal Infrastructure Tab of \$2.83 Billion and Counting, Some Provinces and Territories Appear to Have Had Enough
1 March 2011	2011-2012 Main Estimates Tabled: CSC's Budget Up Another 21.1 Percent
4 March 2011	Some Rare Praise and a Word of Advice to the Non-fiscally Conservative Government on Shadow Management
14 March 2011	One Pig Deserves Another
16 March 2011	The Fiduciary Responsibility of Parliamentarians is a Two-way Street
17 March 2011	What are the Costs of CSC's Long-Term Accommodation Strategy?
21 March 2011	Conservatives Found in Contempt by Parliamentary Committee
23 March 2011	Absent Prisons and Missed Opportunities
26 March 2011	As the Harper Government Falls on Questions of Transparency, Much of the Projected Costs of the Punishment Agenda Remain Hidden
6 April 2011	Questions About the Conservative and Liberal Punishment Agendas
8 April 2011	A Green Platform Indeed: Questions for Elizabeth May and Company
9 April 2011	A Reality Check on the Costs of the Conservative Punishment Agenda
11 April 2011	Questions on the NDP's "Prevention, Protection and Prosecution" Platform
13 April 2011	A Note on the Bloc's Punishment Platform
14 April 2011	The Provincial-Territorial Penal Infrastructure Tab Now Sits at \$3.385 Billion
16 April 2011	The 'Other' is We

Appendix XI: Related Media Coverage (February 2010 – April 2011)

Date	Author / Interviewer	Article / Program Title	Publication / Broadcaster	Medium
18 February 2010	Sara Falconer	Community garden	<i>Ottawa Xpress</i>	Print
20 February 2010	Tonda MacCharles	Provinces to spend \$2.7B on prisons	<i>The Toronto Star</i>	Print
3 March 2010	Janice Tibbetts	Provinces spending billions on jails: Researcher	<i>Canwest News Service</i>	Print
7 March 2010	Janice Tibbetts	Ottawa to up prison spending to prep for inmate influx	<i>National Post</i>	Print
31 March 2010	Evan Solomon	Power & Politics with Evan Solomon	<i>CBC Television</i>	Television
1 April 2010	Ailsa Watkinson	Mandatory terms offer few benefits while hiking costs	<i>The Star Phoenix</i>	Print
9 April 2010	Dee Blues	Prison Radio	<i>CKUT 90.3 FM Montreal</i>	Radio
30 April 2010	Dale Smith	Cost of Tory crime agenda ballooning amidst government secrecy: Expensive 'tough on crime' bills don't work, say critics	<i>Xtra!</i>	Print
30 April 2010	Dee Blues	Prison Radio	<i>CKUT 90.3 FM Montreal</i>	Radio
4 May 2010	Janice Tibbetts	Public safety minister debunks double-bunking concerns in Canada's prisons	<i>Canwest News Service</i>	Print
6 May 2010	Anna-Maria Termonti	The Current	<i>CBC Radio One</i>	Radio
7 May 2010	Dee Blues	Friday Morning After	<i>CKUT 90.3 FM Montreal</i>	Radio
9 May 2010	Kathryn May	Watchdog, critics decry lack of financial information from Tories	<i>Ottawa Citizen</i>	Print

14 May 2010	-	Prison impact tales from Dorchester; Ideas from Carleton University	<i>Valemount Live!</i>	Web Television
17 May 2010	Chris Windeyer	GN needs cash infusion to fix BCC: Aariak	<i>Nunatsiaq Online</i>	Print
17 May 2010	-	Stark Raven	<i>Co-op Radio 102.7 FM Vancouver</i>	Radio
21 May 2010	Janice Tibbetts	One-third of Harper bills are crime and punishment measures	<i>Canwest News Service</i>	Blog
23 July 2010	Dee Blues	Friday Morning After	<i>CKUT 90.3 FM Montreal</i>	Radio
28 July 2010	Laura Collison	An ounce of prevention: Ballooning prison budgets could develop communities	<i>Vue Weekly</i>	Print
3 August 2010	Laura Czekaj	Single occupancy in Canada's jail cells encouraged	<i>Ottawa Sun</i>	Print
7 August 2010	Diana Zlomislac	Ottawa's prison plan won't work, critics say	<i>The Toronto Star</i>	Print
7 August 2010	Rob Tripp	Corrections refuses to tell taxpayers what it's doing with their cash	<i>CanCrime</i>	Blog
9 August 2010	-	Ottawa Morning	<i>CBC Radio One</i>	Radio
9 August 2010	-	Morning Special Blend	<i>CKCU 93.1 FM Ottawa</i>	Radio
9 August 2010	Evan Solomon	Power & Politics with Evan Solomon	<i>CBC Television</i>	Television
10 August 2010	Adrienne Ascah	Why new prisons won't help	<i>24 Hours</i>	Print
11 August 2010	John Moore	Moore in the Morning	<i>Newstalk 1010 Toronto</i>	Radio
11 August 2010	Dee Blues	Off the Hour	<i>CKUT 90.3 FM Montreal</i>	Radio
12 August	Rob Tripp	Prison bosses	<i>CanCrime</i>	Blog

2010		change their rules to expand double-bunking		
2 September 2010	Rob Tripp	Liberals blast prisons spending on cells	<i>Kingston Whig Standard</i>	Print
2 September 2010	Janice Tibbetts	Prison expansions boom to meet flood of inmates	<i>National Post</i>	Print
3 September 2010	Janice Tibbetts	Canada expands prison system	<i>National Post</i>	Print
24 September 2010	Dee Blues	Prison Radio	<i>CKUT 90.3 FM Montreal</i>	Radio
6 October 2010	Jane Taber	Power Play	<i>CTV News</i>	Television
4 November 2010	Maureen Brosnahan	Canada's prisons overcrowded: advocates	<i>CBC News</i>	Web Print
6 November 2010	David Koch	No Room in the Warehouse: Canada's prison system is growing	<i>The Media Co-op</i>	Web Print
19 November 2010	Janice Tibbetts	Senators to consider bill stripping Clifford Olson of pension	<i>Postmedia News</i>	Print
17 December 2010	Robyn Maynard	Building Prisons, Creating Prisoners	<i>The Dominion</i>	Web Print
January 2011	Patricia Clarke	Justice: Politics and prisons	<i>The United Church Observer</i>	Print
10 January 2011	Gloria Galloway	Government faces hard sell for thousands of new jail cells	<i>The Globe and Mail</i>	Print
11 January 2011	-	L'Association de justice pénale dénonce le «patronage carcéral»	<i>Le Soleil</i>	Print
15 January 2011	Rob Tripp	Thousands of cons not getting key programs	<i>CanCrime</i>	Blog
24 January	-	The Spoken Word	<i>CFRC Kingston</i>	Radio

2011		Wildcard		
26 January 2011	J. Stevens	If You Build It... They Will Come	<i>Montreal Media Co-op</i>	Web Print
4 February 2011	Kathleen O'Hara	Conservatives' crime-and-punishment plans will cost us all	<i>Rabble</i>	Web Print
10 February 2011	Hugo De Grandpré	Réforme de la justice criminelle : Les provinces impatientes de connaître les coûts	<i>La Presse</i>	Print
12 February 2011	Mari Galloway	Critics crack down on "tough on crime"	<i>The McGill Daily</i>	Web Print
17 February 2011	Gloria Galloway	Provinces want Ottawa to help pay additional costs for prisons	<i>The Globe and Mail</i>	Print
24 February 2011	Darryn Davis	Anti-pot bill: Opposition Politicians are taking issue with a proposed Federal Law that would get tough on drugs	<i>CKWS Television Kingston</i>	Television
28 February 2011	-		<i>Co-op Radio CFRO 102.7 FM Vancouver</i>	Radio
9 March 2011	Donglas Quan	B.C. jail caught off guard by Tamil ship	<i>National Post</i>	Print
18 March 2011	Alex McClelland	More Jail Than We Need?	<i>Torontoist</i>	Web Print
18 April 2011	Chris Cook	This Week on Gorilla Radio	<i>Gorilla Radio 101.9FM Victoria</i>	Radio
21 April 2011	Evan Solomon	Power & Politics with Evan Solomon	<i>CBC Television</i>	Television
26 April 2011	Dale Smith	Conservative prison plan highlights parties' crime agendas	<i>Xtra!</i>	Print
29 April 2011	Dee Blues	Prison Radio	<i>CKUT 90.3 FM Montreal</i>	Radio

Appendix XII: Related Public Presentations (February 2010 – April 2011)

Date	Presentation Title	Event or Host Organization	Location
17 February 2010	(Un)mapping Penal Expansion in Canada: Preliminary Findings	<i>Prorogation as Opportunity: Proposing New Directions for Criminal Justice Policy in Canada</i>	Ottawa, Ontario
27 February 2010	Resisting Penal 'Inevitability': Reflections and Proposals	<i>Building a National Prisoners' Justice Movement</i>	Toronto, Ontario
20 April 2010	Locking Beyond our Pocketbooks: The Moral Imperative for Reducing our Reliance on Imprisonment	<i>Rotary Club of Kemptville</i>	Kemptville, Ontario
25 May 2010	Towards the Death of Reintegration in Canada? Examining the Potential Impacts of the Conservative Agenda on the Community Supervision Sector	<i>Annual General Meeting of Maison Decision House</i>	Ottawa, Ontario
31 May 2010	An Overview of Prison Expansion in Canada	<i>Bi-annual Meeting of the Provincial-Territorial Heads of Corrections</i>	Ottawa, Ontario
10 August 2010	Prisons Kill	<i>Prison Justice Day: A Time to Reflect Upon Deaths in Custody and Other Issues Inside Our Prisons</i>	Ottawa, Ontario
30 September 2010	Quand tous les chemins mènent à Rome: The Relationship Between Penal 'Reform' and Prison Expansion in Canada	<i>8th Annual Training Conference of the Ontario Halfway House Association</i>	Kingston, Ontario
19 October 2010	'Shut the Fuck Up'? Dilemmas Facing NGO's in Precarious Times	<i>Annual General Meeting of the National Associations Active in Criminal Justice</i>	Ottawa, Ontario
8 November 2010	"The Times They Are A-Changin'": Says Who?	<i>Annual General Meeting of the John</i>	Toronto, Ontario

		<i>Howard Society of Toronto</i>	
9 December 2010	Bill C-31: An Act to Amend the Old Age Security Act (Eliminating Entitlements for Prisoners Act)	<i>Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities</i>	Ottawa, Ontario
13 January 2011	Green Prisons, Carceral Stimulus and Investment in Public Safety? Contesting Penal 'Common Sense'	<i>Ontario Public Interest Research Group Kingston Forum</i>	Kingston, Ontario
18 January 2011	(Un)mapping Prison Expansion in Canada: The Relationship Between Penal 'Reform' and Penal Infrastructure Initiatives	<i>Office of the Correctional Investigator of Canada</i>	Ottawa, Ontario
25 January 2011	The Punishment Agenda on Trial: Problems of Substance and Process	<i>Prison 101</i>	Montreal, Québec
23 February 2011	Canada at a Crossroads	<i>Norml Canada</i>	Kingston, Ontario
3 March 2011	Canada at a Crossroads: A Brief on Prison Expansion	<i>Standing Committee on Public Safety and National Security</i>	Ottawa, Ontario
10 March 2011	On the Politics and Experience of Waiting	<i>John Howard Society of Canada Staff Conference</i>	Calgary, Alberta
11 March 2011	Access to Information and Freedom Information Requests: A Tool for Research and Advocacy	<i>John Howard Society of Canada Staff Conference</i>	Calgary, Alberta
19 March 2011	The Relationship Between Drug Prohibition and Imprisonment	<i>Norml Canada</i>	Ottawa, Ontario
27 April 2011	If I Had Ten Billion Dollars: The Case Against Prison Expansion and a Call for Justice Reinvestment	<i>Elizabeth Fry Society of Saskatchewan</i>	Saskatoon, Saskatchewan