Corrections and the Political Agenda in Canada: Toward an Illuminated Future or a Walk in the Darkness?

by R.E. Bob Brown*

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> There are many prisoners in the world—more than 10 million in all—certainly more than a decade ago—but the trend is not only in one direction. In many countries there are declines in prisoner numbers. Why this is happening in some countries but not others requires closer examination (van Zyl Smit, quoted in Allen, 2015, p. 4).

According to statistics compiled by the Institute for Criminal Policy Research (Walmsley, n.d.), the number of inmates in German prisons in 2004 was 79,452, or 96 prisoners per 100,000 population. By August 2015, Germany's reported prison population had dropped by 22% to 61,906, or 76 per 100,000. In the Netherlands, where the prison population had reached 20,075, or 123 per 100,000, in 2004, it had fallen by 42% to 11,603, or 75 per 100,000, by October 2014 (Walmsley, n.d.). In 2015, Nathalie Prouvez, Netherlands Institute for Human Rights, reported that for the past few years, "the Netherlands has been renting out empty prison space to Belgium" (UN Human Rights, 2015).

*R.E. Bob Brown of Victoria, British Columbia, is a former parole district director for Vancouver Island, former director of the corrections program at the International Centre for Criminal Law Reform and Criminal Justice Policy, and a board director with the American Probation and Parole Association. He is currently under contract to the United Nations, assisting the Minister of Justice of Somaliland with the introduction of a parole system.

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In Canada, however, the trend in federal incarcerations has been decidedly upward, growing more than 14.5% from 2004 to 2013 and increasing steadily from 2009 (Public Safety Canada, 2013, p. 36). If the trend in countries we consider to be similar to ours is downward, why is Canada bucking it?

These trends are, of course, linked to changes in policy approaches and legislative agenda, and, as Alexis de Tocqueville famously observed: "When the past no longer illuminates the future, the spirit walks in darkness." In the two nations that are the focus of this paper—Canada and the United States—are there signs in their approaches to community and custodial corrections that they are learning from the past?

In Canada at present, it would appear that some politicians, in addressing both community- and custodial-based corrections, prescribe, promote and, if in government, legislate "solutions" based on ideology and not on readily available evidence. The "tough on crime" rhetoric of such politicians, civic leaders, and lawmakers, which in many instances is reported to the community by journalists, can only be described as societal posturing, as opposed to the inspiration that flows from evidence.

In 2013, Vancouver, Canada, and the Canadian Criminal Justice Association hosted the 34th Canadian Congress on Criminal Justice. At this event, a memorable address was provided by Mary Campbell, the then recently retired director general, Corrections Directorate, Public Safety Canada. Her address challenged the posturing of Canada's Conservative government of the day. She highlighted how the government had dressed up its legislative agenda with "tough on crime" language and rhetoric. She bluntly shared her conclusion that the agenda was NOT tough on crime. It was tough on offenders, it was tough on victims, and it was tough on taxpayers, but it was strikingly soft on crime because the government's laws, policies, and programs were doing nothing to reduce or address crime (Brown, 2013, p. 39).

In Canada, are we seeing a stubborn refusal to draw on evidence that incarceration is not always the most effective response to crime and criminal behavior in our communities? Although this article considers the situation in other jurisdictions, it focuses on the custodial and noncustodial reality in Canada and the United States and concentrates its examination on the legislative agenda in Canada.

International Rules

The United Nations Standard Minimum Rules for Non-custodial Measures (known as the Tokyo Rules) stipulates that noncustodial measures should provide options, thus reducing the use of imprisonment (Rule 1.5), and that noncustodial measures should be used in accordance with the principle of minimum intervention (Rule 2.6).

For its part, the preamble to the European Prison Rules stresses that "no one shall be deprived of liberty save as a measure of last resort" (Council of Europe, 2006, par. 4).

Custodial Populations of the Group of Seven

The Group of Seven (G7) is a group consisting of seven major advanced economies as determined by the International Monetary Fund. Canada's custodial population, as reported by the Institute for Criminal Policy Research (Walmsley, n.d.), ranks third highest of the G7 countries based on the reported incarceration rates per 100,000 population as reflected by the country's most recent data: Japan, 48, December, 2014; Germany, 76, August 2015; Italy, 86, October, 2015; France, 100, July, 2015; Canada, 106, October, 2013; the United Kingdom (England and Wales), 148, November 2015; and the United States, 698, December, 2013.

Custodial Populations in Canada

In Canada, remand detention, probation, and custodial sentences of under two years are the responsibility of the 10 provinces and three territories. Custodial sentences of two years to life, as well as parole for those in federal custody, are the responsibility of the federal government.

Tables 1 and 2 show the provincial/territorial remand and custodial sentenced populations from 1997 to 2005. Because

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the data provided are a "snapshot in time," caution is required with over-interpretation of the numbers. They are provided to assist in identifying trends.

As shown in Table 1, the provincial/territorial remand custodial population peaked in 2009/2010 following a steady growth from the low in 1997/1998. Table 2 shows that the provincial/territorial sentenced custodial population was at its lowest in 2007/2008 and at its highest in 1997/1998. Although some data are available for the probation caseloads of the provinces and territories in Canada dating back to 1996, a lack of consistency in data collection over the years makes analysis difficult.

In 2015, Canada's Correctional Investigator Howard Sapers reported that:

> Since March 2005, the federal inmate population has increased by 17.5%. Over the same period, the Aboriginal custodial population grew by 47.4% and Black offenders by over 75%. These groups now comprise 22.8% and 9.8% of the total incarcerated population respectively. The federally sentenced women population has increased 66%, with the Aboriginal women count growing by 112%. Over the same period, the number of Caucasian offenders has actually declined by 3% (quoted in Correctional Investigator, 2014a, p. 2).

The federal custodial population (two years to life) shown in Table 3 is now at its highest level ever, even though the crime rate in Canada has been decreasing over the past two decades. In 2003/2004, the population in federal prisons was 12,413. In 2012/2013, it jumped to 14,745. For the same 10-year period, the population grew each year except for 2008/2009. The upward trend is clear.

Another significant trend is apparent when it comes to the proportion of the federally supervised populations, full parolees, and offenders supervised on statutory release. Table 4 shows that statutory release supervisees accounted for 28.3% of the combined day/full parole, statutory release caseload in 1999/2000. Fast forward to 2012/2013, and the statutory release caseload has jumped to 39.3%, its highest point in 16 years, with supervised paroles down and statutory releases up. (If not released via the discretion of the paroling authority, offenders are released by statute on statutory release having served two-thirds of their sentence unless the offender is detained by the paroling authority. In the latter circumstance, the offender is released at the expiration of the sentence. In 2012/2013, of 236 detention reviews, 232 offenders were detained. This detention rate of 98.3% was the highest in the last 15 years.)

The Correctional Investigator reported that in 2013/2014, 71% of all releases from federal custody were by statutory release:

> When the Corrections and Conditional Release Act was passed by Parliament in 1992, statutory release was intended to be a release option of last, not first resort (quoted in Correctional Investigator, 2014a, p. 3).

The current trend clearly contradicts the intent of the 1992 legislation.

Table 1: Provincial/Territorial Remand Population

Year	Population	Year	Population
1997–1998[a]	6,109	2005–2006	N/A
1998–1999	6,472	2006–2007	12,169
1999–2000	6,665	2007–2008	12,973
2000–2001	7,428	2008–2009	13,548
2001–2002	7,980	2009–2010	**13,739**
2002–2003	8,728	2010–2011	13,086
2003–2004[b]	9,174	2011–2012	13,369
2004–2005	9,656	2012–2013	N/A

[a] 1997/1998 to 2002/2003: Public Safety Canada (2007), p. 40.
[b] 2003/04 to 2012/13: Public Safety Canada (2013), p. 36.

Table 2: Provincial/Territorial Custodial Sentenced Population

Year	Population	Year	Population
1997–1998[a]	**12,573**	2005–2006	N/A
1998–1999	12,478	2006–2007	10,032
1999–2000	11,438	2007–2008	**9,799**
2000–2001	10,806	2008–2009	9,931
2001–2002	10,931	2009–2010	10,045
2002–2003	10,621	2010–2011	10,922
2003–2004[b]	9,863	2011–2012	11,138
2004–2005	9,830	2012–2013	N/A

[a] 1997/1998 to 2002/2003: Public Safety Canada (2007), p. 40.
[b] 2003/04 to 2012/13: Public Safety Canada (2013), p. 36.

Table 3: Federal Custodial Population

Year	Population	Year	Population
1997–1998[a]	13,438	2005–2006	12,671
1998–1999	13,187	2006–2007	13,171
1999–2000	12,816	2007–2008	13,581
2000–2001	12,794	2008–2009	13,286
2001–2002	12,663	2009–2010	13,531
2002–2003	12,652	2010–2011	14,221
2003–2004[b]	12,413	2011–2012	14,419
2004–2005	12,624	2012–2013	**14,745**

[a] 1997/1998 to 2002/2003: Public Safety Canada (2007), p. 40.
[b] 2003/04 to 2012/13: Public Safety Canada (2013), p. 36.

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Table 4: Federal Non-Custodial Population—Day Parole, Full Parole, and Statutory Release

Year	Day Parole	Full Parole	Statutory	Total
1997–1998[a]	1,207	3,895	2,168	7,270
1998–1999	**1,385**	4,168	2,151	7,704
1999–2000	1,283	**4,347**	2,219	**7,849**
2000–2001	1,165	4,253	2,163	7,581
2001–2002	1,073	3,952	2,165	7,190
2002–2003	1,040	3,736	2,186	6,962
2003–2004[b]	1,054	3,670	2,162	6,886
2004–2005	962	3,545	2,068	6,575
2005–2006	1,076	3,516	2,063	6,655
2006–2007	1,070	3,532	2,180	6,782
2007–2008	1,059	3,543	2,189	6,791
2008–2009	1,013	3,585	2,490	7,088
2009–2010	1,088	3,584	2,429	7,101
2010–2011	1,012	3,633	2,455	7,100
2011–2012	1,154	3,313	2,600	7,067
2012–2013	1,140	3,068	**2,727**	6,935

[a] 1997/1998 to 2002/2003: Public Safety Canada (2007), p. 70.
[b] 2003/04 to 2012/13: Public Safety Canada (2013), p. 72.

At the same time, the majority of aboriginal offenders are held until they are released on statutory release, "giving them less time under supervision and—by the government's own calculations—shrinking their chances of success at living a free life again. Almost 85 per cent of aboriginal inmates are held until federal authorities have little choice but to release them" (Fine, 2015, pars. 1, 2).

These data reflect, to a degree, the correctional landscape in Canada, and they identify several important trends. The current and past corrections situation in the United States provides a useful comparison.

Crime Control and Incarceration in the United States

Since the mid-1970s, U.S. crime control policies have concentrated heavily on the increased use of custodial sanctions. Indeed, "incapacitation and retribution are central [to the corrections system in the United States], and rehabilitative aims remain secondary (at least often in practice if not in policy). This approach contrasts strongly with the one that prevails in Germany and the Netherlands, which are both organized around the central tenets of resocialization and rehabilitation" (Subramanian & Shames, 2013, p. 7).

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> Fueled by a belief that only incapacitation and punitive sanctions could protect public safety, these policies included the introduction of mandatory minimum sentences, habitual offender legislation, parole release restrictions, truth-in-sentencing laws, and an overall increase in the number and length of custodial sanctions. By 2012, their impact had become clear: in 40 years, the prison population grew by 705 percent, from nearly 175,000 state inmates in 1972 to just under 1.4 million as of January 1, 2012. With more than one in every 104 American adults in prison or jail, the U.S. [has in 2013] the highest incarceration rate in the world—at 716 per 100,000 residents. State corrections expenditures reached $53.5 billion for fiscal year 2012 (Subramanian & Shames, 2013, p. 3).

In 2014, Jeremy Travis, president of John Jay College of Criminal Justice, indicated that:

> The best single proximate explanation for the rise in incarceration (in the United States) was not rising crime rates, but the policy choices made by legislators to greatly increase the use of imprisonment as a response to crime (quoted in Breslow, 2014, par. 7).

A June 2015 opinion piece in the *New York Times* observed a sea change:

> When Hillary Rodham Clinton, Ted Cruz, Eric H. Holder, Jr., Jeb Bush, George Soros, Marco Rubio, and Charles G. Koch all agree that we must end mass incarceration, it is clear that times have changed. Not long ago, most politicians believed the only tenable stance on crime was to be tougher than the next guy (Mauer & Cole, 2015, par. 1).

The title of the *New York Times* piece was "How to Lock up Fewer People." The perspective was similar in a more recent opinion piece in *USA Today:* "The Crack Trade Fades, but the Prisons Still Bulge":

> When President Obama, the liberal ACLU and the conservative Koch brothers all agree on something, it is probably worth paying attention. And they all agree that it is time to rethink America's penchant for doling out harsh, mandatory sentences even for low-level, non-violent crimes (*USA Today*, July 16, 2015, p. 9A).

In the past, both liberal and conservative factions in the United States were tripping over each other to project a "tough on crime" image, which led to policy outcomes that effectively accelerated the "scourge of mass incarceration" (Ortellado, 2015, par. 1).

Has the United States seen a shift—a downward trend—as it relates to locking up fewer people? After 40 years of record-shattering growth, a decline has begun. Although the reduction is more recent and smaller than that seen in both Germany and the Netherlands, state prison inmate numbers decreased steadily from 2009 to 2012, with a modest increase in 2013. For the first time since 1980, federal prison numbers decreased in 2013, by 1,949 prisoners (Carson, 2014, p. 2).

Will this trend continue? Former U.S. Attorney General Eric Holder announced in September 2014 that "the federal prison population is expected to drop by more than 12,000 inmates over the next two years" (quoted in Couch, 2015, par. 8).

Nine states have recently produced double-digit declines, led by New Jersey (29% since 1999) and New York (27% since 1999) (Sentencing Project, 2015, par. 3). Texas has cut both crime and costs, having garnered supportive public opinion, especially among some conservative leaders, and increased awareness that there are research-based alternatives that cost less than prison and work better to reduce recidivism (PEW, 2013, pars. 4, 5).

Although "36 states and the District of Columbia still have incarceration rates higher than that of Cuba, which is the nation with the second highest incarceration rate in the world" (Wagner, Sakala & Begley, 2012, par. 6), it appears that the United States is trending toward an "illuminated future."

Fear of Crime

Mark Bourrie, who holds a doctorate in Canadian media and military history, asks what is going on in Canada?

> Why, instead of levelling with Canadians that their streets are, in fact, safe and their kids can play outside, does Prime Minister Harper insist on scaring the hell out of people with a fake problem, then offering a solution that causes both human misery and higher government spending? Because scaring Canadians elects the Conservatives. That's why the facts aren't allowed to get in the way of their truth, and why the Harper government works so hard to make Canadians believe their streets are swarming with criminals (Bourrie, 2015, p. 143).

In a speech to the Canadian Criminal Justice Association, *The Globe and Mail* justice reporter Kirk Makin touched on the politics of fear of crime:

> To most politicians, the votes lie in creating fear, not calm. The dividends are in demanding longer sentences and the curtailment of conditional release programs, not in leading a public debate on the shortcomings of prison and alternative punishments (quoted in Department of Justice Canada, n.d.).

Fear remains a relevant political strategy for the federal government. In April 2015, following a terrible oil spill onto the pristine beaches of Vancouver's downtown English Bay, concerns were voiced by all levels of government. The senior local Conservative Member of Parliament and Industry Minister James Moore responded "that it was highly inappropriate for politicians to point fingers while the cleanup was underway and before all the facts were known—such talk promoted anxiety and fear" (quoted in Robinson & O'Neil, 2015, par. 18).

The politics of fear as utilized by the current federal government is reminiscent of the following perspective provided by George Orwell, the renowned novelist:

> All political thinking for years past has been vitiated in the same way. People can foresee the future only when it coincides with their own wishes, and the most grossly obvious facts can be ignored when they are unwelcome.

Facts were an issue in the 2015 oil spill and they were welcomed by the federal government. They were critical of promoting anxiety and fear, forgetting that they routinely use this tool in the correctional arena. They stressed that they needed the facts. Are "grossly obvious facts" and evidence-based correctional practices welcomed by the government of the day or unwelcomed as they do not "coincide with their wishes"?

Ignoring the Evidence

Some knowledgeable commentators have been frank about the degree of cynicism surrounding the criminal justice file in Canada. Respected Justice David Cole of the Ontario Court of Justice is a sentencing and parole expert. His response to the "tough on crime" agenda as reported by Kirk Makin was:

> You would think that you would want good policy development in the area of criminal justice particularly in sentencing but everything is done on the fly, and always with a view to quick political gain. All the academics know this. All the commentators know this (quoted in Makin, 2012, par. 12).

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Makin reported further that Judge Cole believed that:

> [All the decisions are made at the] upper echelons of government. All of us who know civil servants in this area know that they are not listened to. It's all about what political gain can be made. There is no room for thoughtful disagreement. Take it or leave it (quoted in Makin, 2012, par. 18).

The government's misstatement of the facts on criminal justice issues is apparently deliberate. The Prime Minister's former chief of staff, Ian Brodie, speaking extraordinarily frankly at a public policy gathering at McGill University, said:

> Politically, it helped us [the Conservative government] tremendously to be attacked by sociologists, criminologists, and defence lawyers because they are held in lower repute than Conservative politicians (and so) we never really had to engage in the question of what the evidence actually shows about various approaches to crime (quoted in Mallea, 2010, p. 35).

John Trent taught political studies at the University of Ottawa for 30 years and is now a Fellow of the Centre on Governance. He stresses that:

> A harsh regime of law and order currently exists that ignores the roots of crime in its drive for more prisons and more people in them for longer terms—at a great cost to society (Trent, n.d., p. 3).

Considering Trent's conclusion, reflecting back on the *New York Times* headline "How to Lock up Fewer People," and given the sentiment and trends shared above, it would appear that an appropriate Canadian headline consistent with the current federal government correctional agenda would be "How to Lock up More People and for Longer."

The Canadian legislative approach is described further in a recent edition of the Canadian Criminal Justice Association's *Justice Report*:

> Parliament's response to crime in recent years is to pass restrictive crime bills—as rapidly as possible. These bills, the legislation behind the Canadian government's tough-on-crime agenda, seem to have the net effect of distracting public attention from the underlying societal problems and to justify social controls, achieved through more legislation. The concept here is "moral panic" creating anxiety and upheaval over an epidemic that doesn't exist and has not existed over the past two–three decades (Holmgren & LaHaye, 2015, p. 12).

The theme of ignoring evidence, expert witness, and disengagement from an experienced criminal justice community is once again highlighted by *The Globe and Mail's* Jeffrey Simpson:

> Almost the entire expert community—corrections experts, lawyers, judges, criminologists —opposes most of these measures. Many of them have trooped before parliamentary committees to say the measures either will do nothing to deter crime or will make things worse. To no avail, of course, because we're not talking about rational policy-making—we're talking about the politics of fear (Simpson, 2011, par. 3).

Penal Reform International provides an enlightening observation concerning "scientific evidence":

> Many commentators unfavourably contrast the way governments take healthcare decisions and the way they approach criminal justice. In the case of health, governments who blatantly ignore scientific evidence in their policies are criticised for the risks to which they expose their population and that of neighbouring countries. However, such criticism is rarely levelled at governments who ignore evidence of what works to reduce crime in their criminal justice law and policy and thereby expose communities to high rates of crime (Penal Reform International, 2013, p. 11).

Responsibility

Another aspect of criminal justice is the way it is managed. In Sweden, for example, as shared by Nils Öberg, Head of Sweden's Prison and Probation Service:

> Individual members of government are constitutionally prohibited from interfering with the way we as a public service carry out our work. The government, not a minister, defines our overall goals and the parliament provides the legal framework and the funds we need to do the job. How we carry out our work is, in almost every aspect not regulated by law, entirely up to us (quoted in Prison Reform Trust, 2014, par. 8).

The management system in Canada is markedly different, as exemplified by the message event proposal (MEP) system used by the Canadian federal government, which relies on micromanagement rather than delegation:

> Any [Conservative] MP, public servant, diplomat, or military officer who wants to say anything to the media has to fill out a Message Event Proposal (MEP) and submit it to the Prime's Minister's Office and the Privy Council Office. The form has headings including Desired Headline, Strategic Objective and Desired Sound bite . . . they can take weeks to process . . . and approval is not guaranteed (Bourrie, 2015, p. 68).

The Theatre of Language

In a further effort to convince Canadians that the criminal justice system is broken and needs fixing, the government has departed from a long-standing tradition of neutral language and has introduced, as Mallea describes, inflammatory language when naming its crime bills, and staging a "theatre of language" (Mallea, 2010, p. 33). A prime example is the proposed *Respecting Families of Murdered and Brutalized Persons Act*.

The U.S. Government's 2008 *Second Chance Act* took a different and more inspiring tack, in both its content and its title. The law echoes the mission of the International Community Corrections Association—that is, to promote "community-based corrections for adults and juveniles to enhance public safety."

In 2014, the United Kingdom brought in its plainly but encouragingly named *Offender Rehabilitation Act*. Canada may be unique in giving the "theatre of language" top billing.

The Legislative Landscape

The Canadian government appears to have little respect for the expertise of academics, lawyers, judges, and others who have worked in the criminal justice system for years. It ignores reams of solid research, based upon years of first-hand experience and peer-reviewed analyses (Mallea, 2010, p. 35). While claiming "truth in sentencing," it neglects truth in legislating. (This refers to the *Truth in Sentencing Act* [S.C. 2009, c. 29], or *An Act to amend the Criminal Code* [*limiting credit for time spent in pre-sentencing custody*], which received assent in 2009.)

A 2005 UN Human Rights Working Group reported that:

> States [countries] enjoy a wide margin of discretion in the choice of their penal

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> policies, e.g., in deciding whether the public interest is best served by a "tough on crime" approach or rather by legislation favouring measures that are alternatives to detention, conditional sentences and early release on parole (UN Commission on Human Rights, 2005, 19, par. 61).

How has the "margin of discretion" been implemented in Canada? It is useful to take a closer look at the government's criminal justice legislative agenda since 2006, when it began pursuing its "tough on crime" approach—just as crime rates in Canada were falling to their lowest since the early 1970s.

Mandatory Minimum Sentences

The intensification of the use of mandatory minimum sentences in Canada, emblematic of the "tough on crime" approach "is somewhat anomalous":

> Several comparable jurisdictions with mandatory sentencing legislation are presently either repealing or amending these punitive laws. The U.S., for instance, is moving away from mandatory minimums by reintroducing judicial discretion in sentencing at the federal and state levels (Mangat, 2014, p. 10).

The British Columbia Civil Liberties Association points out that:

> Mandatory minimum sentences remove from judges their discretion to enact appropriate, proportionate sentences—sentences that take into account all considerations, including the gravity of the offence and the degree of the offender's fault. By fashioning a one size fits all floor for sentencing, mandatory minimums make anemic one of the core features of the criminal justice system: justness. The cost of that will be more than we can we afford (Mangat, 2014, pp. 83, 84).

The Conservatives' 2008 *Tackling Violent Crime Act* significantly reduced the discretion of sentencing judges in relation to certain firearm offenses. On April 14, 2015, the Supreme Court of Canada struck down the mandatory minimum provision and upheld a 2013 Ontario Court of Appeal ruling that labelled the law cruel and unusual (Brown, 2015, p. 12). The Conservative government spent almost $7 million defending this unconstitutional legislation along with 15 other constitutional court challenges (Minsky, 2015).

Eligibility for Parole

In March 2011, Bill C-38, the *Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act*, received royal assent. Until that date, parole eligibility for a life sentence was a maximum of 25 years. For each first-degree murder (planned and deliberate killing), the convicted now waits as long as 25 years before a parole hearing. Four murders could bring a parole eligibility period of 100 years.

The legislation became a sentencing reality in 2013. As reported in the print media:

> A 21-year-old armoured-car employee in Edmonton pleaded guilty to killing three coworkers in a heist, and his lawyer accepted a plea deal of 40 year parole eligibility—the harshest sentence in Canada since the last death penalty case in 1962. The offender will be eligible for parole at age 61" (Fine, 2014, par. 10).

At the end of Canada's 41st Parliament in June 2015, a number of bills were left in limbo, including Bill C-587, an *Act to amend the Criminal Code* (increasing parole ineligibility), short title: *Respecting Families of Murdered and Brutalized Persons Act*. A brief summary of this bill proposes "imprisonment for life without eligibility for parole until the person has served a sentence of between twenty-five and forty years as determined by the presiding judge after considering the recommendation, if any, of the jury" (Parliament of Canada, 2015a, par. 1).

Bearing in mind C-587's proposal for a 40-year parole ineligibility, consider that Serbia and Croatia, which set their maximum at 40 years, and Bosnia and Herzegovina, which has set its own at 45 years, are post-conflict states. Portugal, however, has set its maximum sentence without eligibility for parole at 25 years (Cayman, 2013, pp. 17–21), the same as Section 110.3 of the Rome Statute (ICC, 2001, Article 74).

In 2014, Bill C-483, *An Act to amend the Corrections and Conditional Release Act* (escorted temporary absence), received royal assent. The amendment shifted the granting authority of escorted temporary absences for "lifers" from the prison warden to the Parole Board of Canada. During the parliamentary review of the bill, opposition MP Wayne Easter observed that:

> The information by the promoter of the bill identifies a single case of the release of an offender on the authority of the warden of the institution who had been denied a similar request the year prior. No evidence was provided that the offender in question committed any offence while on temporary release. The legislation as it was originally presented to the House was not supported by evidence indicating an abuse of the escorted temporary release program, which would justify such legislative change (Parliament of Canada, 2014, 3rd speaker, par. 5).

"According to a November 2013 government briefing document prepared by the Correctional Service, each temporary absence application undergoes a thorough analysis of risk that includes consultation with a security intelligence officer and community corrections liaison officer" (Quan, 2013, par. 10). For the 10-year period preceding the enactment of this legislation, the average successful completion rate for escorted and unescorted temporary absences was 99% (Public Safety Canada, 2013, p. 97).

"By fashioning a one size fits all floor for sentencing, mandatory minimums make anemic one of the core features of the criminal justice system: justness."

Release Conditions

Another bill—this one in limbo pending the October 2015 federal election—C-616, *An Act to amend the Criminal Code and the Corrections and Conditional Release Act* (failure to comply with a condition) would make the breach of a release condition by an offender "without reasonable excuse" either a summary or an indictable offense. With an alleged breach of a condition, the parole officer would be mandated to inform the parole board, the police of jurisdiction, and the respective attorney general. The discretion of the paroling authority and the parole service would be reduced and shifted to crown counsel/attorney and a judge—in other words, it would be passed from an administrative authority to an overburdened judicial authority, along with increased costs to the provinces and territories (Brown, 2015, p. 12).

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Funding for Reintegration Programs

Consider the expenditures required to address the "new" custodial measures in light of the 2014 observation made by Canada's Correctional Investigator concerning the budget of the Correctional Service Canada (CSC). Mr. Sapers noted that "Community corrections operations continue to be the poor cousin of institutional corrections. Less than 5% of CSC's total budget is allocated to correctional reintegration programs" (quoted in Correctional Investigator Canada, 2014b, p. 4).

strategy—no more victims. The response from the Public Safety Minister in June 2015 indicated that the Conservative government "believes that dangerous sex offenders belong behind bars" (quoted in Butler, 2015, par. 5). Such a simplistic response is indicative of interest not in community safety but in political positioning. If a portion of the $7 million spent by the government defending the constitutionality of their legislation had been allocated to CoSA, it would have made a significant contribution to reintegration programs and community safety.

The U.S. Government's Justice Reinvestment Initiative (JRI) stands in stark contrast to this. Seventeen JRI states are projected to save as much as $4.6 billion through reforms that increase the efficiency of their criminal justice systems (LaVigne et al., 2015, p. 3). It would appear once again that the U.S. reality is seeking an "illuminated future" while in Canada the federal political criminal justice agenda continues to "walk in darkness."

As a result, lower-risk offenders were released later in their sentence and had less time supervised and supported in the community before the end of the court-imposed sentence.

This would explain the findings of the Auditor General of Canada (OAG) in its 2015 report. In 2013/2014:

> Only a small portion of offenders (20 percent) had their cases prepared for a parole hearing by the time they were first eligible. As well, the majority of offenders (54 percent) were first released from a penitentiary at their statutory release date, rather than on parole at an earlier point in their sentence. CSC made fewer recommendations for early release to the Parole Board of Canada in 2013/14 than in the 2011/12—and this was the case even for offenders who had been assessed as a low risk to reoffend. Moreover, 39 percent of low-risk offenders were first released from custody at their statutory date rather than on either day or full parole by the Parole Board (OAG, 2015, pp. 4, 5).

As a result, lower-risk offenders were released later in their sentence and had less time supervised and supported in the community before the end of the court-imposed sentence.

Irwin Cotler, a justice minister under a previous government, was critical of the Conservatives' decision to no longer fund a Canada-wide program that helps to prevent sex offenders from reoffending after their release from prison. Circles of Support and Accountability (CoSA) is recognized internationally as an effective crime prevention

Inspiration From Evidence

Internationally, evidence-based practices are having a significant and positive impact on countries' correctional realities. Their experience demonstrates that enhanced community safety—the "illuminated future"—is readily attainable, but only if it is supported by political leaders who eschew the tough-on-crime, fear-based agenda and pursue instead an evidence-based program that learns from past mistakes and spurns ideology.

Inspiration flows from evidence. It is inspiration that citizens require to successfully and humanely tackle the many issues and concerns that are challenging the criminal and social-justice situations facing our communities. They seek inspiration based not on truth in sentencing but truth in legislating, with legislation that is evidence-based, not event-based; and they crave community dialogue that flows from enlightened thought, not from the politics of fear. As William Wordsworth wrote:

> Life is divided into three terms—that which was, which is, and which will be. Let us learn from the past to profit by the present, and from the present, to live better in the future.

The direction of the current federal majority Conservative government's correctional agenda in Canada has been opposite to the one pursued by both the liberal and the conservative political leadership in the United States. It has not reflected any desire to learn from the past or from the available evidence and research. Regrettably, it has been driven by ideology; it has been regressive and has done little to contribute to a better future for our communities. Indeed, the agenda has demonstrated that the Government of Canada has been "walking in the darkness," eyes forcefully closed to the ample evidence that surrounds it.

Postscript

On August 2, 2015, prior to the September publication of the above by the Smart Justice Network Canada, the Prime Minister of the day, Stephen Harper, requested that the Governor General of Canada dissolve Parliament. The request was granted and a general election date was confirmed for October 19, 2015. This initiated an 11-week election campaign, the longest in the country's history since 1926 (Canada Election, 2015, pars. 2, 36 & 38).

Three months prior to the election, on July 31, 2015, U.S. Democratic Senator Cory Booker commented on the growth of the prison system in recent years in the United States. With criminal justice reform in the national spotlight in the United States, he highlighted that "we (in the United States) have built a new prison every 10 days between 1990 and 2005 to keep up with our mass incarceration explosion of nonviolent offenders" (quoted in Herring, 2015, par. 2). On October 2, 2015, two months following the election call, media once again covered developments on both sides of the 49th parallel, one issue supported by Senator Booker and one by former Prime Minister Harper.

Senator Booker supported a congressional push to overhaul the criminal justice system with the introduction of Senate legislation that had the backing of key leaders in both parties (Berman, 2015, par. 1):

> The bipartisan proposal would reduce the length of mandatory minimum sentences, and limit them to serious drug felonies and violent crimes. It would ban solitary confinement for juveniles and allow them to apply for parole after a maximum of 20 years, and it would grant judges more flexibility in doling out sentences for a range of crimes. The bill would also bolster re-entry programs in federal prisons aimed at reducing recidivism (Berman, 2015, par. 2).

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Mr. Harper supported a more ideologically based development. As noted above, concern was voiced concerning the use by the Conservative government of inflammatory language when naming its crime bills. This was referred to as the "theatre of language." This tactic did not abate during the election campaign. The same day that the media in the United States were reporting on criminal justice reform issues, journalists in Canada were sharing with the electorate further examples of "inflammatory language." Flowing from their *Zero Tolerance for Barbaric Cultural Practices* legislation, the Conservatives again played the fear card, hoping for another wedge issue that would divide the electorate and gain them political support:

> The Conservative campaign, continuing its shift toward a focus on religion and identity, promised to establish an RCMP tip line for reports of "barbaric cultural practices," fuelling accusations of fear mongering from opposition politicians and prominent Muslims (Andrew-Gee, 2015, par. 1).

Thus we had, on October 2, two countries, two media perspectives, two significant messages, and in Canada one electorate that was left in a position to either support an "illuminated future" or a continued "walk in the darkness."

On October 17, 2015, those who are students of the legislative agenda in Canada were encouraged by President Obama's message delivered two days prior to our election, when he said:

> Justice means allowing our fellow Americans who have made mistakes to pay their debt to society, and rejoin their community as active, rehabilitated citizens . . . justice has never been easy to achieve, but it's always been worth fighting for (quoted in Wolfgang, 2015, par. 3).

By the evening of October 19, 2015, it was apparent the Canadian electorate had voted boisterously for an "illuminated future" and the Liberal Party of Canada headed by Justin Trudeau. In acknowledging the election result, Prime Minister-Elect Trudeau indicated that "Canadians from all across this great country sent a clear message tonight, it's time for a change in this country, my friends, a real change" (quoted in Murphy & Wolfe, 2015, par. 6). He became Prime Minister elect following "a dramatic federal election that ended the divisive reign of the Conservative prime minister, Stephen Harper" (Murphy & Wolfe, 2015, par. 1).

On November 4, 2015, in Ottawa, Canada's national capital, after being sworn in as Canada's 23rd prime minister, Justin Trudeau "launched a new Liberal era with a 30-member cabinet that featured predominantly fresh faces, an equal number of men and women and probably the most diverse line-up of ministers in Canadian history (The Canadian Press, 2015, par. 1).

More important to the chronology of events and to a desire for an "illuminated future," on November 13, 2015, mandate letters were distributed to all ministers of the new government by the Prime Minister enumerating the results to be achieved by the respective ministers. Briefly, and reflecting on the September 15 paper above, the letter to the Minister of Justice and Attorney General highlighted, among other items, that:

- You should conduct a review of the changes in our criminal justice system and sentencing reforms over the past decade with a mandate to assess the changes, ensure that we are increasing the safety of our communities, getting value for money, addressing gaps and ensuring that current provisions are aligned with the objectives of the criminal justice system. Outcomes of this process should include increased use of restorative justice processes and other initiatives to reduce the rate of incarceration amongst Indigenous Canadians, and implementation of recommendations . . . regarding the restriction of the use of solitary confinement and the treatment of those with mental illness; and
- Work with the Minister of Public Safety and Emergency Preparedness and the Minister of Indigenous and Northern Affairs to address gaps in services to Aboriginal people and those with mental illness throughout the criminal justice system (Trudeau, 2015a).

Concerning the latter objective, it was also included in the Letter to the Minister of Public Safety and Emergency Preparedness. For both, the following key expectation that mitigates against ideology-based policy and legislation directs the ministers to ensure that their "work will be informed by performance measurement, evidence, and feedback from Canadians (Trudeau, 2015b, par. 6).

October 19, 2015

What a difference a day makes. In Washington on October 19:

> The Obama administration expressed support for bipartisan Senate legislation that would reduce prison sentences for some nonviolent drug offenders, a rare issue where conservatives and liberals agree that the current system is overwhelmed and in desperate need of reform (Jalonick, 2015, par. 1).

On that same day in Ottawa, a new federal government chapter commenced that I am confident will replace the "tough on crime," fear-mongering, ideology-based outlook of the previous government's criminal justice "walk in the darkness" to a real potential for an "illuminated future."

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