

The Canadian 'Get Tough' Discourse Needs a Hard Look Too

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Abstract

This paper considers the discrepancy between 'get tough' approaches to crime, primarily in the U.S. and Canada, and the reality of who is being incarcerated. Reports from multiple jurisdictions indicate that rates of violent crime are declining generally for men and increasing for women, but there is no consensus that the 'get tough' approach is responsible for the decline or increase, and there is little political recognition of the need to address the imbalance in incarceration. The paper focuses on how 'get tough' discourses are perpetuated through selective valuation of 'evidence.' It is found that all evidence is not weighed or weighted equally in policies and practices, especially evidence of the over-representation of certain groups in prison populations. It is recommended that future studies address the larger socio-economic and political contexts and purposes of, and expectations for, incarceration through transdisciplinary work that expands the discussion.

Keywords: Incarceration, Canada, United States, 'Get tough' discourse, SDoH, evidence, over-represented populations, Aboriginal populations

1. Introduction

This paper explores the proliferation of 'get tough' approaches in Canada and how the 'get tough' discourse is perpetuated despite evidence that necessitates reconsideration of these approaches. I specifically cite political appeals, statistics, and studies of causes and effects, primarily in Canada and the United States. Some of the ways that selective valuation of evidence facilitates the 'get tough' discourse and obscures incarcerated populations are analyzed. The overall aim of this paper is to provide a theoretical discussion of the complexities of the persistence of the 'get tough' discourse and to highlight the inequities of race and gender in incarcerated populations. It is important to study the 'get tough' discourse because of the social costs and the questionable effectiveness of approaches facilitated by the discourse.

The 'get tough' discourse is a structure that appears without a convincing (or any) explanation of how or why previous approaches to crime were inadequate or 'soft,' which would justify taking a tougher stance. While much of the literature on incarceration focuses on the U.S., the 'get tough' discourse is not restricted to one country or continent. Similarly, the curious lack of influence of evidence is not restricted to the U.S. As examples from Canada also show, disregard of evidence begs consideration of what constitutes 'evidence' and how and when 'evidence' counts.

1.1 Background

The term 'get tough' appears in the literature before 1960 (Barnes, 1959). Concerns regarding the motivation for, and impacts of, 'get tough' on crime approaches span the subsequent decades (Bell, 2011; Eastvedt, 2008; Mauer, 1999; Reske, 1991). 'Get tough' approaches grew in the U.S. in the 1970s and 1980s by building on citizen concerns regarding the then "high rates of lethal violence associated with crime [... and] political fear mongering" (Zimring, 2008, p. 469). Voter acceptance of various 'get tough' policies has been gained through media campaigns using repeated visual and aural messages to suggest threats to the public peace and personal safety (Caldwell & Caldwell, 2011, p. 61). More recent trends suggesting increasing crime have been attributed to improved reporting and record-keeping concerning crime rather than to increasing incidents of crime (for example, see O'Brien, 2003, p. 499).

At about the same time, scholars called for use of advanced research methodologies to extend research that, to date, had suggested that the 'get tough' policies were ineffective and expensive (Kovandzic, Sloan, & Vieraitis, 2004). The *Stanford Law & Policy Review* (1999) devoted an entire issue (volume 11, issue 1) to an evaluation of 'get tough' sentencing laws. Expectations of the 'get tough' discourse ending (for example, see Mauer, 2002) have been premature. A decade later, *Daedalus*, the journal of the American Academy of Arts and Sciences, dedicated an entire issue (volume 139, issue 3) to mass incarceration. Scholars (DeFina & Hannon, 2013; Di Tella, Edwards, & Schargrodsy, 2010; Fafchamps & Minten, 2002; Hsieh & Pugh, 1993; Moene & Mehlum, 2005; Palumbo & Petersen, 1994; Park, Thornberry, Elwyn, Smith, & Ireland, 2013; Wacquant, 2001, 2009; Western & Pettit, 2010) and others (Human Rights Watch, 2013; United Nations Office on Drugs and Crime [UNODC], 2007, 2011; WHO, 2002) have studied the relationship between crime and the complexities of poverty, race and gender. As discussed next, the over-representation of certain groups of people and their diseases in prisons suggests that the 'get tough' discourse ignores the public policy shift away from educating illiterate people and treating mentally ill people that has led to confining them to correctional services not so much to 'correct' their behavior, but more likely because few other options exist. Next, the paper considers who is experiencing incarceration.

2.0 Who is being jailed?

The U.S. leads the world in both the absolute numbers of people and the proportion of population incarcerated (Human Rights Watch, 2013). It is well recognized that African American men are overrepresented in the U.S. prison system (Garrison, 2011). Terrell (1997) describes the extension of punishment from prisoners to their families, while Salazar (2013) studies the effect of incarceration on mothers. Conversely, women's incarceration has significant impacts on their families and communities (Women's Prison Association Institute on Women and Criminal Justice [Women], 2004, p. 9). It is important to note that most literature focuses on male experiences with prison systems.

In absolute numbers, considerably more men than women are incarcerated (Canada. Statistics Canada. Canadian Centre for Justice Statistics [Juristat], 2008b, p. 1; Women, 2004, p. 9), however, the rate of incarceration of women has been increasing dramatically in the U. S. (Women, 2004, p. 9) as well as in Canada (Juristat, 2008b, p. 1) and elsewhere in the developed world (Canadian Association of Elizabeth Fry Societies, 2008, p. 4). In a discussion of U.S. public attitudes toward crime, Zimring (2008) asked "Why has Canada not doubled its prison population every decade?" (p. 469). Although Canada's incarceration numbers (Juristat, 2012, p. 7) do not yet approach those of the U.S. (Human Rights Watch, 2013), being ranked in the middle of OECD countries' incarceration rates means Canada's rates are higher than those of similarly developed European countries (Juristat, 2012, p. 7). Statistics Canada (2007, November 21) reported an increase in the incarceration rate in 2005-2006 from 107 to 110 prisoners per 100,000 people (paragraph 3). In 2005-2006, this rate is greater than France at a rate of 85 per 100,000, and less than the U.S. at a rate of 738 per 100,000 population, which includes adults only, not youth, in its rate (Statistics Canada, 2007, November 21, paragraph 5). In Canada, the 2 percent increase, which was the first increase in a decade, is credited by the Government agency as resulting from court processes rather than an increase in crime (Statistics Canada, 2007, November 21, paragraph 3).

It is said that the rate of incarceration rose primarily because the courts remanded more people to jail pending trials and sentencing hearings (Statistics Canada, 2007, November 21, paragraph 1), continuing a trend that began in the mid-1980s (Statistics Canada, 2007, November 21, paragraph 6). However, the trend reflects adults, not youth. The number of youth in custody has declined substantially as has the number of young offenders on probation (Statistics Canada, 2007, November 21). Unlike the U.S., France and Canada do include youth incarcerated in their total figures. This distinction matters. In Canada, for example, the rate of adult confinement has increased despite the reduced number of youth locked up since the Youth Criminal Justice Act was enacted in 2003 (Statistics Canada, 2007, November 21). The act diverts youth charged with less serious crimes and first offenses away from the court process (Statistics Canada, 2007, November 21). This reduction in numbers and the continued inclusion of youth in the incarceration rates suggests that the rate of incarceration rate for adults has increased significantly.

During its tenure, the current Canadian government has passed many acts related to crime, which is broadly defined (Canada. Department of Justice [DoJ], 2013; Canada. Public Safety Canada [Safety], 2013a, b).

This legislation conflates a number of issues including violent, white collar and organized crime; human trafficking; child pornography; child sex offenses; elder abuse; and terrorism. 'Get tough' approaches focus on harsher punishment and victims of select crimes, at the expense of considering crime prevention, prisoner rehabilitation, and evidence concerning who is actually being incarcerated in large numbers.

A number of groups are overrepresented in Canadian prisons. The 2006 Census in Canada found that Aboriginal¹ people comprised 4% of the adult population in Canada, yet in 2005/2006, Aboriginal people represented 18% of admissions to federal custody (Juristat, 2008a, p. 1). More recent statistics for 2010/2011 confirmed the continuing and growing over-representation of both male and female Aboriginal adults, at 41% of women and 25% of men in sentenced custody (Juristat, 2012, p. 11). Canada's prison populations also are over-represented by people with literacy problems and learning disabilities (CSC, 2008, 2009b; Kerka, 1995; UNODC, 2009). Although illiteracy and learning disabilities are common in the prison population, the obvious cost and personal benefits of enabling literacy in inmates is ignored to a great extent (Kerka, 1995). Correctional Services Canada's (2009 a, b) website confirms that "[u]pon arrival in institutions, approximately 65% of offenders test at a completion level lower than Grade 8 and 82% lower than Grade 10" (CSC, 2009a). Critics have pointed to the "warehousing" of mentally ill people in prisons (PrisonJustice.ca, 2005; The Canadian Press, 2010, September 23; The Globe and Mail, 2010, November 5). These issues are further complicated in the Canadian context by the division between federally run prisons and provincially administered health care and education systems. Next, I consider reports concerning the impacts and outcomes of 'get tough' approaches.

3. What is 'getting tough' getting done?

As more jurisdictions pursue 'get tough' approaches, more accounts appear of their experiences and outcomes. Cook and Roesch (2012) find that scientific literature does not support 'get tough' approaches (p. 217). There are many reports concerning the failure of 'get tough on crime' policies (Caldwell & Caldwell, 2011; Jones, 1995; Macallair & Males, 1998). Similarly, the prison system is judged to be ineffective (Lynch, 2007). Scholars reported the failure of 'get tough' system for juveniles in general (Fass & Pi, 2002; Jordan & Myers, 2011; Meyer, 2008; Shepherd, 2005). The 'get tough' approach has failed for African-American juveniles in particular (Curry, 1998) and, in California, for both Black and Latino youth (Rios, 2008). While recognizing conflicting trends in the U.S. data, Bernard (1999) estimated "that juvenile crime, with the exception of homicide, has declined by about one-third over the last twenty years" (p. 337).

In Canada, the Canadian Bar Association (2011) has expressed concern regarding several aspects of the government's 'get tough' legislation, including mandatory minimum sentences, constraints on judges' discretion and the impact on marginalized groups. Under the Access to Information Act, the Canadian Press obtained a copy of an internal Department of Justice report, "Recidivism Among Impaired Drivers," which casts doubt regarding the effectiveness of harsher sentences (The Canadian Press, 2011, November 27). A review by Cook and Roesch (2012) suggests that, in general, the crime rate is not increasing in Canada and the 'get tough' measures are not likely to reduce crime rates. Perhaps repetition of the 'get tough' discourse makes it possible for governments to ignore such reports by having the discourse itself serve as a substitute for evidence.

4. Evidence isn't what it used to be

If 'get tough' is not working, why are jurisdictions such as the U.S. and Canada still pursuing these approaches? The discourse keeps attention focused on the 'threat.' By conflating crime and terrorism, the threat becomes generalized: both internal and external, local and global. Such conflation keeps the threat alive even as rates of serious crime decline. While attention is focused on threats, attention is not directed at other issues such as root causes or persistent characteristics such as illiteracy, mental illness, and racism.

Repetition of the 'get tough' discourse and invoking threats of crime justify increased incarceration despite declining crime rates. Such threats also effectively serve to distract attention from the decline in social programs and treatment facilities since the 1980s (Koyanagi, 2007; Thomas, 1998), and the resulting 'warehousing' of certain groups of people in prisons (Hogeveen, 2005, p. 92; Jacobson-Hardy, 2002, p. 403, quoted in Turner, 2013, p. 36).

1 In the Canadian context, the term 'Aboriginal' refers to First Nations, who may or may not have status under the Indian Act; Métis; and Inuit, all of whom have distinct groups within them.

For example, 'get tough' narratives repeat and reinforce the message that being sent to a psychiatric facility for the criminally insane is not a form of incarceration and, therefore, being sent to prison is the only 'real' punishment. This assertion further implies that punishment is required rather than treatment. Visiting a facility for the criminally insane likely would disabuse notions of psychiatric hospitals as spas, and yet these notions persist. This persistence suggests that, perhaps before illness and intent in crime are discussed, issues of vengeance, retaliation, and revenge with respect to punishment should be addressed. Broadening the public discussion through addressing such issues would serve to ease the constraints that the discourse imposes.

5. Conclusion

The disconnection between continuing the 'get tough' discourse without exploring the declining rate of serious crime except among women and the personal and social costs associated with the 'get tough' discourse, collectively suggest that the discussion should be broadened. Future studies should address the larger context and purposes of, and expectations for, incarceration through trans-disciplinary work. Specifically, I argue for greater study of subjects associated with crime and punishment (1) through consideration of alternative methods of 'correction' and of recent work on reconciliation and restitution, and (2) for scholars from multiple disciplines engaging with each other, potentially connecting their joint work using the Social Determinants of Health (SDoH) respecting prevention, treatment, and post-release support with the aim of increasing the topics, questions and participants, in discourses beyond 'getting tough.' Neither the 'get tough' discourse, nor evidence concerning its efficacy, have been confined to the U.S. Racial and gender inequalities require that scholars make contributions to evidence without geographical or disciplinary limitation. Creating evidence has a value because, despite all of the moral imperatives presented by the racial, gender, and class inequities, it may be the sheer financial expense of 'get tough' approaches (Canadian Centre for Policy Alternatives, 2010; Cook & Roesch, 2012; Fournier-Ruggles, 2011, p. 21; Mauer, 1999, p. 13; Reuben, 1995, p. 16) that will cause them to be revisited.

Sponsoring information: This research is not supported by any organization.

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