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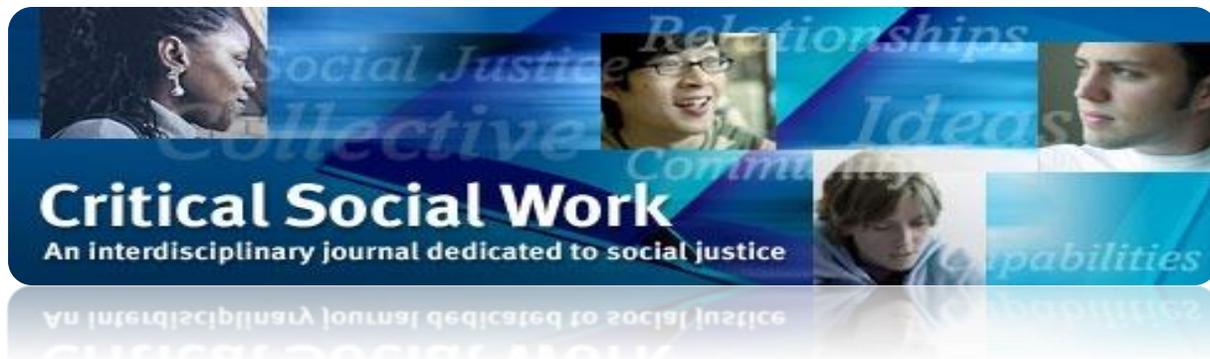
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Structural Violence Perpetrated Against Indigenous Peoples in Canadian Criminal Courts: Meta- Analytic Evidence of Longstanding Sentencing Inequities

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Abstract

Social justice entails opposing discrimination and working towards eliminating structural violence. The problem of overrepresentation of Indigenous peoples across Canada's criminal justice system, a site of structural violence, has persisted for decades. Most studies uncovered through this review and meta-analysis indicated Indigenous disadvantage in criminal sentencing. Specifically, Indigenous peoples were at much greater risk of receiving punitive sentences than non-Indigenous people. Additionally, the disparity was observed to be significantly greater among women than men. This synthesis also elucidated the paucity of data and research related to Indigenous peoples' involvement with the court system. Implications and future research needs are discussed.

Keywords: research synthesis, criminal justice system, sentencing, Indigenous, Canada

Criminal justice systems in Canada and the United States of America (USA) are complex and multifaceted with many actors and agents, including social workers. The major subsystems within criminal justice systems include legislation, police, courts, and corrections (Patterson, 2019). Social workers are employed across these subsystems in both private (for-profit) and nonprofit sectors. Arguably, social workers may even be gatekeepers to the criminal justice system. For example, in both Canada and USA, school social workers play a role in the school to prison pipeline which disproportionately affects already vulnerable youth (Bernard & Smith, 2018; McCarter, 2016). Social work is a human rights profession (International Federation of Social Workers, 2020) and social workers are responsible for engaging in social transformation efforts to fulfill their ethical responsibility of challenging social injustices (Canadian Association of Social Workers [CASW], 2005; National Association of Social Workers, 2017). Unfortunately, it seems, social workers may actually be contributing to injustice.

Literature Review

Overrepresentation of Indigenous Peoples in Canadian Custody

In Canada, the overrepresentation of Indigenous, including First Nations, Inuit, and Métis, peoples in custody has been recognized for more than half a century (Canadian Corrections Association, 1967; Manitoba, 1991). Although historical data is sparse, in 1950 it was reported that only 48 out of 4750, or 1%, of people in federal penitentiaries were Indigenous (Inspector of Penitentiaries, 1950). However, by 1967 a federally commissioned report acknowledged the shocking numbers of Indigenous peoples in both provincial/territorial and federal institutions (Canadian Corrections Association, 1967). By 1976/1977, evidence from Saskatchewan suggests that First Nations and Métis women and men were 160 and 49 times as likely, respectively, to have been admitted to provincial custody than non-Indigenous people (Hylton, 1981). Despite this longstanding recognition, the problem not only persists but continues to get worse (Latimer & Foss, 2005; Clark, 2019). Further, although the incarceration rates for Indigenous peoples are steadily increasing, the rate of increase for Indigenous females has been consistently higher than that of Indigenous males (Public Safety Canada Portfolio Corrections Statistics Committee, 2013, 2017). This difference can be explained by the intersection of the multiplicative effects of sexism, racism, and colonialism on Indigenous women and girls.

Such overrepresentation of Indigenous people, females in particular, is another window into their experience of structural violence through the organization and actions of the criminal justice system and its agents. The term “structural violence” was coined by the sociologist Johan Galtung (1969). At the heart of structural violence are social inequalities which lead to social injustice and includes exploitation and oppression (Farmer, 2004; Rylko-Bauer & Farmer, 2016). Indeed, some authors suggest structural violence and social injustice are interchangeable (Galtung, 1969; Rylko-Bauer & Farmer, 2016). Often accepted without question or objection and fed by covert social arrangements and relations, structural violence/social injustice can fester in deleterious ways that put people and groups at increased risk of harm (Galtung, 1969; Farmer 2004; Rylko-Bauer & Farmer, 2016). These social arrangements and relationships include ubiquitous and detrimental social structures intentionally infused in economic, political, legal, religious, and cultural institutions (Angell & Dunlop, 2001; Galtung, 1969; Rylko-Bauer & Farmer, 2016). It is also important to account for the contributing and confounding parts played by patriarchy, colonialism, and neoliberalism in placing Indigenous peoples in jeopardy of running afoul of the criminal justice system (Maddison, 2013; Rylko-Bauer & Farmer, 2016).

These integral aspects of oppression, in turn, are causal and sustaining factors to the impoverishment, marginalization, exclusion, and exploitation of Indigenous peoples, which impede their ability to not only adequately meet immediate needs but also future goals (Angell & Dunlop, 2001; Gatlung, 1969; Mukherjee et al., 2011). This type of violence is structural in that it is embedded within institutions whose agents use their assumed and authorized powers to organize and regulate the social world of Indigenous peoples and their communities. It is violent because it causes avoidable suffering, injury, illness, and/or death (Angell & Dunlop, 2001; Gatlung, 1969; Farmer et al., 2006; Rylko-Bauer & Farmer, 2016).

The primary focus in literature related to the overrepresentation of Indigenous peoples in the criminal justice system has been on their overrepresentation in custody. However, this does not mean it is the only, nor the most detrimental, aspect of overrepresentation (Rudin, 2005). Further, although many reasons for this overrepresentation have been posited, one understudied area is the negative discrimination hypothesis (Jeffries & Bond, 2012). This hypothesis posits that discrimination and bias at the point of criminal sentencing result in more punitive sanctions, including incarceration, for Indigenous peoples who have been convicted of offenses (Latimer & Foss, 2005; Reasons et al., 2016). Given that social workers have an ethical obligation to pursue social justice, which entails opposing discrimination and working towards reducing and ultimately eliminating structural violence, this is crucial to understand.

Race, Ethnicity, and Sentencing in Criminal Courts

Evidence from the United States suggests that race/ethnicity effects sentencing decisions. Mitchell's (2005) meta-analytic study of race and sentencing research found that African Americans are typically sentenced more harshly than non-Hispanic White people. Although there does not appear to be any meta-analytic studies related to race/ethnicity and sentencing in Canada, several reviews have been undertaken. In their review of literature related to Indigenous status on adult sentencing in the United States, Canada, and Australia, Jeffries and Bond (2012) concluded that empirical evidence is mixed, and that this is an understudied area. However, they also suggest that some of the studies included in their review are positively biased towards Indigenous peoples. In other words, Indigenous peoples receive more lenient sentences. However, their study was limited in that it included only two Canadian studies. In a more recent review of laws, policies, and practices related to sentencing Indigenous offenders, Jeffries and Stenning (2014) acknowledged that sentencing responses to Indigenous peoples' overrepresentation in custody vary between Australia, Canada, and the United States. They concluded that despite this variability and responses by all three countries to address over-incarceration, none of the three have been successful in reducing the over-incarceration rates of Indigenous peoples. Although providing foundational knowledge related to the state of sentencing Indigenous offenders in Canada, none of the previous reviews provided meta-analytic evidence of sentencing disparities.

For adults, 18 years and older, the Criminal Code of Canada (s.718.2) sets out the fundamental purpose of sentencing. According to Canadian law, the purpose of sentencing is to contribute to the maintenance of a safe, peaceful, and just society by imposing just sanctions. Although youth, ages 12 through 17, may be charged as adults in Canada, they always receive their sentences in youth justice courts. For youth, section 38 of the Youth Criminal Justice Act (YCJA) sets out the objectives of sentencing. These include holding the young person accountable through imposition of what are termed just sanctions. Further, the sanctions must

have meaningful consequences for the young person, promoting their rehabilitation and reintegration into society. Finally, these objectives must ultimately contribute to public safety (Maxim & Whitehead, 2004). One major difference between youth justice court and adult criminal court is that the judges in youth court must consider whether the offence could be dealt with outside of the court system. Further, youth interventions should respond to the needs of Indigenous youth as well as youth with special needs (Department of Justice Canada, 2017).

Race and racism have and continue to “play an important role” (Millar & Owusu-Bempah, 2011, p. 653) in the Canadian legal system. For decades it has been acknowledged that there are serious problems with the criminal sentencing processes in Canada. Specifically, in 1987, The Canadian Sentencing Commission explicated the “existence of unwarranted disparity in sentencing” (p. xxi) and noted that this problem was widely recognized long before the release of their report. For example, looking at executions from 1926 to 1957, Avio (1987) found that Indigenous females were sentenced to death and executed at a rate almost three times (66.5% vs. 25.0%) that of non-Indigenous women and Indigenous men were 15% (97.5% vs. 85.0%) more likely to be sentenced to death and executed than non-Indigenous men for similar crimes.

It has also been acknowledged more recently that Indigenous peoples are sentenced more punitively than non-Indigenous peoples (Clark, 2019; Gorelick, 2007). For example, Thompson and Gobeil (2015) found that from 2008 to 2010, Indigenous women were nearly three times (5.7% vs. 2.0%) as likely as non-Indigenous women to receive an indeterminate prison sentence. Similarly, although not accounting for gender, Moore (2003) found that Indigenous peoples were 35% more likely to be recommended for maximum security than non-Indigenous peoples. These findings are similar for Indigenous youth. For example, Latimer and Foss (2005) found that overall, Indigenous youth are 69% (60.0% vs. 43.1%) more likely to receive a custodial sentence of 60 days or longer than non-Indigenous youth. Similarly, in their study of youth who appeared in an Edmonton, Alberta court, Schissel (1993) concluded that race, including Indigenous identity in this case, significantly influenced decisions at all stages of the judicial process. More specifically, they concluded that Indigenous youth received more punitive sentences than non-Indigenous youth.

Recent anecdotal evidence also suggests that just sentences are still not being imposed, and perhaps this is a result of judiciary bias. Criminal lawyer, Mallea (2017) argued that sentencing is arbitrary, inconsistent, and inflexible, and thus unfair and unjust. Mallea blamed the situation at least partially on judiciary discretion, presenting two cases which together demonstrate the lack of fairness and justice. The first, a group of over 200 Canadian lawyers misappropriated \$160 million dollars of residential school survivors’ money. Of these 200 lawyers, only 23 were charged with criminal offences. The rest were simply ordered to pay the money back. Conversely, an Indigenous client of Mallea’s was charged and convicted for stealing \$20 worth of clothes for her baby. She was imposed a jail sentence. No doubt, the thought that justice is blind does not mean impartiality and objectivity when it comes to dealing with and the sentencing of Indigenous peoples. It is biased, punitive, and racialized.

In their analysis of data related to admissions into federal custody, Neil and Carmichael (2015) found that “ethnic divisions” and the “minority threat theory” apply in Canada and are significantly associated with variations in incarceration rates. Their findings, aligned with the ethnic divisions and minority threat theories, show that as the rates of minority populations and Indigenous peoples increase within a Canadian region, federal incarceration rates also increase.

They concluded that the number of Indigenous peoples and visible minorities living in a particular area are the most significant factors related to variations in punishment, even when all other factors were controlled for. Someone needs to be blamed and consistently it is those who are most vulnerable, visible, and socioeconomically needy who are held responsible for what are in fact society's failings.

Because the lives of Indigenous peoples overall, and Indigenous women in particular, are impacted by structural violence, grounded in the synthesis of gender, race, and (neo)colonialism, studying Indigenous peoples' experiences through the lens of intersectionality is ideal (Bowleg, 2008). Intersectionality emerged initially as a mechanism for understanding how individual and social identities, specifically gender and race, interact multiplicatively to affect lived experiences (Crenshaw, 1989). This theory has evolved to include analyses of not only gender and race, but also other socially constructed categories of difference, such as socioeconomic status. Coming from an intersectionality perspective, this research synthesis aims to test two hypotheses: (1) Compared to non-Indigenous Canadian offenders, Indigenous offenders in Canada are sentenced more punitively in youth and adult criminal courts, and; (2) the relative risk of being sentenced more punitively is greater among Indigenous females than Indigenous males.

Methods

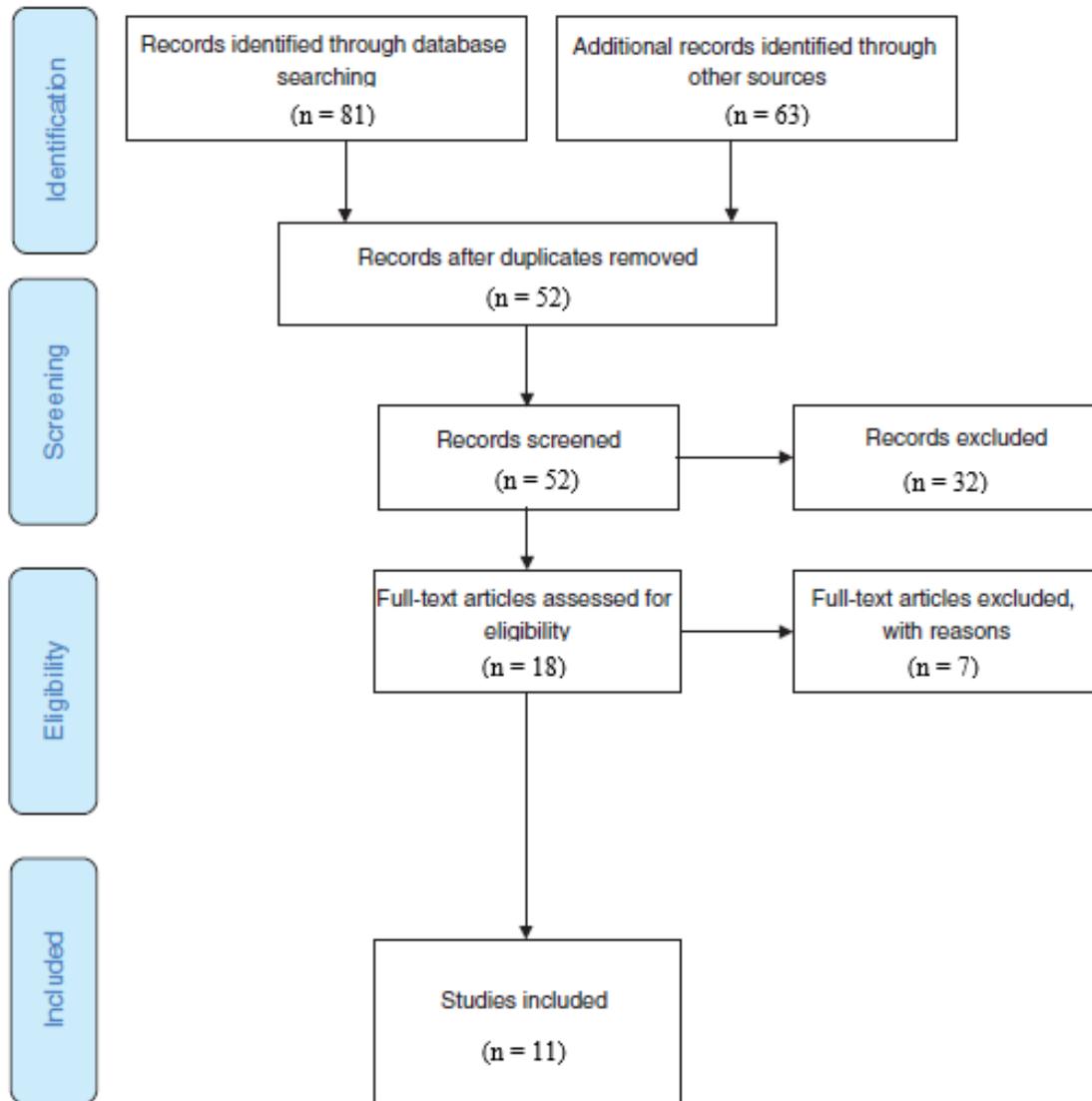
Selection of Studies

The following research literature databases were searched until May 1, 2020: *Academic Search Complete, Bibliography of Native North Americans, EconLit, Indigenous Peoples of North America, Indigenous Studies Portal, Political Science Database, JSTOR, PsycINFO, Scholars Portal Journals, Social Services Abstracts, Social Work Abstracts and Sociological Abstracts*. The following unpublished or gray literature sources were similarly searched to protect against publication bias: *Google Scholar, ProQuest Dissertations and Theses, Web of Science Core Collection* including the *Social Sciences Conference Proceedings Citation Index* (de Smidt & Gorey, 1997; Grenier & Gorey, 1998). Research literature databases were selected to ensure a multidisciplinary focus across published, interdisciplinary, and Indigenous forums as well as other so-called gray sources of unpublished study reports. Keyword search schemes are summarized as follows: (Indigenous or First Nations or Métis or Inuit or Aboriginal or Native or Indian) and (sentenc* or punish* or fine or probation or custody or incarcerat* or prison or imprisonment or execut* or corrections or “criminal courts” or “youth courts”).

Our first selection strategy was broadly inclusive. We included any quantitative study, cross-sectional or longitudinal, that compared any Indigenous group with any non-Indigenous group of young or adult offenders who perpetrated any type of crime anywhere in Canada. Studies that did not report findings in enough detail to calculate an effect size metric—relative risk of more punitive sentencing of Indigenous offenders—were necessarily excluded. Searches were then augmented with bibliographic reviews and author searches of retrieved manuscripts. Searches were also conducted for literature that cited the included studies and reports. Two of the authors, with the support of two experienced library scientists, independently searched for eligible studies and consensus decisions regarding inclusion and exclusion were reached after discussion. Eleven studies were so selected. They are indicated with an asterisk in the reference list. A Preferred Reporting Items for Systematic Reviews and Meta-Analyses (PRISMA) diagram outlining the study selection process is displayed in Figure 1 (Kelly et al., 2016; Moher

et al., 2009; Peters et al., 2015). This diagram details the authors’ review decision process including the results from the search, duplicate references, which studies were selected and retrieved, and which were included for final analysis (Peters et al., 2015).

Figure 1: PRISMA flow diagram for the scoping review process (Peters et al., 2015)



Meta-Analysis

Rate ratios, odds ratios, or similar measures of association estimated primary study risk ratios or relative risks. Study associations (natural logarithm of their relative risks [RR]) were weighted by their inverse variances, computed from estimated standard errors ($1/SE^2$) so that larger, more precise studies, were weighed more. Such precision-weighted associations were then pooled using a weighted meta-regression model. Each study could contribute only once to the meta-analysis. If a primary study provided multiple interrelated ethnicity-sentencing outcomes, first

we selected its primary outcome, and if there were multiple such outcomes, we selected the most valid outcome(s). For example, if bivariate and multivariate outcomes were presented, we selected the better controlled multivariate outcome. However, if its RR was not calculable, we used the bivariate outcome. Then any multiple outcomes were pooled so that each study contributed one data point for the meta-analysis. Pooled RRs within 95% confidence intervals (CI) were calculated from primary study statistics, nonparametric or parametric, as was a chi square-based test of heterogeneity (χ^2 -test), and the planned comparison of females and males (z -test) (Chinn, 2000; Cooper, 2017; Greenland, 1987; Grizzle et al., 1969; Stroup et al., 2000). Primary study outcomes were observed to be significantly heterogeneous; $\chi^2(10) = 458.45, p < .05$. Therefore, the potential moderation of the ethnicity-sentence association by gender was tested. Other potential moderations by study population, contextual as well as specific research design, including analytic characteristics were explored (Greenland & O'Rourke, 2001; Patnode et al., 2018). Meta-analytic hypotheses were independently tested and cross-validated by two analysts. Finally, RRs were coded such that values greater than 1.00 indicate Indigenous sentencing disadvantages, that is, that Indigenous study participants received more punitive sentences than did non-Indigenous participants.

Results

Sample Description

Eleven studies were selected for the meta-analysis, all were surveys except for one which was a historical cohort. Descriptive characteristics and outcomes for each of the studies are displayed in Table 1. Surprisingly, our initial scope of this field's research found that most studies were of a diverse mix of crimes, typically ranging from property to personal, nonviolent to violent (Arksey & O'Malley, 2005; Tricco et al., 2016). They are respectively displayed in the top and bottom of the table. All studies included samples of Indigenous and non-Indigenous populations between 1925 and 2010 across Canada (5), a province or territory (3), or within one or more metropolitan area (3). Eight studied adults and three studied youth. Perhaps providing insight into the cultural awareness of the research teams who accomplished this research, the specific names used to describe the people studied are also displayed in the table: Indian, Native, Aboriginal, Indigenous; First Nations, Métis and/or Inuit. It can be seen in the reference list that three of the included studies were unpublished or gray literature reports, while the remainder were peer-reviewed, published articles. Finally, sentencing outcomes are displayed in the table's far right column. Nine of the single or pooled primary study outcomes were in the hypothesized direction of Indigenous disadvantage in sentencing. Study RRs ranged from 0.74 to 2.85 (median RR = 1.35), six of which were minimally statistically significant at $p < .05$, four were null and one approached statistical significance at $p < .10$.

Our initial, broadly inclusive sampling strategy was meant to realistically map this field's quantitative literature. As previously noted, it was surprising to learn that most studies analyzed sentencing outcomes for a range of crimes. This nearly guaranteed that findings would be confounded. For example, a typical study included crimes widely ranging from shoplifting to murder without accounting for prevalent differences on the perpetration of each type of crime between Indigenous and non-Indigenous subsamples. Clearly, in such uncontrolled case-mix scenarios any observed between-group sentencing difference would be exceedingly difficult to confidently interpret. Such confounding can be controlled, however, by using large, statistically

Table 1: Characteristics and Outcomes of 11 Studies Included in the Meta-Analysis of Sentencing Outcomes

Crime charged with Reference	Populations Places & cohort years Sample description	Research design & analytic sample Sampling frame(s) Descriptors or covariates	Sentencing outcome Descriptive statistics Risk Ratio (95% CI)
Any crime			
			Custodial sentencing rate Female: 7.8% vs 5.8% RR = 1.34 (0.34, 21.54) Male: 4.8% vs 3.9% RR = 1.23 (0.75, 9.87) RR _{pooled} = 1.26 (0.78, 2.04)
Bienvenue & Latif, 1974	Indian vs White Winnipeg, MB, 1969 Aged 18 or older, 11.3% female	Bivariate survey, 1,919 & 4,076 Winnipeg Policy Records Crime severity	
Boldt et al., 1983	Native vs non-Native The Yukon, 1980 Aged 18 or older	Bivariate survey, 82 vs 66 Yukon Probation Services Crime severity, criminal record & employment	Incarceration recommended by PO 40.2% vs 30.3% RR = 1.33 (0.85, 2.08)
Schissel, 1993	Native vs non-Native Alberta, 1986 Aged 12 to 18, 16.5% female	Multivariate survey, 65 & 300 John Howard Society Crime severity, age, gender Criminal history & 2 others	Incarcerated or probationary scrutiny OR = 1.66 (1.01, 2.72)
Moore, 2003	Aboriginal vs non-Aboriginal National, 2000 Mean _{age} = 36.5, 2.8% female	Bivariate survey, 2,176 & 10,378 Federal Offender Management System Crime severity, age, gender, criminal history (3) Education, employment & 6 others	Maximum security recommended 21.0% vs 15.5% OR = 1.35 (1.23, 1.48)
Latimer & Foss, 2005	Aboriginal vs non-Aboriginal Five cities, ^a 1999-2000 Aged 12 to 20, 20.3% female	Multivariate survey, 115 & 288 Provincial Youth Court Records Crime severity, age, gender criminal history (4) & 4 others	Custodial sentence 60 days or longer 60.0% vs 43.1% OR = 1.69 (1.18, 2.41)
Welsh & Ogloff, 2008	Aboriginal vs non-Aboriginal National, 1990-2002 Aged 17 to 83	Multivariate survey, 358 & 333 Quicklaw Database Crime severity, disadvantaged background Criminal history (2) & 18 others	Custodial sentence 75.7% vs 78.1% OR = 0.97 (0.89, 1.05)

Isted, 2009	Aboriginal vs Caucasian or others Vancouver, BC, 1997-2003 Aged 12 to 19, 20.6% female	Multivariate survey, 88 & 353 Vancouver Serious and Violent Offenders Database Crime severity, age, gender Criminal history & 5 others	Sentenced to closed/secure custody 55.7%, 54.1% & 65.7% OR = 1.39 (0.98, 1.72) ^b
Thompson & Gobeil, 2015	Aboriginal vs non-Aboriginal National, 2008-2010 Mean _{age} = 34.6, 100% female	Bivariate survey, 174 & 452 Federal Offender Management System Crime severity, age, gender, marital status Criminal history & 4 others	Indeterminant imprisonment Female: 5.7% vs 2.0% RR = 2.85 (1.23, 6.59)
Homicide			
Avio, 1987	Native vs Anglo-Canadian National, 1926 to 1957 Aged 18 or older	Multivariate historical cohort, 350 National Archives, Crime Statistics Crime severity, age & 20 others	Execution rate Female: 66.5% vs 25.0% RR = 2.66 (1.97, 5.74) Male: 97.5% vs 85.0% RR = 1.15 (1.09, 1.38) RR _{pooled} = 1.21 (1.14, 1.28)
Moyer, 1992	Aboriginal vs non-Aboriginal National, 1962-1984 Aged 18 or older, 12.4% female	Bivariate survey, 1,734 & 7,220 Canadian Centre for Justice Studies Age, gender, marital status Year & 2 others	Suspended sentence, probation or fined Female: 10.2% vs 28.6% RR = 2.80 (2.08, 3.77) Male: 1.8% vs 1.5% RR = 0.83 (0.51, 1.35) RR _{pooled} = 1.97 (1.76, 2.21)
Weinrath, 2007	Aboriginal vs White Alberta, 1989-1991 Aged 20 or older, 0.0% female	Bivariate survey, 81 & 156 Corrections, Motor Vehicle & Transportation Depts. Age, gender, marital status, education Employment, prior DUIs & collisions	Length of prison sentence Male RR = 0.74 (0.01, 48.05)

Notes. CI, confidence interval; DUI, driving under the influence; OR, odds ratio; PO, probation officer; RR, rate ratio.

^a Toronto, ON; Vancouver, BC; Halifax, NS; and Winnipeg and Edmonton, AB. ^b $p < .10$.

powerful, multivariable mathematical or regression models that adjust for the potential confounding influence of factors like crime severity and criminal history. Most of this field's primary studies described these confounding and related factors, but regrettably, most did not analytically account for them. Less than half of the studies used multivariate methods and except for three studies with exceptionally large samples, study samples tended to be exceedingly small, particularly the Indigenous subsamples that ranged from only 65 to 358 (median = 88). Finally, seven of the studies employed, additionally confounding, comparison groups that aggregated White people with other diverse racialized and ethnic groups. Using these, more conservative, hypothetical meta-analytic inclusion criteria would likely have produced a sample of only one study, depending upon the severity of one's judgements, perhaps none. These would have been fairly characterized as near empty or empty reviews (Yaffe et al., 2012). Consequently, this study's synthetic findings ought to be interpreted with extreme caution. In doing so, readers ought to note the following: Three of the studies allowed the estimation that non-Indigenous, predominantly White, offenders were much more likely to perpetrate violent crimes (i.e., about 60% more likely), including first degree murder, than were Indigenous offenders (RR = 1.61 [95% CI 1.52, 1.69]; Bienvenue & Latif, 1974; Moore, 2003; Moyer, 1992). Two interpretive adjuncts then seem clear. First, this study's synthetic findings will almost certainly be biased. Second, any such bias is highly likely to operate such that any synthetic findings on Indigenous disadvantages in sentencing are gross underestimates of the truth.

Meta-Analytic Findings

Both study hypotheses were largely supported. First, the aggregated risk of receiving more punitive sentences was much greater among Indigenous offenders than among non-Indigenous offenders (RR_{pooled} = 1.24; 95% CI 1.22, 1.26). Though they tended to perpetrate less violent crimes, on average, Indigenous offenders were about 25% more likely to receive longer and more punitive sentences. Second, the ethnic divide was observed to be significantly larger among women than men. The relative risk of being sentenced more punitively was observed to be much greater among Indigenous women (RR_{pooled} = 2.74; 95% CI 2.45, 3.07) than men (RR_{pooled} = 1.12; 95% CI 1.06, 1.19); $z = 13.91, p < .05$). It ought to be noted, however, that this meta-analytic moderator test of the Indigenous identity by gender interaction was based upon a very small subsample of only four study outcomes each for women and men. The gender moderation hypothesis was not testable among young offenders as none of those studies reported their outcomes by gender. No other population or research design characteristic was significantly moderating. Most notable among them were period of data collection (< 1980, 1980s, 1990s, 2000s) and type of manuscript (peer-reviewed, published journal article, or unpublished grey paper). The former null moderator suggests that the observed sentencing inequities represent consistent and longstanding injustices. The latter suggests that publication bias is not a likely alternative explanation for this study's findings.

Discussion

To the authors' knowledge, this is the first research synthesis of Indigenous and non-Indigenous sentencing disparities in Canada that presents meta-analytic evidence. The aims of this study were to explore whether Indigenous peoples receive more punitive sentences in Canadian criminal and youth justice courts than non-Indigenous people and whether these inequities are

more profound for Indigenous women. Unfortunately, due to the limited number of studies, it was not possible to examine whether the landscape of sentencing has changed for Indigenous peoples since the *R. v. Gladue* and *R. v. Ipeelee* rulings. However, the one study in this sample conducted post-*R. v. Ipeelee* found Indigenous peoples to be nearly three times as likely to be sentenced more punitively (RR = 2.85). This was the highest rate ratio of the entire sample.

The evidence presented here suggests that Indigenous peoples, both adults and youths, were 25% more likely to receive longer and more punitive sentences. And this inequity was much larger for Indigenous women than Indigenous men. Compared to non-Indigenous women, Indigenous women were nearly three times as likely to receive harsher sentences. The Indigenous-non-Indigenous divide among men was significantly smaller, but still substantial and practically significant at the population level as the risk of receiving a relatively harsh sentence was 12% greater among Indigenous men. We were unable to similarly test the gender divide among youth as none of the three relevant primary studies provided enough analytic detail. The current study thus provides consistent evidence that sentencing disparities do exist in Canada and Indigenous women are highly likely the most disadvantaged group within its criminal courts. It may, then, be extrapolated that Indigenous girls are similarly disadvantaged. Moreover, such sentencing disparities are likely contributing to Indigenous peoples,' especially women's, overrepresentation in both provincial/territorial and federal correctional systems. Of the 11 primary studies included in this meta-analysis, nine used custodial sentences as outcomes. Finally, the inequities, indeed the injustices observed with this meta-analytic study have been longstanding, probably for at least 100 years or for as long as such data, limited as it is, has been available in Canada.

This meta-analytic review builds on the foundational knowledge set out by Jeffries and Bond's (2012) narrative review. However, as mentioned, their three-nation study included only two Canadian studies. An additional nine Canadian studies were reviewed here, and the age inclusion criterion was expanded to include youths. Jeffries and Bond assessed the findings of both Canadian studies as null (Weinrath, 2007; Welsh & Ogloff, 2008) and we concurred. However, when the nine additional studies were included, our conclusions diverged markedly from Jeffries and Bond. They concluded that there was no evidence in Canada in support of the negative discrimination hypothesis. We found consistent support for it.

What the current study elucidated most clearly, though, was the paucity of research related to Indigenous peoples and the criminal justice system. This dearth, noted within both published and unpublished research literatures, can probably be explained in large part by the lack of high quality and detailed data being recorded by provincial corrections, police agencies, and youth and adult courts (Department of Justice, 2018; Reitmanova & Henderson, 2016; Reasons et al., 2016; Reid, 2017; Rudin, 2005; Sittner & Gentzler, 2016; Walter & Andersen, 2016; Zimmerman, 1992). According to Reid (2017), increasingly there are delays in the publications of court statistics by Statistics Canada. For example, Miladinovic's (2019) report on adult criminal and youth court statistics, released in January of 2019, reported data from 2016/2017. In addition to delays in reporting, police agencies and courts across Canada do not consistently collect and report data related to race and ethnicity (Reasons et al., 2016). For example, as of 2009, 20% of Canadian police services, including the Royal Canadian Mounted Police and Ontario Provincial Police, refused to report data related to race/ethnicity, including Indigenous identity (Millar & Owusu-Bempah, 2011). Relatedly, in 2005, Kong and Beattie

Alberton et al.

reported that work was underway to include Indigenous identity in the Adult Criminal Court Survey and Youth Court Survey. However, in 2005-2006, these surveys were integrated into one survey, the Integrated Criminal Court Survey and as of the 2017-2018 iteration, race- and/or ethnicity-based data still were not being collected (Statistics Canada, 2019). Despite longstanding debates among academics and minority groups about the collection of race-based data across the criminal justice system (Reasons et al., 2016), recent evidence suggests routine collection of these data is now supported by both racialized and colonized communities, and academics (Millar & Owusu-Bempah, 2011; Owusu-Bempah & Millar, 2010; Reasons et al., 2016; Walter & Andersen, 2016).

Implications

Clearly, Indigenous peoples are sentenced more punitively in criminal courts. One is left wondering, though, if the problem starts with over-policing or, more disconcerting, a purposefully flawed system of justice structured in such a way to unjustly repress and oppress Indigenous peoples. A recent study found that Indigenous peoples are much more likely to experience involuntary contacts with police than non-Indigenous White people in Canada (Alberton et al., 2019). Specifically, Alberton et al.'s (2019) national study found that 4.5% of Indigenous peoples reported two or more involuntary contacts with police in the past year, versus 1.7% of non-Indigenous White people.

There is a need to re-think the root causes of the issues confronting Indigenous peoples and how we go about addressing them. We recommend that police services need to be augmented by alternative interventions. For example, portions of police budgets should be re-allocated to education, healthcare, social services, and the like. However, the structure of society and its systems, which are founded on privilege and incontestably permeated with racialized policies, procedures, programs, and practices, must also be addressed. We also recognize that one of the challenges of re-allocating or adding resources is that if funding is provided to systems that are not working well there is a good chance that the resources will be used to maintain social control by way of racism, patriarchy, and neocolonialism. Social workers must be involved in interventions that promote social care, rather than social control (Mullaly & Dupré, 2018). To achieve this, collaborations with Indigenous peoples to revamp social systems are necessary. These consultations must be ongoing, not token conversations. Additionally, these conversations need to take place not just with academics and legal experts in journals and at conferences. As Harold Johnson, a member of Treaty 6 Territory in Saskatchewan and former Crown Attorney stated in an interview: "What we need to do is go out on the street and ask somebody, especially women, to come in and explain to us what justice means" (Mike, 2019, para. 19). Finally, if objectification and subjugation of "others" is to be ameliorated across social systems, there must be a greater effort to integrate compassion, empathy, kindness, and respect into societal systems via courageous conversations and actions. As Justice Murray Sinclair noted when speaking about accountability within the criminal justice system, "trust is a result of actions, not a result of words" (Paikin, 2020). Simply tinkering with the system has not and will not work. As Johnson states, "fundamental ideas around justice" (Mike, 2019, para. 24) need to be changed. Social workers are poised to be transformative agents; however, this transformation must be undertaken with the pursuit social justice as the foundation.

Limitations and Future Research Needs

There seems clear evidence of the whitewashing of data in the Canadian criminal justice system. Such will require political solutions: coalitions of Indigenous people and ally-settlers advocating for change. Politics notwithstanding, this field clearly suffers for scientific problems as well. The two, politics and science, are inexorably linked in diverse nations with limited research budgets. Most regrettably, the Canadian example demonstrates the profoundly detrimental effect that politics can sometimes have on science. Without the availability of high-quality data, including fundamental descriptors of people such as their racialized/ethnic group status and gender, it clearly becomes nearly impossible to do high quality social scientific research on any given aspect of society. Take the topic of racial bias in the criminal justice systems in Canada and the USA, for example. Given the topic's timeliness, obvious significance, as well as prevalent contemporary journalistic coverage and political rhetoric, one would expect a broad systematic search to find many rigorous studies. Yet our search of the research literature specific to sentencing disparities between Indigenous and non-Indigenous people, that essentially covered the past century, found only 11 studies that, for the most part, were quite methodologically limited. In fact, it appears that Canadian society has purposefully colluded to ensure that any injustices that do exist within our criminal justice system cannot ever be confidently observed. More powerful and rigorous research that can well account for racialized/ethnic group status and gender will be needed if we are to reach the legitimate goal of *justice* within Canada's criminal justice system.

Our research synthesis observed four further limits of this field's methods. First, only five of its studies addressed gender in any way, only three of these allowing for gender comparisons. Second, eight of the studies were of diverse crimes, not allowing for the control of case-mix differences between Indigenous and non-Indigenous. Such confounding could be controlled, however, by using large, statistically powerful, multivariable mathematical or regression models adjusting for the influence of factors like crime severity and criminal history. However, we noted a third limit of this field, that is, most of its studies did not incorporate such rigorous multivariable analyses. Fourth and finally, ethnicity is confounded in the majority of this field's comparisons. For example, most typically this field uses non-Indigenous comparison groups, providing an average outcome among non-Hispanic White people and all other non-Indigenous people (all other so-called visible minority group members or people of colour). Future research needs in this field are clear and uncomplicated. Meeting those needs, though, will first and foremost necessitate the routine collection of two simple datapoints for every person who contacts any element of Canada's criminal justice system; police, courts and corrections: racialized/ethnic group membership and gender.

Conclusion

The evidence from this meta-analytic exploration leads to the conclusion that being Indigenous contributes to longer and more punitive sentences in Canadian adult and youth courts. This is especially true for Indigenous women. This is yet another example of Canadian systems and the actors and agents involved, including social workers, failing Indigenous peoples (Reasons et al., 2016). The overrepresentation problems across the criminal justice system are not due to failures of Indigenous peoples or communities.

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Further, the near empty status of this meta-analytic review suggests the importance of consistently and prudently collecting and reporting race- and ethnicity-based data across all facets of the criminal justice system. For example, the Canadian government should require that courts report and make publicly available detailed data related to sentencing and other criminal court outcomes. According to then president of the Native Women's Association of Canada, Dr. Beverly Jacobs, "racism is just a lack of education," and most Canadians simply "have no idea" (Gorelick, 2007, p. 52) and are dismissive about the perils experienced by Indigenous peoples as a result of structural violence, including colonization, and the resulting marginalization and oppression. Only when data are consistently and thoroughly reported and made publicly available can education truly begin. If data continue to be suppressed, so will the truth.

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