ARE LIFE SENTENCES WITHOUT THE POSSIBILITY OF PAROLE FOR MULTIPLE MURDERERS "CRUEL AND UNUSUAL"?
A CONSTITUTIONAL COMPARATIVE CASE ANALYSIS OF R V BISSONNETTE: CANADIAN AND AMERICAN PERSPECTIVE

By
Logan Scott Kroeker

Under the Supervision of
Professor Doug King

An Honours Project submitted
in partial fulfillment
of the Degree requirements for the degree of

Bachelor of Arts – Criminal Justice (Honours)
Mount Royal University

Date Submitted:
April 6th, 2023

MOUNT ROYAL UNIVERSITY

CALGARY, AB. CANADA

Acknowledgements

First and foremost, I would like to express my sincere gratitude to my Honours Supervisor and mentor, Professor Doug King. Our journey began eight years ago, and although it commenced on a rocky footing, Doug has profoundly influenced my life. In those early days, I struggled with critical thinking and introspection whenever my viewpoints were challenged. As a result, I avoided his class for many years, fearing I ruined any potential future relationships with this great man; I was wrong, and I wholeheartedly regret that choice.

The function of education is to teach one to think critically. Doug's impact extends beyond cultivating one to think critically and be introspective, but to thrive in conditions when you are constantly challenged. Your mentorship, compassion, and sincere interest in seeing me and other students reach their fullest potential has had a profound impact. You were the person I confided in when I thought my Law School aspirations were over, but you told me time and time again that you were going to Law School. Yet again, you challenged my views, and once again, you were right. From our first encounter until now, I have gotten wiser and older, but what remains persistent is your teachings that have surpassed the classroom — forgiveness is key for critical thinking and being introspective, allowing you to grow and become the best version of yourself.

Lastly, I must acknowledge my family's invaluable contributions. My profound gratitude goes to them for their unwavering support, patience, and guidance throughout my undergraduate journey. Without your encouragement and being by my side through thick and thin, I would not be where I am today. Thank you for believing, even when there were so many doubts. Thank you, mom, dad, and my sister, for pushing me to remain persistent and ensuring that I never set limits on my capacity to grow.

Abstract

For two countries that share a border, there is a paucity of comparative research examining section 12 of the Canadian Charter of Rights and Freedoms and the United States Eighth Amendment. This study critically examines Canada's and America's divergent legal frameworks and jurisprudential interpretations surrounding Cruel and Unusual Punishment and Life of Imprisonment Without the Possibility of Parole for multiple murderers. The study employs a hypothetical application of the R v Bissonnette decision to the United States context to illustrate the complexities and distinctions inherent in their respective legal frameworks. By examining the constitutional underpinnings, jurisprudential traditions, and societal factors that shape each country's approach to sentencing in cases involving multiple murders, this analysis elucidates the role of the R v Bissonnette case in highlighting the differences between the two nations. Through an in-depth exploration of the living tree doctrine in Canada and the competing interpretations of originalism, textualism, and the living constitution in the United States, the study reveals how these differing constitutional paradigms inform the balance between punishment, deterrence, rehabilitation, and the protection of human rights in the context of criminal justice. The findings underscore the importance of cross-jurisdictional dialogue and comparative research to foster a deeper understanding of the underlying principles and values that guide each legal system, ultimately contributing to developing more humane and effective sentencing policies across jurisdictions.

Keywords: Bissonnette, Canadian Charter of Rights and Freedoms, Cruel and Unusual Punishment or Treatment (CUP), Eighth Amendment, Grossly Disproportionate, Life of Imprisonment Without the Possibility of Parole, Living Constitution, Mandatory Minimum Sentence (MMS), Originalism, Textualism.

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The Basics: Cruel Punishment & Life of Imprisonment – Is it Confusing?

Life of imprisonment without the possibility of parole (*LWOP*) is colloquially known as a life sentence or under s. 745.1(a) of the Canadian *Criminal Code,* RSC 1985, c C-46 as a life of imprisonment, and is reserved for those convicted of first-degree murder or high treason; second-degree murder with prior culpable homicide conviction(s); and lastly, second-degree murder with prior convictions under ss. 4 or 6 of the *Crimes Against Humanity and War Crime Act,* SC 2000, c. 24 [*CAHWCA*]. These sentencing provisions stipulate that those found guilty of the offence are to be sentenced to *LWOP* until having served twenty-five years of imprisonment. Notwithstanding, a second-degree murder conviction carries a mandatory minimum period of parole ineligibility until having served ten years but no more than twenty-five years of incarceration (*Criminal Code* s. 745.1(a-c)). Essentially, a life of imprisonment is a designation for those convicted of a crime that contravenes the provisions of s. 745.1 and are to serve a *mandatory minimum sentence* (*MMS*) of twenty-five years before they can apply for parole. Even then, there is no guarantee of being granted parole and released at the twenty-five-year mark, but only the '*possibility'* and '*ability'* to apply for parole.

Nevertheless, many, including myself, at one point, misinterpreted the provision to mean they only serve twenty-five years and are then released, or a life of imprisonment is to be incarcerated for the rest of their natural life (i.e., until death). While contextually wrong, being incarcerated until the day you die has become a reality once more through the enactment of s. 745.51 of the *Criminal Code,* and is reserved for those convicted of multiple murders, by granting the court the authority to sentence the offender to multiple consecutive life sentences (i.e., back-to-back; when one sentence ends, the other sentence begins). The complexity of the

law creates confusion within society because people cannot understand what is said, leading to misinterpretation and misinformation.

These perplexing issues are heightened further with constitutional matters. The *Canadian Charter of Rights and Freedoms* Part I of the Constitution Act*,* 1982, being Schedule B to the Canada Act *1982* (UK), 1982, c11., [*Charter*] under section 12, titled treatment or punishment and states, "[e]veryone has the right not to be subjected to any cruel and unusual treatment or punishment" (para 16). The historical framework to be free from cruel punishment originates in England's *Bill of Rights* [1688], (UK), 1 Wm. & M. sess. 2, c. 2, s. 10., which provides the rights to be free from the imposition of excessive fines and the infliction of punishments deemed illegal and cruel punishments (at para. 13-14; Dostal, 2022 at para 7; *9147-0732 Quebec inc., v Director of Criminal and Penal Prosecutions*, 2019 QCCA 373 [*Quebec inc.* QCCA] at para 113). This fundamental principle is embodied in the American Bill of Rights' Eighth Amendment (i.e., the United States Constitution), which proclaims: "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted" (U.S. Const. Amend. 8; *Quebec inc.* QCCA at para 113).

Meanwhile, similar provisions were adopted by Canada in the *Canadian Bill of Rights,* SC 1960, c 44, under section 2(b). In 1982, the *Canadian Bill of Rights* was amended and replaced with the *Charter* (Dostal, 2022; *Quebec (Attorney General) v 9147-0732 Quebec inc.*, 2020 SCC 32 [*Quebec inc.*] at para 48). It is worth noting that the *Eighth Amendment* and England's *Bill of Rights* [1688] "were originally intended to prohibit the use of barbaric punishments and inhumane torture" (*Quebec inc.,* at para 49). Conversely, neither the *Canadian Bill of Rights* nor the *Charter* contains the provision to be free from excessive fines, but the *Charter* does include the right to be free from excessive bail under s. 11(e) – "the right not to be

denied reasonable bail without just cause" (*Charter* s 11(e); *Quebec inc.,* at para 16). Consequently, the question arises, what is the relationship between a life of imprisonment and cruel punishments for those convicted of multiple murders? It is this question I seek to answer.

Thesis Overview & Methods

This thesis investigates the commonalities and differences in how Canada and America define *cruel and unusual punishment* (*CUP*) and its implications on *LWOP* for multiple murderers. Both nations' frameworks will be assessed through a comparative case study application to *R v Bissonnette* 2022 SCC 23 [*Bissonnette*]. Whereby facilitating an in-depth understanding of how the courts determine an infringement of s. 12 of the *Charter* and the *Eighth Amendment*. By examining these aspects, we can gain meaningful insight into the contrasting differences and similarities and assess the significance of a nation adhering to the fundamental principles and goals of justice, corrections, and rehabilitation. For this endeavour, the research will be guided by four central questions:

1. How do Canada and the United States define *CUP*?
2. What constitutes a *LWOP,* and how do both nations compare in this regard?
3. What are the principles and goals of justice, corrections, and rehabilitation for Canada and America?
4. In the comparative case analysis of *Bissonnette*, what juxtapositions, if any, do Canada and America have?

The study follows a qualitative*,* comparative analysis through the application of *Bissonnette* and is exploratory because analyses on *LWOP* and *CUP* between Canada and America are an under-researched area. In addition, exploratory research seeks to investigate and develop a baseline understanding of an issue yet to be studied in-depth (University of Southern California [USC],

2022). Lastly, an exploratory approach complements the research design by addressing the paucity of similar comparative studies.

Ethics Approval & Data Collection

Secondary research is the primary source of data collection, which evaluates, analyzes, and synthesizes already existing data sources as evidence to defend or refute the hypothesis (Maurer School of Law, 2019). These data sources consist of case law and are supported by secondary sources, including scholarly articles, books, and new articles. Mount Royal University's Human Research Ethics Board (HERB) did not require ethical approval. Due to the inherently unobtrusive data collection measures, accessing secondary data sources anonymously and in the public domain, such as court case documents and scholarly articles, are deemed less than minimal risk; thus, they are not subject to HERB approval and per the Tri-Council Policy Statement (TCPS) (Government of Canada, 2018; Mount Royal University [MRU], 2022). The primary documentation in this thesis includes court and legal documents for the respective cases from Canada and America:

> **Canada** - *R v Bissonnette* [2022], *R v Boudreault* [2018], *R v Morrisey* [2000], *R v Nur* [2015], *R v Oakes* [1986]*, Rodriguez v British Columbia* [1993], *R v Smith* [1987], *R v K.R.J* [2016], *R v Rodgers* [2006], *Quebec v 9147-0732*.
>
> **America** - *Furman v Georgia* [1972], *Graham v Florida* [2010], *Harmelin v Michigan* [1991], *Miller v. Alabama* [2012], *Solem v. Helm* [1983], *Trop v Dulles* [1958]

These cases are critical to evaluate the historical jurisprudential evolution in defining *CUP* within Canada and America. These cases are necessary for a historical overview and conceptual understanding to be possible. Meanwhile, selecting *Bissonnette* is relevant to the main topic — LWOP and multiple murderers are inextricably bound to s. 12 of the *Charter* and the *Eighth*

Amendment. Furthermore, the case of *Bissonnette* established a new framework for *CUP* for these offenders and sentences. These new parameters assist in assessing how Canada and America would rule on this case under separate systems. Lastly, being a unique design and a paucity of literature on similar studies, it is imperative and the underlying prerogative of any thesis – to create and disseminate works of scholastic merit, furthering the scope of articles in academia.

Research Methodology/Theoretical Framework: Multi-Design Approach

Investigating inherently puzzling questions can lead to oversimplifications of the research design, tarnishing the study. For this study, a one-size-fits-all research design is not sufficient. Instead, the research designs best suited for examining case law and assessing the polarity between both nations' jurisprudential histories of *LWOP*, legal doctrines, and jurisprudence on *CUP* require a multi-method approach. Thus, the research design selected is a historical and comparative analysis, with a case study application, through an integrated literature review. Historical analyses explore past issues by analyzing, synthesizing, and evaluating evidence that either disputes or repudiates a hypothesis (Choongh, 2017). Such an analysis allows for examining case law and assessing the polarity between both nations' jurisprudential histories of *LWOP*, legal doctrines, and jurisprudence on *CUP*. Additionally, a historical analysis uses secondary sources and different forms of primary documents to provide unobtrusive data. For instance, the primary documentation in this thesis includes legislation, court documents, and Supreme Court cases (*See* Ethics Approval & Data Collection).

A comparative case study is an "in-depth study of a particular problem" (University of Southern California [USC], 2022, para 1) by adding or enhancing scholarship through existing research through comparison and examination (Choongh, 2007; USC, 2022) "of a legal issue on

how the outcome could be different under each set of laws" (Maurer School of Law, 2019, para 30). Lastly, an integrative literature review aims to critique and combine literature on a research topic in a way that can reconceptualize the theoretical framework guiding an issue (Snyder, 2019; Torraco, 2016). Such an approach enables a comprehensive comparative analysis and interpretation to expand our understanding of complex topics.

Limitations

There are always limitations to the research, even when the utility maximization is high. However, the limiting factors for this study do not vitiate the validity. While researching topic-specific literature and comparative analyses on *LWOP* between Canada and the United States of America (USA or states) is noteworthy. Albeit there is a breadth of scholarly works for the USA and Canada individually. Surprisingly, there is a paucity of literature comparing both nations' *LWOP* and a lack thereof on the implications of defining *CUP*. Nevertheless, the available literature provides detailed information that needs to be only compiled, where it can be evaluated, analyzed, synthesized, comprehended, and applied to future academic works. Lastly, one crucial restriction hinders the study's scope – accessing U.S. legal documents without paid subscriptions, which constrains the breadth of the comparative analysis.

Thus, before proceeding to the core of the case analysis, we need to explore the jurisprudential evolution of an s. 12 *Charter* defence. The underlying purpose is to inform and provide those who are not *Charter*-sensitive with a foundation that facilitates their ability to synthesize and comprehend future discussions and references. Additionally, much of the s. 12 jurisprudence has been in the context of challenges to *MMS*; as we will discover, there are exigent circumstances in its justification (Newman, 2019).

Section 12 Charter Defence: The Jurisprudential Evolution of CUP

The framework of an s. 12 *Charter* defence is outlined within six pivotal cases. These six cases' jurisprudence will be integrated to provide a succinct overview of the legal doctrines and their application for *CUP*.

Cruel & Unusual Punishment or Treatment – Proportionality

In *R v Smith* (*Edward Dewey),* [1987] 1 SCR 1045 [*Smith*], the SCC defined cruel and unusual punishment or treatment in section 12 of the *Charter* in three parts:

(1) Nature of the punishment – the [form] of punishment/treatment;

(2) Conditions in which the punishment is served — involves the physical or psychological environment in which punishment is served; [and]

(3) Duration of the punishment — the length of the sentence must be proportional to the severity of the offence (King, 2021; *Smith*).

These conditions outline the legal meaning of *cruel and unusual* and the framework for the *grossly disproportionate* test, which assesses the effects of state-imposed treatment or punishment on an individual. These effects were recognized in *Rodriguez v British Columbia (Attorney General),* [1993] 3 SCR 519 [*Rodriguez*] to include physical and psychological harm. To meet the threshold, as articulated in *Smith,* the treatment or punishment must be of a nature that "outrage[s] society's sense of decency" (p. 1072). This threshold is met when the actions of the state are deemed "abhorrent or intolerable" (as cited in GOC, 2022 at para 5, quoting *R v Morrisey,* [2000] 2 SCR 90 [*Morrisey*] at para 26) by Canadian society. Additionally, the courts in *Morrisey* refined the test to include a third factor, the consideration of individual circumstances.

Legal Meaning of Cruel and Unusual

In the case of *Smith,* the courts held that for treatment or punishment to be *cruel and unusual*, the level must be "so excessive as to outrage standards of decency" (p. 1072). For treatment or punishment to offend s. 12 of the *Charter,* the sentences imposed were without due regard to individual sentencing requirements by not considering the nature and circumstances of the offence and offender (*R v Nur,* 2015 SCC 15 [*Nur*]). The standard for excessiveness is high, requiring that the sentence be — arbitrary, disproportionate, and without justification; however, a merely excessive sentence is not enough to infringe or offend s. 12 of the *Charter* (*Nur*).

The Legal Meaning of Punishment

In *R v K.R.J.*, 2016 SCC 31 [*K.R.J.*], the Courts define punishment as any state action that falls within the following three criteria:

(1) [T]he results of a conviction that forms part of the arsenal of sanctions[;]

(2) [Sentences] imposed in furtherance of the purpose and principles of sentencing[; or]

(3) [H]as a significant impact on an offender's liberty or security interests" (as cited in *Bissonnette* at para 57, quoting *R v Boudreault*, 2018 SCC 58 [*Boudreault*] at para 39, quoting *K.R.J.* at para 41).

Meanwhile, the SCC in *Boudreault* expanded the meaning of punishment to have consistency and is to encompass ss. 11(*h-i*) of the *Charter* (at para 38). This expansion enabled the courts to recognize that mandatory minimums fines and surcharges can offend s. 12 of the *Charter*. Accordingly, this new parameter can no longer require victim surcharges and is one of the turning points to rid the system of MMS and recognize the importance of proportionality and rationality for s. 12 *Charter* infringements.

Legal Meaning of Treatment

Treatment is defined broadly as any state action extending beyond and amounting to the s. 12 articulation of punishment. The SCC has extrapolated on 'treatment' to be "a process or manner of behaviour toward or dealing with a person or thing" (Government of Canada [GOC], 2022 at para 6, quoting *Chiarelli v Canada (Minister of Employment and Immigration,* [1992] 1 SCR 711 [*Chiarelli*]). While lacking specificity, there is substance. For instance, in *Rodriguez,* the courts stated that DNA samples "as a consequence of conviction [are] treatment" (para 63).

Redefining The Scope of Grossly Disproportionate - R v Nur [2015]

In *Nur,* the courts recognized the arcane meaning of *CUP* by refining it and peering through the lens of proportionality and following strict adherence to the fundamental principles of sentencing. In the perspective of proportionality, Chief Justice McLachlin (CJ) selected one that "ensures sentences reflect the gravity of the offence[, which is] closely tied to the objective of denunciation" (*Nur,* [2015] at para 43). Furthermore, proportionality places limits on the judiciary system, in turn, providing justice for the offender by "ensuring that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender" (*Nur,* [2015] at para 43).

Grossly Disproportionate – Section 12: Two-Step Test

To determine if a sentence is excessive and *grossly disproportionate,* the courts must assess it through the two-step test of s. 12 of the *Charter* as follows:

(1) is the punishment *grossly disproportionate* given the circumstances of the particular offence?

(2) is the offence *grossly disproportionate* for a reasonably foreseeable offender? (*Bissonnette*; *Nur*).

The courts must differentiate between two spectrums of offenders. At one end of the spectrum is the reasonably foreseeable offender (e.g., incurring a minor infraction). Then, on the other end, is the specific offender who has "no business [being there] and who are engaging in criminal conduct […] that poses [a] danger to others [and is who should] receive exemplary sentences that emphasize deterrence and denunciation" (*Nur* at para 25). To determine this assessment, the courts must consider the excessiveness of the punishment by asking the following three questions:

(1) is the punishment excessive to the point of being intolerable to human dignity? (2) is the punishment excessive to the extent of being abhorrent or intolerable to society? (3) does the law mandate specific punishment? (King, 2021).

In answering these questions, the courts must consider a range of factors for the specific offender, the gravity of the offence, and the nature and circumstance of the offence and offender. Meanwhile, the courts must consider circumstances that are not remote or far-fetched for the reasonably foreseeable offender. For instance, if a sentence is not an infringement of s. 12 for the specific offender (i.e., individual), would the same sentence offend s.12 for the reasonably foreseeable offender (i.e., other offenders) Whereby establishing if the punishment is more than merely excessive (*Nur*).

Revision Expansion - R v Boudreault [2018] to Quebec v 9147-0732 Quebec inc. [2020]

In *Boudreault,* the SCC expanded the scope by recognizing that mandatory minimums and surcharges can offend s. 12 of the *Charter* while highlighting the importance of proportionality and rationality in determining such an infringement. Such logic was essential in the SCC judgement in *Quebec inc.* The courts ruled that non-human legal entities (i.e., business) are not afforded s. 12 *Charter* protections because the violation of – human dignity – is a

requirement for a state action to be considered cruel punishment; thus, it only applies to "natural persons" (at para 57 & 141).

With everything discussed, it is clear that the principles of proportionality are the precipice for an s. 12 analysis. The test requires a comparative analysis that weighs the gravity of the offence and the severity of the punishment. Nevertheless, by discussing the legal framework of *CUP*, we can now turn to the case analysis of *Bissonnette*. The following will provide a background factual matrix of the case, the legal doctrines utilized, the requirements for determining if the impugned measure constitutes cruel punishment and if it can be saved through a section 1 analysis. Whereby allowing for a comparative analysis in applying the United States of America's legal framework to the case.

R v Bissonnette [2022] - Case Brief: The Abolishment for Life of Imprisonment

The case of *R v Bissonnette,* 2022 SCC 23 involves the appellants, Her Majesty the Queen and Attorney General of Quebec, and the respondent, Alexandre Bissonnette, represented by numerous interveners.

Factual Matrix of the Case & Judicial History

In 2017, Mr. Bissonnette, armed with a semi-automatic fire and handgun, opened fire in the Great Mosque of Quebec, killing six people and injuring five others. He was charged with six counts of first-degree murder under ss. 231(2) and 235 of the *Criminal Code*, which mandates a 25-year mandatory minimum term of imprisonment before parole eligibility. The Crown asked for the application of s. 745.51 *Criminal Code*, amended by the *Protecting Canadians by Ending Sentence Discounts for Multiple Murders Act,* SC 2011, c.5. Under the provision, those found guilty of multiple murders are to serve their sentences consecutively (i.e., back-to-back) instead of concurrently (i.e., sentences served at the same time for a maximum of 25 years). In the case

of Mr. Bissonnette, the term of imprisonment for six counts of first-degree murders would be 150 years of imprisonment before parole eligibility which is the matter in dispute. Thus, the court is to determine if the provisions of s. 745.51 of the *Criminal Code* infringe s. 12 of the *Charter*, and if so, can the *Charter* infringing measures be saved by a section 1 analysis using the *Oakes test.*

Lower Court Decision: Quebec Superior Court – *R. c. Bissonnette,* 2019 QCCS 354

The complexity of Mr. Bissonnette's case started in *R. c. Bissonnette,* 2019 QCCS 354 [*R. c. Bissonnette*], at the Quebec Superior Court. The Crown requested that the court impose consecutive sentences for all the murders under s. 745.51 of the *Criminal Code*, resulting in 150 years of imprisonment. At trial, Justice Huot held that a 150-year sentence parole eligibility is inherently excessive and intrinsically incompatible with human dignity. As a result, a constitutional analysis to determine a proportional sentence had to be considered. Justice Huot had to weigh the totality of the circumstances surrounding the nature of the offence, the circumstances for and during the omission of the offence, evaluate the character of Mr. Bissonnette and consider the principles of sentencing.

Principles of Sentencing – Purpose & Objectives. It is worth noting that s. 718 (a-f) of the Criminal Code outlines six objectives for criminal sentencing (See **Error! Reference source not found.**) as follows:

(a) Denounce unlawful conduct by the offenders and others.

(b) Deter offenders and others from committing future offences.

(c) Separate offenders from society when necessary.

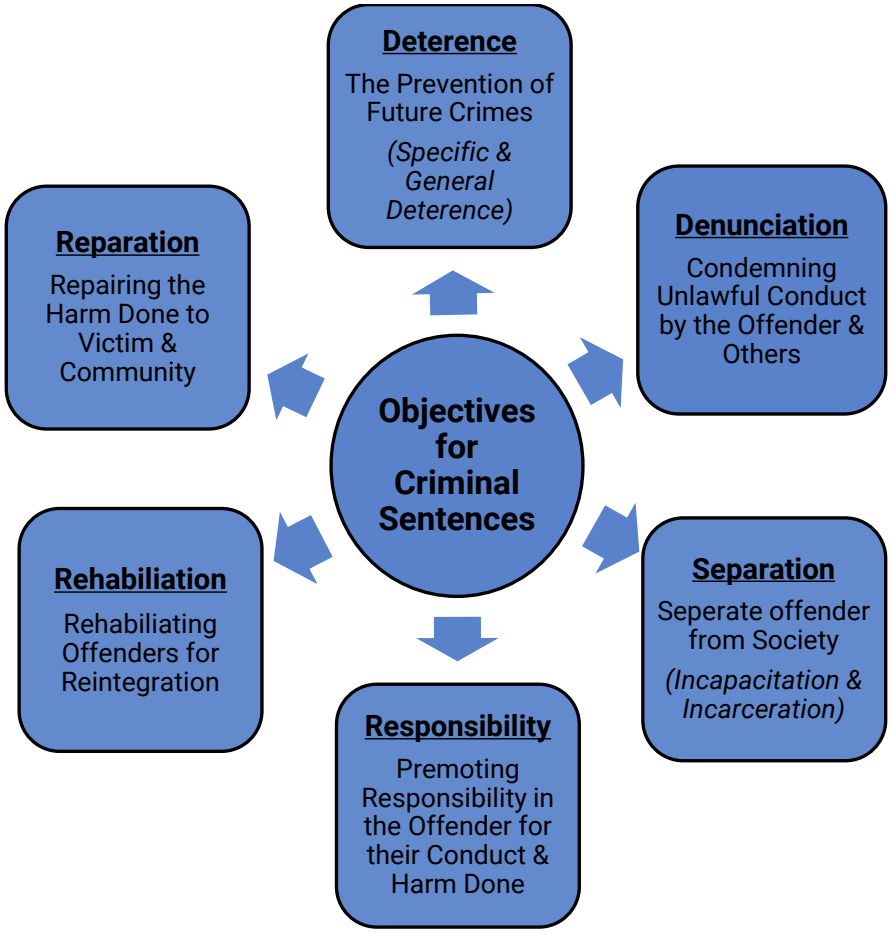
(d) Rehabilitate offenders.

(e) Provide reparations for harm done; [and]

(f) Promote responsibility in the offender for their conduct and harm done to society (*Criminal Code,* s 718(a-f)).

Figure 1

The Six Objectives of Criminal Sentences - Section 718(a-f) Canadian Criminal Code



Note. Visual representation of the six objectives of criminal sentence pursuant to s. 718(a-f) of the *Criminal Code.* Adapted with permission from the works of Professor Doug King, Mount Royal University, Department of Economics, Policy Studies, & Justice Studies material.

These compulsory principles weigh the totality of the circumstances of the offence by examining the mitigating and aggravating circumstances central to one's biographical core, whereby a proportionate sentence is determined (*Criminal Code,* ss 718.2 (a)(i-vi), 718.2(b-e)). Additionally, the purpose of sentencing is to protect society by contributing to the respect for the

law and maintaining a just, peaceful, and safe society through the imposition of just sanctions that align with one or more sentencing objectives (*See* Figure 1) (*Bissonnette* at para 45). The sentence is how society communicates and disseminates moral values and must be weighted cautiously (*Bissonnette* at para 46). The objective of sentencing is to deter future crimes, known as general deterrence and is accomplished by the swiftness and certainty in the punitive measures, dissuading members of the public who might engage in criminal activity (*Bissonnette* at para 47). Meanwhile, specific deterrence is meant to discourage offenders from reoffending through punitive measures (i.e., incarceration, fines, et cetera) (*Bissonnette* at para 47). Nevertheless, the sentencing objective varies with the crime's nature and the offender's characteristics. There is no guide for determining a just sentence; as a result, the courts must judiciously balance sentences of moral blameworthiness and account for the needs of society (*Bissonnette* at para 49).

Lower Court Decision: Quebec Superior Court – cont'd

In continuation, considering these facts, Justice Huot asserted that s. 745.51 of the *Criminal Code* limits a judge's exercise of discretionary power to the imposition of 25-year periods, each served consecutively; as a result, these restricting provisions provided Justice Huot sufficient grounds to conduct a section 12 *Charter* analysis to determine a proportionate sentence. The trial judge found that s. 745.51 does infringe on s. 12 of the *Charter* and the impugned measures cannot be saved by a section 1 analysis. Therefore, an appropriate sentencing period of more than 25 but less than 50 years before parole eligibility was deemed proportionate (*Bissonnette; R. c. Bissonnette*). The trial judge applied the remedy of reading-in (i.e., striking down the law through constitutional invalidity) of s. 745.51 to create adherence to the fundamental principles of justice and principles outlined in s. 718 of the *Criminal Code* (*R. c.*

Bissonnette; *Criminal Code,* s 718). Thus, Justice Huot sentenced Mr. Bissonnette to life imprisonment (i.e., 25 years of incarceration) on five of the six counts of first-degree murder, which are to be served consecutively. Lastly, the trial judge ordered the sixth count to be served consecutively, sentencing Mr. Bissonnette to a mandatory minimum term of imprisonment of 15 years before parole eligibility. Mr. Bissonnette is to be remanded for 40 years before parole eligibility.

The Court of Appeal: Quebec Court of Appeal – Bissonnette c. R., 2020 QCCA 1585

The Crown and Mr. Bissonnette appealed to the Quebec Court of Appeal in *Bissonnette c. R.*, 2020 QCCA 1585 [*Bissonnette c. R.*]. On appeal, the Crown disputes the trial judge's perception/interpretation of s. 745.51 when requested to sentence Mr. Bissonnette to six consecutive sentences of parole ineligibility (i.e., 150 years of parole ineligibility), asserting they "never suggested such a lengthy period[, but] at most, the provisions be applied" (*Bissonnette c. R.* at para 18; *Criminal Code* s 745.51). Conversely, Mr. Bissonnette's appeal is not challenging the constitutional invalidity of s. 745.51 on ss. 7 & 12 of the *Charter;* instead, disputing the remedy of "reading in and rewriting legislation, rather than striking down" (*Bissonnette c. R.* at para 3). Additionally, The Court of Appeal affirmed the trial court's ruling of constitutional invalidity, but on differing grounds. In turn, allowing Mr. Bissonnette's appeal and rejecting the Crown's appeal. The Court of Appeals asserted that the trial judge erred when reading in by "arrogating the discretion to reformulate s. 745.51" (*Bissonnette* at para 20), while the subsequence order of Mr. Bissonnette to "serve a parole ineligibility period ha[s] no basis in law" (*Bissonnette* at para 20). The rationale behind the appeal court's judgement is based on the principles of rehabilitation and proportionality. The appeals court concluded that the "imposition of a parole ineligibility period that greatly exceeds the life expectancy of [any person] is

degrading and incompatible with human dignity" (*Bissonnette* at para 21). In the Court of Appeal's view, any periods of parole ineligibility that exceed the fixed term of 25 years are incompatible with human dignity, fail to satisfy the test of proportionality in sentencing and are grossly disproportionate (*Bissonnette; Bissonnette c. R.*). In congruence, a fixed term of 25 years is inextricably bound to the legislative sphere, and Parliament objects, where to disregard is to unduly intrude and usurp the role of governance and Parliament (*Bissonnette* at para 21).

By way of unanimous decision, the Justices of Appeal, Doyon, JA., Gagnon, JA., and Belanger, JA., held that the consecutive sentencing provisions prescribed by s. 745.51 of the *Criminal Code* are overbroad and do infringe Mr. Bissonnette's ss. 7 and 12 *Charter* rights. Thus, the Court of Appeal declared s. 745.51 of the *Criminal Code* unconstitutional and ordered Mr. Bissonnette to be remanded for 25 years before parole eligibility for each count and is to be served concurrently.

Supreme Court of Canada Overview

At the SCC, the majority in *Bissonnette,* [2022] SCC 23, aff'g (2020), QCCA 1585, (2019) rev'g QCCS 354, affirms the appeal trial courts rationale on different grounds than the lower court and the appeal court that the concurrent sentencing provision of s. 745.51 *Criminal Code* violates s. 12 of the *Charter*—however, the answer as to why follows later (*See* SCC Majority Decision & Remedy).

The paramount importance of these questions was not to vindicate Mr. Bissonnette for his criminal acts but for future cases involving the reasonably foreseeable offender resulting in an unjustifiable violation of s. 745.51*,* infringing upon their ss. 7 and 12 *Charter* rights. Therefore, the potential scenarios/circumstances that could arise were deliberated and assessed by first defining cruel and unusual punishment, the *grossly disproportionate* test, and hypotheticals (i.e.,

scenarios involving the reasonably foreseeable offender). Lastly, the measures prescribed by law (i.e., *Criminal Code* s 745.51) are evaluated through a section 1 analysis using the *Oakes test* to determine if the impugned measures are reasonable and demonstrability justified or are a deleterious and egregious infringement of one's *Charter* rights (*R v Oakes*, [1986] 1 SCR 103 [(*Oakes,* [1986])]).

Sections 1 & 12 Charter Analysis & the Application to Mr. Bissonnette's Case — SCC

At the Supreme Court of Canada (SCC), the matter presented a puzzling question that had to be answered: Are the concurrent sentencing provisions imposed by s. 745.51 deleterious and a blatant infringement upon ss. 7 and 12 of the *Charter* to the extent that to be remanded to serve six life sentences concurrently (i.e., 150 years of imprisonment before parole eligibility) constituting as cruel and unusual punishment vitiates and eviscerates Mr. Bissonnette's right to life, liberty and security, and to be free from cruel and unusual punishment? If not, will these concurrent sentencing provisions constitute cruel and unusual punishment in separate cases? Lastly, what is an appropriate remedy if the provision is impugned and cannot be saved? The SCC must answer these questions.

Section 12 Analysis & Application

In assessing the two-ponged test of section 12 to Mr. Bissonnette's case, the SCC needed first to establish whether the "parole ineligibility periods [of s. 745.51] constitutes punishment, and [is] afforded protection by this constitutional guarantee" (*Bissonnette* at para 54). Secondly, do the parole ineligibility periods and the length of punishment have constitutional protections (*Bissonnette* at para 55-58; *See* Section 12 Charter Defence: The Jurisprudential Evolution of CUP).

To answers these questions, the SCC utilized the *Charter's* purposive nature (i.e., the living tree doctrine). Being a purposive document, the *Charter* is meant to grow and change over time and not be constrained by unjust judgement or legislation, but is malleable; likewise, so too is s. 12, whose purpose is "to prevent the state from inflicting physical or mental pain and suffering through degrading and dehumanizing treatment or punishment. [Furthermore,] it is meant to protect human dignity and respect the inherent worth of individuals" (as cited in *Bissonnette* at para 59, quoting *Quebec inc.* at para 51). With these facts, the SCC agreed with the lowers court's analysis of s. 745.51, where it does not provide an offender with a realistic possibility of parole before death and relates to the *specific offender.* Meanwhile, for the *reasonably foreseeable offender,* such a sentence greatly exceeds an offender's natural life expectancy, contravening the principles of fundamental justice, goals of rehabilitation, and sentencing.

The Oakes Test – Section 1 Analysis & Application: Can the Impugned Measures Be Saved?

The Oakes test was established in the case of *R v Oakes,* [1986] 1 SCR 103 [*Oakes*] to establish a section 1 defence where the courts determine the scope of what is considered 'reasonable' and 'demonstrability justified' in relation to the measures prescribed by law (i.e., legislation) limiting a *Charter* right(s) are sufficiently important to warrant overriding a constitutionally protected right or freedom (*Oakes*; Sharpe & Roach, 2021, pp. 86–98). This test establishes whether legislation can be saved under section 1, while it must be noted that if even one of the four parameters outlined in the *Oakes* test fails, the test fails.

Section 1 Application. Being the respondent, Mr. Bissonnette must show that the impugned measures of s. 745.51 are not a pressing and substantial objective and is not sufficiently important to warrant overriding a constitutionally protected right or freedom

(*Oakes*). However, there is a caveat for the *Oakes* test. The SCC delineated that the appellant (i.e., Crown) "made no arguments concerning the justification for the impugned provision" (*Bissonnette* at para 121). By the Crown not challenging the impugned measures in being demonstrably justified in a free and democratic society, s. 745.51 of the *Criminal* Code fails to demonstrate having a pressing and substantive need; a section 1 analysis cannot save the impugned measures and must be struck down.

SCC Majority Decision & Remedy

In Canadian society, "rehabilitation is one of the fundamental moral values that distinguish Canadian society from the societies of many other nations in the world" (quote in *R v Lacasse,* 2015 SCC 64 [*Lacasse*] as cited in *Bissonnette* at para 48). The Crown failed to propose an alternative remedy to the SCC. As a result, in a unanimous decision, C.J. Wagner and Justices (JJ.) Moldaver, Karakasanis, Cote, Brown, Rowe, Martin, Kasirer, and Jamal concurred to dismiss the appeal and uphold the appeal court's ruling (*Bissonnette* at paras 120-148). Therefore, Mr. Bissonnette is to be incarcerated for 25 years before parole eligibility (*Bissonnette* at para 148).

Thus, in discussing Canada's judicial and constitutional framework for *LWOP* and *CUP*, we can assess and compare the evolutive legal framework in the United States (U.S.). However, it should be noted that the U.S. perspective is complex and variegated. The infamous quote by John F. Kennedy (JFK) (1962) illustrates the complexity:

> "*We […] do things not because they are easy but because they are hard*
>
> [italics added]" (at para 1).

The United States Perspective on LWOP & Cruel and Unusual Punishment or Treatment

The early jurisprudence for the *Eighth Amendment* focused on the principle of proportionality, which posits that punishment is not to be excessively severe in comparison to the gravity of the offence (*Weems v. United States*, 217 U.S. 349, 367 (1910) [*Weems*]). For instance, shoplifting is considered a minor offence, but imagine being sentenced to two years of imprisonment when a fine or community service would be sufficient. Perhaps at one point in human history, such a punitive measure would be reasonable, but in contemporary society it is draconian and *grossly disproportionate*. The courts in *Trop v. Dulles*, 356 U.S. 86, 101 (1958) [*Trop*] recognized society's mutable nature and the pressing need for legislation to be equally adaptive and expansive in its view. In turn, the courts held that the Eighth Amendment's scope needs to reflect "the evolving standards of decency that mark the progress of a maturing society" (*Trop* at para 15). In layman's terms, laws must be malleable and adaptive to society's needs, where they are constructed or deconstructed depending on their need.

From *Trop* onwards, the courts were required to examine whether a punishment is — inhumane, degrading, or disproportionate to the crime committed based on current societal standards. To determine this, the U.S. supreme court in *Trop* developed criteria to be considered: the nature and gravity of the offence, the character of the offender, and the potential for rehabilitation. In this endeavour, the U.S. supreme court formed three principles to guide the analysis to determine if it is *CUP* and is as follows:

1. The courts must consider the “evolving standards of decency that mark the progress of a maturing society” (*Trop* at para 29).
2. Punishments cannot “involve the unnecessary and wanton infliction of pain” (*Estelle v Gamble,* 429 U.S. 97 (1976) [*Estelle*] at para 15).

3. The sentence must not be "grossly disproportionate to the severity of the crime (*Solem v Helm,* 463 U.S. 277 (1983) [*Solem*] at para 70).

It should be noted that the precise meaning of 'cruel and unusual' has been debated since the amendment's adoption, but the core principle has remained intact: the government may not impose punishments that are unduly severe or disproportionate to the offence (*Hudson v. McMillian*, 503 U.S. 1 (1992) [*Hudson*]).

The Proportionality Principle

In *Weems*, the courts held a sentence deemed *CUP* cruel and unusual because it was disproportionate to the offence. The court subsequently applied the proportionality principle in cases involving the death penalty (*Furman v Georgia*, 408 U.S. 238 (1972) [*Furman*]; *Gregg v Georgia*, 428 U.S. 153 (1976) [*Gregg*]) and non-capital sentences (*Solem*; *Harmelin v. Michigan*, 501 U.S. 957 (1991) [*Harmelin*]).

The Grossly Disproportionate Test

In *Solem*, the courts articulated a three-pronged test, known as the *Solem* test, for determining whether a non-capital sentence is grossly disproportionate to the offence as follows:

1. The gravity of the offence and the harshness of the penalty;
2. The sentences imposed for other crimes within the same jurisdiction;
3. Sentences imposed for the same crime in other jurisdictions (*Solem*).

It needs to be mentioned that capital sentences are for capital offences, which involve multiple murders, acts of terrorism, heinous acts of murder, rape, and various other reprehensible murders (USCS Const. Amend. 8, Part 1 of 4). Nevertheless, only the first stage will be explained as the other two stages can be understood when read word for word. Thus, the first stage requires the courts to objectively assess the severity of the punishment, the gravity of the offence, and the

offender's culpability. Next, the courts have to weigh mitigating and aggravating circumstances, such as the nature of the crime, the level of violence, and the harm caused (*Solem* at para 292). Finally, for the offender's culpability, the courts assess the offender's mental state, criminal history, and other mitigating circumstances (*Ewing v. California*, 538 U.S. 11 (2003) [*Ewing*]).

The Evolving Standards of Decency

As mentioned, the Eighth Amendment's interpretation has evolved to reflect contemporary societal standards. For example, the court has invalidated certain punishments as cruel and unusual based on the evolving standards of decency, such as executing mentally disabled individuals (*Atkins v. Virginia*, 536 U.S. 304 (2002) [*Atkins*]). Additionally, in *Roper v Simmons*, 543 U.S. 551 (2005) [*Roper*], the courts held that juvenile offenders could not be sentenced to death while the age of a juvenile is precisely 18 years of age or younger (e.g., eighteen plus four days old, you are an adult). This evolutive approach is akin to Canada's living tree doctrine (*Edwards v Canada (Attorney General)*, 1929 CanLII 438 [*Edwards*]), which acknowledges that constitutional provisions must adapt to changing social, moral, and legal contexts. This living constitution is pivotal for the U.S. judiciary because it allows the constitution to be malleable, where it can be constructed or deconstructed, depending on society's needs (Strauss, 2010; U.S. Const. Amend. 8). Thus, by providing a historical framework into the working of the U.S. judiciary as it relates to the eighth amendment, we can now conduct the case application.

Eighth Amendment Application - *Bissonnette*

Applying the *Solem test* (i.e., the grossly disproportionate test) to the case of *Bissonnette*, we first compare the gravity of the offence (six counts of first-degree murder) and the harshness of the penalty (150 years of parole ineligibility). Although the crime is undoubtedly grave, a

parole ineligibility period far exceeding a person's natural life expectancy could be considered grossly disproportionate. Furthermore, the U.S. supreme court has only deemed sentences involving *LWOP* for non-homicide offences for juveniles as *CUP* (*Graham v Florida*, 560 U.S. 48 (2010) [*Graham*]). In comparison, the arguments made in *Bissonnette* advocated for his age and life experiences to be considered. Regardless, Mr. Bissonnette, being over 18 years old, is not afforded the case law protections established in *Roper* and *Graham*. Nevertheless, comparing the sentences imposed for other crimes within the same or other jurisdictions, we find that *LWOP* is generally reserved for the most heinous crimes, such as premeditated murder or murder involving torture. Mr. Bissonnette's actions were malicious, callous, and irreprehensible. Moreover, it was planned and deliberate. From these facts, Mr. Bissonnette's conduct has risen to the level of heinousness associated with other *LWOP* cases. Under U.S. civilian federal law, the sentence for first-degree murder is death (18 USCS § 1111).

U.S. Decision – Applying *Bissonnette*

In assessing the case of *Bissonnette* through the U.S. penal code, Mr. Bissonnette's fate is more simplified than Canada's; in most states, Mr. Bissonnette would never see the light of day as a free man again. However, some states, especially those along the U.S.-Canada border, have more lenient sentencing requirements for first-degree murder, similar to Canada, but this does not apply to capital offences such as multiple murders. Thus, the following will compare and contrast the sentencing requirements for those guilty of multiple murders (i.e., U.S. multiple murders is a capital offence):

- **Canada**: which is a 25-year mandatory minimum sentence of parole ineligibility;

- **Minnesota**: is a 30-year mandatory minimum sentence of parole ineligibility for juveniles, while adults (over 18 years old) are to remain imprisoned for the rest of their natural life;
- **Mississippi**: those convicted of non-capital offences (i.e., did not commit multiple murders) are eligible for conditional release at 65 years old, and capital offenders are imprisoned for the rest of their natural life;
- **Oregon**: is a 30-year mandatory minimum sentence of parole ineligibility for adults and 15 years for juveniles (*Criminal Code,* s 235; Minn. Stat. § 609.185; Miss. Code Ann. § 97-3-21; ORS §163.005).

Reflecting on these figures, the border states along Canada do not reflect the rhetoric for the rest of America. Nevertheless, it is plausible that the imposition of 150 years of parole ineligibility could be deemed unconstitutional under the Eighth Amendment (U.S. Const. Amend. 8; USCS Const. Amend. 8, Part 1 of 4). The determination would rest solely on the grossly disproportionate nature of the punishment and the evolving standards of decency. However, with the nature of these crimes, the U.S. supreme court would find a sentence of *LWOP* or even the death penalty to be proportional to the gravity of the offence and the offender's culpability (USCS Const. Amend. 8, Part 1 of 4). The court would not look further into the mitigating circumstances of Mr. Bissonnette's crimes because the crime committed was capital murder; simply put, these individuals lose nearly all *Eighth Amendment* protections (USCS Const. Amend. 8, Part 1 of 4). By applying the U.S. legal doctrines to *Bissonnette*, we can extrapolate on a deeper understanding of the similarities and differences between both nations' *LWOP* and how such determinations are made. However, the application and judgement would not come as a shock for most North Americans, but would, is the constitutional division.

Discussion & Key Findings

While Canada and the U.S. share a border and cultures, their judiciaries diverge drastically. This divergence lies within the constitutional pedigree itself and its jurisprudential rigidities. From a constitutional perspective, adaptability and fluidity are inextricably bound to a constitution to be a living and ever-changing organism; this characterization is the precipice of Canada's *living tree doctrine* and America's *living constitution*. The *living tree doctrine* requires a predictable set of rules (e.g., the *Oakes* test and the *grossly disproportionate* test) and flexibility (i.e., the interpretations accommodating the realities of a changing society). With that in mind, the *Charter* is not to be constrained but is malleable, evolving its purpose through its very application to applicable cases and, in turn, establishing constitutional precedents that can be expanded and modified without the atypical rigidity that case law requires.

Meanwhile, the U.S. interpretation of the constitution has evolved through the doctrine of 'constitutional construction' (Strauss, 2010). Constitutional construction allows the judiciary to adapt the constitution's principles to new circumstances and societal changes through what is known as the living constitution (Strauss, 2010). However, the U.S. approach is less expansive and more fractured in its interpretations while following a rigid adherence to stare decisis. Stare decisis is based on situations of similar facts and legal issues, known as precedents, which is when a prior ruling is subsequently used in future rulings as a guide, known as common law. In its application, when a similar case is brought to the courts with similar circumstances, the judge must look at those cases to decide on the case; it is worth noting that a case from the 1600s can be utilized and carries the same credence.

However, the stare decisis application through a constitutional interpretation is vastly more complex because of the judge's preference for using one of the three competing traditions:

the *living constitution*, *originalism,* and *textualism*. *Textualism* is interpreting the constitution, similar to reading a contract, by interpreting the text explicitly (i.e., as stated) when reading the constitution (Scalia, 1997). Meanwhile, justices who adopt the *living constitution* will interpret the constitution with more flexibility and willingness to depart from or modify precedents, resulting in a possibility of expanding rights and liberties; such an approach is similar to Canada's and gives credence to the principle established in *Trop* (Posner, 2013; Scalia, 1997; Strauss, 2010). Meanwhile, the *originalism* principle consists of original intent and original public meaning (Scalia, 1997; Whittington, 1999). Proponents of original intent argue that the constitutional interpretation must be based on the framer's intentions (i.e., authors), and the meaning is to remain static, regardless of society's evolving needs. Conversely, original public meaning argues that the text should be interpreted as a reasonable person would understand when it was adopted (i.e., a reasonable person of the 1600s) (Scalia, 1997; Solum, 2011; Whittington, 1999). In sum, the original public meaning argues for the text's objective meaning, whereas original intent is the framer's subjective intention, guiding the interpretation (Barnett, 2004; Solum, 2011).

Key Findings

Constitutional Divisions

Canada's living tree doctrine emphasizes the growth and adaptability of the *Charter*, providing a flexible framework for the interpretation of rights and freedoms. This approach has led Canadian courts to strongly emphasize the protection of human dignity and the inherent worth of individuals, particularly in the context of s. 12 of the *Charter*, which prohibits cruel and unusual punishment. In contrast, American courts have interpreted the *Eighth Amendment* in a

manner that often prioritizes retribution and incapacitation over rehabilitation and the protection of individual dignity.

Justice Models & Legal Tests – Achieving Penal Aims

Within Canada, the two-pronged test under s. 12 of the *Charter* and the *Oakes* test determine if the impugned measures are demonstrably justifiable. In contrast, the U.S. test for *CUP* under the *Eighth Amendment* considers whether the punishment is *grossly disproportionate* to the severity of the crime, whether it is degrading to the dignity of the individual, and whether it goes beyond legitimate penal aims. The penal aims of the U.S. are more inclined to prioritize incapacitation as their primary means of deterrence in cases involving heinous crimes such as Mr. Bissonnette's (*Ewing*). As such, consecutive periods of parole ineligibility serve the objectives of sentencing for the U.S.

Jurisprudence

Canadian and American courts have developed distinct bodies of case law concerning *LWOP* and *CUP*. In Canada, cases such as *Bissonnette* have influenced jurisprudence on this issue, emphasizing the importance of proportionality, individual dignity, and the possibility of rehabilitation. Comparatively, U.S. cases such as *Harmelin* have shaped the interpretation of the *Eighth Amendment*, often leading to harsher sentences and a greater focus on retribution and incapacitation.

Compare and Contrast

In the U.S., the *Eighth Amendment* prohibition against *CUP* focuses primarily on retribution and deterrence, with less emphasis on rehabilitation and the protection of the dignity of the individual. Consequently, U.S. courts have tended to uphold harsher sentences, including

life imprisonment without parole, particularly for heinous crimes such as those committed by *Bissonnette*.

By virtue of the tenth amendment, the entire U.S. justice system is fragmented, where each state has their own independent objectives, penal code, and constitution (U.S. Const. Amend. 10). While there is none at a state level, at the federal level, the United States Sentencing Commission (2021) [USSC] has established the U.S. Federal Sentencing Guidelines, which are more advisories than being mandatory (i.e., judges have discretion on the sentences imposed). Albeit this can be beneficial because there are no checks and balances, leading to a potentially disproportionate sentence. Nonetheless, even though the U.S. system gives judges on a federal and state level full discretionary powers that could benefit the offenders and society, the potential for corruption and biases is immense without guidelines akin to s. 718 of the *Criminal Code.*

Political & Social Climate – Implications

These differences are best understood when peering through a lens that accounts for historical, cultural, and social differences. For instance, the U.S. still imposes capital punishment, while Canada does not. Additionally, the U.S. justice system is more aligned with a punitive and retributive approach to crime prevention. Meanwhile, Canada has progressively moved away from such practices to one that emphasizes the need for rehabilitation and respecting human dignity, which ensures s. 12 *Charter* rights and freedoms are upheld. Furthermore, this dedication allows the courts to scrutinize the proportionality of sentencing provisions with respect to s. 718 of the *Criminal Code.* Conversely, the U.S. has no sentencing provisions similar to Canada in this respect. Finally, while both nations' constitutions are purposive and evolutive, Canada’s political and social climate enables such evolution to flourish

with time. In the U.S., however, this evolution faces challenges and is often impeded by the country's geopolitical and social landscape.

Interpretation of Cruel and Unusual Punishment

Differing interpretations within both nations are a drastic departure when compared. The protections afforded by the *Eighth Amendment* are constrained and specific, with little to no leeway in the interpretation. This rigidity is prevalent in the U.S. crime prevention model of retribution and their use of incapacitation (e.g., an eye for an eye policy). Conversely, s. 12 of the *Charter* allows the interpretation to be fluid and evolutive, allowing for proportional and equitable sentencing practices. By virtue, Canada is naturally more rehabilitative and restorative in their crime prevention models.

Recommendations

Given the disparities between the U.S. and Canadian legal systems, legal professionals, policymakers, and researchers need to consider the following recommendations:

I. **Cross-jurisdictional dialogue:** Encouraging dialogue and the exchange of ideas between legal professionals, academics, and policymakers from both countries can enable for a deeper understanding of the underlying principles and values that guide each legal system; whereby, facilitating the advancement of more effective and humane sentencing practices.

II. **Comparative research:** There is a need for more comparative research on interpreting and applying *CUP* within the U.S. and Canada. Such research can help identify the strengths and weaknesses of each system, thereby informing legal reforms and encouraging the development of more consistent sentencing approaches across jurisdictions.

III. **Emphasize rehabilitation:** For the U.S., there is a need to re-evaluate the role of rehabilitation and consider adopting policies and practices that prioritize reintegrating offenders into society and moving away from the retributive model. For this to occur, the justice system will need to rethink the use of *LWOP*, particularly for non-violent or less serious offences, and invest in education, vocational training, and mental health support for incarcerated individuals.

IV. **Protect human dignity:** Encourage U.S. courts and policymakers to emphasize protecting human dignity in interpreting and applying the *Eighth Amendment*. In continuance, such emphasis may involve adopting a more nuanced understanding of *CUP* and ensuring that sentencing policies do not disproportionately affect marginalized communities or perpetuate systemic inequalities.

V. **Assessing the Impact of Constitutional Frameworks on Criminal Justice:** Research should be conducted to evaluate how the differing constitutional frameworks of Canada and the U.S. impact criminal justice outcomes. By examining the effects of the *living tree doctrine* in Canada and the *originalist* or *textualist* interpretations in the U.S., researchers can better understand the influence of constitutional interpretations on the development and application of criminal law.

VI. **Longitudinal Studies on the Evolution of *CUP* Jurisprudence:** Future research should focus on longitudinal studies examining the evolution of *CUP* jurisprudence in Canada and the U.S. This research could help identify trends in judicial decision-making and provide insights into how societal values and legal principles have shaped the interpretation.

VII. **Evaluating the Role of Dignity in Criminal Justice:** There is a need to explore the role of dignity in criminal justice systems, investigating how the protection of human dignity affects

the outcomes of cases and the overall functioning of the criminal justice system. This research could provide valuable insights for policymakers and legal professionals in both countries.

Conclusion

In sum, the exploration of the legal frameworks and jurisprudence of Canada and the U.S. concerning *LWOP* and *CUP* has revealed significant differences in how these countries approach sentencing in cases involving multiple murders. By examining both nations' constitutional frameworks and case laws, we have gained a comprehensive understanding of how these countries balance the goals of punishment, deterrence, rehabilitation, and the protection of human rights in the context of criminal justice. However, further research and policy development is needed to help promote more humane and effective approaches to criminal justice in Canada and the U.S. and other jurisdictions worldwide.

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