Discounting Life: The Impact of Gender, Race, Domestic Violence, and Ideal Victim Status on Second Degree Murder Sentencing in Canada

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A research paper submitted in partial fulfillment of the requirements for the Master of Arts degree.

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We the undersigned certify that this research project meets an acceptable standard in scope and quality for the Master of Arts in Criminal Justice.

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Dr. Michael Weinrath, Supervisor

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Dr. Steven Kohm, Committee Member

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ABSTRACT

Scholars, the media, and the public have been concerned about differing values placed on crime victims on the basis of social factors such as gender, race, and domestic violence affiliation. Some academics argue that specific victim attributes result in more punitive sentencing to be imposed, particularly if the victim is constructed as "ideal". An ideal victim is one who is socially constructed as more "worthy" than another victim of crime based on personal attributes, behaviors and situational aspects of their victimization. International and domestic Canadian sentencing research, however, has demonstrated inconsistent results regarding the role of key victim attributes of gender, race and domestic violence status in sentencing. This study uses the theoretical perspective of social constructionism to guide an assessment of what impact victim gender, race, and domestic violence affiliation may have on sentencing and evaluate the effect of other "ideal victim" factors on court sanctions. The research design also considers the perspective of legal rationalism and the influence of legal factors such as past criminal history, as well as aggravating and mitigating circumstances considered by judges in their sentencing decision. The study uses the crime of second-degree murder and the outcome of parole ineligibility length to test research hypotheses. Through legal case reports and media coverage, data was gathered on victim and offender demographic, social situation and legal background data on 259 cases of second degree murder from 1980-2017. There was little support for the influence of race and domestic violence attributes on murder sentencing. Gender did appear to increase sentence punitivity, even after control variables were introduced. Consistent with past research, demographic factors and ideal victim situational factors showed mostly weak effects on sentencing, while legal predictors such as prior criminal history, other aggravating and mitigating factors explained considerably more variance in parole ineligibility. Given the high evidentiary burden of second degree murder and its seriousness as a crime, it may be an offence less likely to show bias at the point of sentence. Researchers investigating bias might be better served examining manslaughter, assault and less serious offences. Given the limited evidence of domestic violence bias, it may be that governments should provide more resources directly to family violence offenders for rehabilitation and victims for social support. Finally, results should be interpreted cautiously given sampling limitations.

Keywords: Ideal Victim, Homicide, Sentencing, Gender, Race, Domestic Violence

"Justice is neither a term of explanation nor of classification, but of experience."

- Torres & Brewster (1986)

INTRODUCTION

Murder has a way to captivate a nation. It is grotesque, newsworthy, and an abuse of power over a victim (Geksoki, Fray & Adler, 2012; Jiwani & Young, 2006). Canadians generally expect one who murders to have their day in court, and have a sentence imposed upon them that communicates that such behaviour is unacceptable, abhorrent, and intolerable. Victims of murder in both racial and gendered situations may find the quest for "justice" becomes less attainable (Crenshaw, 1991; Jiwani & Young, 2006). The construction of these deaths may not be "ideal" as their victimhood allows for victims to be blamed for their death at least partially based on the social characteristics they hold. This construction is not only based on stereotypes, but may also fail to consider social and cultural vulnerability of these individuals. Justice in these situations may not be equal when compared to other victims of homicide in similar situations.

Cautioning against this viewpoint, legally speaking, Justice Campbell has indicated that criminal sentencing "…is not a memorial to the victim" (*R. v. Gabriel* [2017 NSSC 90], para 6), yet practically and socially, it is difficult not to think that an unintended aim of sentencing is to recognize the worth of the victim. There is undoubted symbolic power in sentencing which must be considered. How such symbolism is demonstrated when sanctions are meted out may further suggest who the Canadian state views as the most representative "victim". Though sentencing is to be rooted in legal principles and codified in statutes, this does not prevent the public from viewing judicial decisions as the state imposing "justice" or (for some) the lack thereof, based on the devaluing of one's social characteristics.

A practical example follows from the death of Judy Ogden, a mother of two from Port au Port, Newfoundland. On July 23, 1997 she lost her life due to domestic violence. While attempting to leave the relationship she had with her then husband, Mr. Ogden broke into her house, awoke his four-year-old son, walking him down to the hallway to watch the abuse and killing of his mother.

Judy Ogden's son, Daniel Benoit, who is from the Qalipu First Nation, has gone on in the years since his mother's death to testify at the Missing and Murdered Indigenous Women and Girls Inquiry. Daniel's mother was an Indigenous woman who sadly met a similar fate to thousands of Indigenous women in Canada. Mr. Ogden was convicted of second degree murder in 2000, being subject to life in prison with a parole ineligibility period of 14 years out of a possible 25. Subsequently, after serving 16 years, Mr. Ogden was released from prison on full parole. He violated his parole in 2016, and has remained incarcerated ever since (Kelland, 2020).

It remains unclear what, if any role, race and gender had in the imposition of punishment in the case of Judy Ogden. Did who Mrs. Ogden was force justice to appear different than had she been White? Similarly, it also remains unclear whether the role of extensive domestic violence in this case framed the construction of Mrs. Ogden's victimhood.

Canadian judges are in a unique position to weigh all factors of a crime and impose a sentence which should balance principles of denunciation, deterrence, rehabilitation, the protection of the public, reparation, and responsibility (*Criminal Code, s.718)*. This case considers some of the most blameworthy aggravating factors; extreme domestic violence, a child being subject to watching the murder of his mother, the use of a weapon, and her death occurred during a break-in. Each of these factors only raised the imposed parole ineligibility by a mere 4 years above the

minimum (it could have been up to 11 years more), though these factors demonstrated extreme power and control over a vulnerable victim.

Continual deaths of women at the hands of their abusive partners indicates that domestic violence continues to be a serious problem in Canada but victims may not be sufficiently "worthy" to be denounced by the courts. For context, such violence accounts for 25% of all police reported violent crime (Sinha, 2013). Eighty percent (80%) of these victims are women. The home continues to be the most dangerous place for females, with common-law partners, married partners, and dating violence being the most common relationships leading to the death of women (Dawson, et al., 2019).

The combination of gender, indigeneity, and domestic violence produce a visceral construction of Indigenous victimhood. The killing of Indigenous women has consistently been demonstrated to be disproportionate to the killing of non-Indigenous women (Scrim, 2017; Dawson et al., 2019). Indigenous women are also more likely to be killed by a male intimate partner, strangers and acquaintances than their non-Indigenous counterparts (Scrim, 2017; Dawson et al., 2019). Based on the symbolic nature of the sentence imposed, in Mrs. Ogden's case the state failed to denounce such victimization, which continues to proliferate and be normalized by society.

Despite the horrific nature of her victimization, Mrs. Ogden's life was only valued by the state at 14 years, while the range of what could have been imposed is between 10 – 25 years. The notion of equality before the law is ideal in principle, though research suggests that implicit or unconscious biases may be found within Canadian courts and those of other nations (Grant, 2010; Curry, 2010; Drápal, 2020).

One way of thinking about this bias is through the construct of the ideal victim. An ideal victim is one who is perceived as more vulnerable and in need of protection and thus more easily

able to acquire the label of victim. On the basis of this construction, the death of ideal victims should result in more punitive sanctions to be imposed as a result of their death (Tomsich, et al., 2014). Ideal victim status is conditioned by both gender and race and these factors have given rise to disparities in murder sentencing. For example, women are considered more vulnerable and as victims may invite more serious punishments (Kirkland, 2010; Phillips, Haas & Coverdill, 2012). But this can vary by race. Consider that the "White female victim effect", for example, hypothesizes that the dominant racial group of White women are among the most ideal of victims, resulting in their antagonists being sentenced more harshly than women of different races (Holcomb, et al., 2004; Simon, 2007). Similarly, when considering gender, female domestic violence homicide victims may see their killers receive less severe dispositions because they are in some way to blame for their victimization (Rapaport, 1994, 1996).

This research asks the following question: "*What is the impact of gender, race and domestic violence on second degree murder sentencing in Canada?*" This project aims to understand whether there are sentencing disparities among second degree murder victims based on gender and race. Further, this research will investigate if sentencing discrepancies based on gender and race are compounded when a woman is killed during the course of domestic violence. This work will be rigorous in its application of controls for competing theories for sentencing outcomes. The study will also consider the impact of ideal victim attributes and legal factors such as the offender having a prior record, as well as aggravating and mitigating factors considered by a judge at sentencing.

This paper will first consider social constructionism and the current literature regarding ideal victimhood as well as gender and race conceptualizations. Next, this research will consider academic discussions of sentencing discrepancies on the basis of gender and race. Study

methodologies described will include the sampling frame, data collection strategies and the operationalization of variables. Findings of the research will next be considered, at the univariate, bivariate and multivariate level and hypotheses tested. Discussion, academic contributions, policy implications, study limitations and directions for future research will conclude this paper.

LITERATURE REVIEW

Social Constructionism

This work primarily uses the theoretical framework of social constructionism to consider the intersection of gender, race, and victimization and its impact on sentencing. Social constructionism, according to Surette (2015), claims that understanding of the world individuals encounter is not based extensively on direct experience. Amongst the multiplicity of human experiences, only a small percentage of the social world is individually experienced; the other larger portion must be learned about through other means such as the media and other people's experiences. Individuals, such as "promoters, activists, professional experts, and spokespersons" (p.36) all compete for their own construction of reality. This leaves individuals to consider various interpretations of events to construct their own "reality".

In the context of the criminal justice system, social constructionism requires one to "investigate[s] the *myths* associated with criminal justice and crime control thinking, study the formation and maintenance of occupational cultures, scrutinize how certain behaviors and situations come to be reacted to as "crime," (Kraska, 2006, p.179) and dissect the way in which public and private-based crime control tactics are produced (Kappeler, 2004).

Salient to this study's focus on judicial criminal justice decision-making is the concept of victimhood. An "ideal victim" has been socially constructed by society as a means to identify who is most deserving of public sympathy. Some individuals, however, are not as easily able to acquire this label, and may have victim blaming attitudes or other justifications imposed as a means to stimy their claims of severe hurt or injury (Lerner, 1980; Jiawni & Young, 2006).

Ideal Victimhood

Walklate (2005), using the work of Nils Christie (1986), asserts "there are certain assumptions attached to the label 'victim' meaning not everyone actually acquires the label of "victim of crime" (p.99). The concept of an ideal victim is itself a stereotype of a crime victim (van Wijk, 2012). To be considered "ideal", the victim must adhere to six different notions: "…he or she 1) is weak, 2) blameless, 3) carrying out a noble task, 4) was harmed by malignant forces or actors (record for misbehaviour), 5) but these forces cannot be specifically identified (stranger), and 6) the victim can effectively claim victim status" (Christie, 1986; Lewis, et al., 2019, p.1). Jiwani & Young (2006) further suggest it is required that the victim be viewed as morally good, or this stereotype is not able to persist. They observe that this assumption of morality, when convenient to the representation of victimization, is navigated along racial lines (Jiwani & Young, 2006).

Carrabine and his colleagues (2004) state the term "victim" allows for the creation of a socially constructed hierarchy which is perpetuated through the media. The construction of the ideal victim may be brought into the courtroom and "woven into the fabric of society" through the process of socialization and therefore part of ones understanding of society (Kleinstuber, et al., 2020). It is arguably more difficult to account for such bias if it is routinely part of the socialization process (Kleinstuber et al., 2020). Such socialization processes can, at least in part, be readily reinforced through media (Surette, 2015).

Children, women, Caucasian individuals, the elderly, and the young are among individuals who are most easily able to attain the label of ideal victim (Geksoki et al., 2012). Simon (2007) suggests the crime victims who drive policy creation are those who are typically White, suburban, middle class victims. Victims who are typically presented as of "good character" or "hard-

working" also help fulfill the ideal victim stereotype (Kleinstuber et al., 2020). Ideal victims must ensure that they are not involved in any illegitimate activities, or their label is jeopardized (Christie, 1968). Gekoski et al., (2012) conclude that "[the] homeless, drug users, runaways, and young male aggressors" are considered "undeserving" victims (p.1213).

Next, with the ideal victim framework in mind, the construction of victim gender and victim race will be discussed.

Construction of Gender in Society

Quite often, gender and sex are conflated terms. The division between gender and sex is deep rooted and allows society to make sense of differences (West & Zimmerman, 1987). In the view of West and Zimmerman (1987) there are differences between that of sex, sex categories and gender. Sex is a socially accepted means of classifying individuals on biological criteria. Such dichotomy extends to include differences between one's hormones, chromosomes, and reproductive functions (Jacklin, 1989). In contrast, sex categories put an individual in a category of male or female on the basis of socially approved characteristics (West & Zimmerman, 1987). It should be noted, individuals do not simply intend to "liv[e] up to normative conceptions of attitudes and activities [of race or gender]... rather it means engaging in action at the risk of [...] assessment" (West & Fenstermaker, 1995, p.24).

Gender is learned and performed within society (West & Zimmerman, 1987; West & Fenstermaker, 1995). It is argued by West and Zimmerman (1987) that through socialization, gender is seen as a status that is largely fixed, much like sex. In many ways notions of gender are applied not only to the individual but also to the collective. It provides a means for individuals to be categorized based on their own actions, but also as a means to justify and legitimize gender-

based divisions in society. West & Fenstermaker (1995) assert that these divisions must not be absent from considerations of other social demographics such as race and class.

Construction of Race in Society

Society has allowed for the construction of race to denote how one should act or conduct themselves (Ore, 2009). These constructions are reinforced by social institutions such as peers, the media and families and are not something individuals are innately born understanding (Ore, 2009; Surette, 2015). In many ways this allows for the maintenance of a status quo, that legitimizes the oppression and marginalization of some individuals over others. Policies or actions that purport to address the marginalized status of minorities may mask continued oppression, Simpson (2014) notes that the state may attempt to readjust the perceptions of its citizens, by announcing inclusive policies of reconciliation, but only to distract them while the government maintains its power over Indigenous peoples.

The combination of gender and race as compounding social factors allows for greater social complexity in considering marginalization (Spelman,1988; Crenshaw, 1991; West & Fenstermaker, 1995; Henne & Troshynski, 2019). Spelman (1988) and Crenshaw (1991) describe the relationship between a Black woman's gender and race as having differing magnitudes. It is unlikely that gender and race constructions act in equal measure to become targets of oppression. As a result, there are separate and compounding magnitudes of gender and race as factors on their own. Gender and race are difficult to quantify in their effect on oppressing an individual, as the degree of oppression or marginalization may situationally change, but only to allow for stereotyped constructions to persist (Crenshaw, 1991).

Indigenous female victims in Canada are constructed to ensure their oppression by the state. Simpson (2014) suggests that Canadian society is set up as to oppress Indigenous women based

on the (re)construction the settler state engages in. Through this social construction, Indigenous women have the violence they are subjected to normalized (Simpson, 2014; Riel-Jones, 2016). Jiwani and Young (2005), using the work of Harding (2006), assert that the association of Indigenous people with criminality has been a ploy in the news media construction of Indigenous people to ensure that they are discredited. Eberts (2017) notes that frequently Indigenous women are labelled as leading a high-risk lifestyle, an element of victim blaming that negates any image of ideal victim status. She indicates that the term "high risk lifestyle" should be read as inferring prostitute status, further adding to the construction of a victim that cannot easily attain the "ideal victim" label.

Construction of Punishment in Canadian Society

Sentencing allows for the imposition of punishment within society that is to be proportional to both the gravity of the offence committed and blameworthiness of the offender (*Criminal Code, s.* 718.1*)*. Legal punishments which can be imposed by the state are various and can include fines, probation, carceral periods, as well as diversionary methods (Griffiths, 2015). In a court of law, combinations of these punishments can be used to ensure each sentence is not only proportional but is consistent with the principles of sentencing (*Criminal Code, s.* 718, 718.1). These principles are outlined under *Criminal Code* section 718 and include denunciation, deterrence, rehabilitation, protection of the public, reparation, and responsibility.

One view of sentencing would see it based on consensus theory, the Durkheimian notion that there is societal agreement on laws and the criminal justice system operates based on these laws. The court system bases sentencing on existing legislation and case law. Some researchers have argued for the more explicit inclusion of this perspective, as it provides a theoretical perspective

for the strong influence of legal factors such as prior criminal history and current offence severity on sentencing (Leiber & Fox, 2003).

Consensus theory leads to the legal rationalism perspective, the view that aggravating and mitigating factors explain the differential outcomes of sentencing, moreso than personal attributes (Leiber & Fox, 2003). Sentencing researchers have found that legal factors play an important role. For example, there are some conflicting results considering the role of race in criminal sentencing. Paternoster (1983) and Stauffer Smith, Cochran, Fogel & Bjerregaard (2006) were uncertain that the discrepancies found in criminal sentencing were based on racial discrimination. Their ideas are consistent with earlier cautions from Kleck (1981), who argued that discrepancies in homicide sentencing between Black and White offenders exist as a result of legal considerations of a given case, such as aggravating and mitigating factors and prior criminal history rather than race being the most influential factor. There are measurement issues with these aggravating and mitigating definitions, and research designs have been recommended that better distinguish these legal factors. Scholars such as Rapaport (1996) for example, pose that the construction of womanhood in domestic violence acts as a means for punishment to be viewed differently, and thus an offence may be seen as less aggravating because the offence itself was committed in a fit of rage. Phillips et al., (2012) caution, however, that these factors are difficult or impossible to appraise carefully because their allocation is arbitrary; any specific factor could be given more or less weight at any one given time.

Broadly, Torres (1991) advocates that the law is a means to illustrate "at least one form of social consensus" (p.994). But many academics still disagree that this is the way the law works. Scholars such as Patzer (2012) and Crenshaw (1991) assert that the law works in favour of those with social power, and to the detriment of those without such social capital. Gevikoglu (2013)

states "[s]entencing is a process that requires law take up the question of individual identity, always assessing and evaluating the quality of the individual, 'the circumstances of the offender', and weighing them against the crime before the court, [and] 'the circumstances of the offence' " (p. 215). Ultimately, justice has the ability to take on many forms itself and the quest for punishment ultimately becomes subjective (Gromet, et al., 2012; Parkes, 2019).

Murder Sentencing in Canada

In Canada, as per the *Criminal Code* sentencing for both first and second-degree murder, infanticide and manslaughter are considered under the umbrella of culpable homicide for sentencing purposes (*Criminal Code,* s.229). The definition for homicide under the *Criminal Code* definition states: one must cause the death of a human being, where one means to cause death or is likely foreseeable to cause death and are likely to cause death by object (*Criminal Code, s.229).* Murder in this regard must have increasingly specific definitions to make it either first- or second-degree murder.

For one to be convicted of first-degree murder the act must be both planned and intended (*Criminal Code, s.231(2)*), and it carries a sentence of life in prison with no chance of parole for 25 years (*Criminal Code, s. 745(a)*). Second degree murder carries a mandatory punishment of life in prison with no chance of parole for 10-25 years (*Criminal Code, s. 745 (c)*). The discretionary 10-25 years allows a justice to impose a sentence which is fit based on sentencing principles as per s. 718 of the *Criminal Code*. The *Criminal Code,* by way of s. 231(7), points to second degree murder being classified as all murder which is not first-degree murder or infanticide, but with sufficient intent so that it is not manslaughter. As outlined, the 10-25 year parole ineligibility period allows for a judge to tailor the sentence imposed to what they deem fit based on the facts of the case before them. This is also where potential bias may arise, when a justice

could possibly construct a murder as not as blameworthy as a comparable case on the basis of who the victim was.

Murder, in totality, is among the most egregious acts one human can commit towards another (*R. v. Martineau*, [1990] 2 S.C.R. 633). The sentencing imposed for murder, is in many ways symbolic of the life lost and assesses such through the perpetrator spending, potentially, the rest of their life in prison. Gender and race have been shown to influence sentencing in studies across Canada, the United States and Europe as social characteristics which have the propensity to alter homicide sentencing outcomes.

Gender and Sentencing for Homicide

Increases in punitive sentencing are consistent with the ideal victim construct of women as vulnerable. A stereotype plays out that women are weak and in need of protection. The "female victim effect" suggests that women victims are more worthy of protection by the state and incur more punitive sentencing of perpetrators (Holcomb et al., 2004; Evans, 2005; Kirkland, 2010; Dawson, 2015). The female victim effect has been referenced in the literature as related to the chivalry hypothesis.

The chivalry hypothesis can be thought of in two separate ways as per Dawson (2015). The first is that the government intends to protect "vulnerable and weak women" (p.4) by punishing their accused more harshly (See also: Curry et al., 2004). On the other hand, chivalry can also be exercised through the patriarchal nature of the criminal justice system, and the need for men to reinforce social power (Dawson, 2015). Belknap (2001) notes that chivalry is associated with placing an individual on a pedestal and behaving gallantly toward that person, whereas paternalism involves taking care of the powerless and dependent" (p.133). As discussed, within the social construction of gender, this definition works in tandem with gender norms which rely on women

having less power. Tomsich et al., (2014) argues that there is some element of the chivalry hypothesis in the construction of a female victim effect, and that this effect is produced through the need to protect women. This effect can be found in other offence types besides murder, as it aids in the construction of the victim (Gillespie, et al., 2013). For example, an increase in sentencing for female victims is evident in research by Curry (2010). Their study of 863 cases across the six biggest counties in Texas found that for violent offences, men who victimized women received 30% longer sentences when compared to victimizing men (Curry, et al., 2004).

Focusing on my study, the female victim effect also posits that those who cause the death of women receive more punitive sanctions (Holcomb et al., 2004; Dawson, 2015). Evidence of this is found in the sentencing literature, particularly in death penalty cases. American state level studies of capital and non-capital murder sentencing are the most numerous in academic literature.

In their study of 2,319 South Carolina FBI supplemental homicide reports, Royer, Hritz, Hans, & Eisenberg (2014) found men are sentenced to death at a rate 2.6 times higher if the victim is a female. Kirkland (2010) found that regardless of the victim and offender's relationship, when a female victim was involved a jury was more likely to recommend a death sentence. In a European study of 1,328 murder and manslaughter cases, Johnson, Van Wingerden & Nieuwbeerta (2010) found when a man kills a woman longer prison sentences are imposed. However, support for the female victim thesis is not universal; Evans (2005) discovered no support for a female victim effect in her study of 1,003 capital murder trials in North Carolina between 1979-2002.

Race, Victims and Sentencing for Homicide

In a foundational contribution to the role of victim status in sentencing, Holcomb, Williams, and Demuth (2004) found offenders were 1.8 times more likely to receive a death sentence when killing a white victim, compared to a non-white victim. In their analysis of 5,976 Ohio homicide

cases, they further found that Black male victims were 78% less likely to have their assailant receive a death sentence when compared to White women. In a North Carolina study, Radelet and Pierce (2011) also found assailants who murdered White victims were three times more likely to be sentenced to death than those who murdered Black victims. When White victims were killed by Black perpetrators, it was five times more likely a death sentence will result than when a Black offender killed a Black victim.

Paternoster's (1983) South Carolina study found, of the previously mentioned race combinations, that it was forty times more likely to have the death penalty requested when inter-race violence is committed, than when Black suspects kill Black victims. Kirkland (2010) echoes these findings, concluding in her study of 821 homicide cases in North Carolina, there was a 28% decrease in a jury recommending a death penalty if the victim and offender are both non-White. Most recently, Ulmer et al. (2020) found in a study of 805 offenders who were sentenced in Pennsylvania that White victims were more likely to have death penalties imposed on assailants as a result of their death, and this finding approached statistical significance when controlling for a geographic area.

In Canada, the author's previous research of all 40 reported and unreported Canadian multiple murder cases from across Canada between 2011 and 2019 indicated that murderers of Indigenous and Black victims received the least punitive parole ineligibilities imposed by the courts (Belisle, 2019). The study used a small sample and did not control for aggravating or mitigating factors.

When combining both gender and race, Girgenti (2014) posited that there is a hierarchy of "deathworthiness" which ranks the death of White female victims as most blameworthy as a result of the social capital they hold. Social constructions define how this hierarchy has come to be

further shaped on the basis of gender and race (Girgenti, 2014, Windsong, 2016). Girgenti (2014) concluded her study noting that race is a predictor of death penalty sentencing.

"Domestic Discount" in Intimate Partner Homicide Sentencing

The construction of victimhood involves gender and race, but consideration is also required of the social situations' victims are in. For women and racialized groups, intimate partner relationships can pose a deadly situation. Women are most often the victims of intimate partner violence, accounting for 8 out of every 10 victims (Conroy et al., 2019). Intimate partner violence frequently occurs between girlfriends and boyfriends living in a shared dwelling (Conroy et al., 2019). The home continues to be the most unsafe place for women (Dawson et al., 2019). As a result, domestic violence has been considered "private violence" by scholars (Rapaport,1994, 1996; Dawson, 2015). A history of domestic violence and pending divorce or separation are among the most common risk factors for domestic homicides (Dawson & Piscitelli, 2017). Domestic violence offending is argued to be an offence of power, in which men are able to reaffirm power granted to them through gendered roles (Dawson, 2015).

Most starkly, domestic violence, in the worst of cases extends into the disproportionate death of women. Dawson (2015) refers to this as "femicide". Femicide in its basic elements refers to the death of a woman (Dawson, 2015), but the death of women in gendered situations has also produced a situational definition on the international stage (Dawson et al., 2019).

Dawson (2015) found in 1,381 homicide cases in Ontario Canada, roughly 40% were femicides. Of that, 58% of femicide deaths were intimate partners. Femicides have decreased by roughly half (52%) since 1975 to 15 per million population in 2015 (Trends in Femicide, n.d.). According to the 2015 Homicide survey, 29% of homicide victims in Canada were female

(Mulligan, et al., 2016). In Canada, trend data indicates that about half (48%) of murdered females are killed by a spouse or intimate partner (Dawson et al., 2019).

Violence towards women at the hands of their spouse has been a controversial topic for decades, with varying degrees of willingness to accept intimate partner murders as an issue for the criminal justice system. Through the course of a woman's victimization by their spouse, law enforcement and social service programs can present barriers to achieving assistance (Schneider, 2000; Jacobsen et al., 2007). Many times, these barriers are coupled with women being blamed for their own victimization, such as "why didn't you just leave?" (Schneider, 2000, Jacobson et al., 2007). Fairbairn & Dawson (2013) found that Canadian victims of domestic violence continue to be blamed for their own victimization, but at lesser rates over time.

Socially and practically, other cited reasons for domestic violence being treated more leniently by the courts include the belief of little future violence by offenders, and, conversely, the sheer frequency of intimate partner homicides (Dawson, 2006).

Gender, Race, Intimate Partner Violence and Sentencing

In Canadian homicide studies that involve gender and race, the racial focus tends to be on Indigeneity. It is argued that the combination of race and gender creates means for less punitive sentencing to be imposed when killing a non-White woman as a result of their inability to attain ideal victim status (Kleck, 1981; Philips et al., 2012). When considering the combination of race, the Native Women's Association of Canada (2010) outlined that Indigenous women are at the greatest risk of being subject to femicides, because of inadequate state resources and continuing impacts of colonization. Dawson's (2015) study of Ontario femicides was able to find gender based

bias[1], but Aboriginal[2] or minority status had very little impact on the subsequent sentence imposed. Though Dawson's (2015) study did note there was a significant amount of missing data in relation to race, which therefore may have more fruitful results should that data be located.

Turning to legislation and the construction of domestic murderers more broadly, Crenshaw (1991) observed that legislation aimed at improving the response to domestic violence used the notion of the "ideal victim" to increase the legitimacy of intimate violence as a social problem. Richie (2000) argued that this construction suggests domestic violence could happen to *anyone,* though in reality this construction did not really mean *anyone,* rather it meant White women. This is echoed by Crenshaw (1991), noting that domestic violence policies have stressed the victimization of White women. These investigators have attempted to transform the message that domestic battering is not exclusively a problem of the poor or minority communities, but rather it is a claim that it equally affects all races and classes (Richie, 2000; Crenshaw, 1991).

Significance of Research

As outlined by Dawson (2015), there is very limited scholarship among Canadian academics in relation to sentencing and victim status. American studies have a plethora of research conducted when compared to their Canadian counterparts (Paternoster,1983; Stauffer et al., 2006; Evans, 2005; Radelet & Pierce, 2011; Girgenti, 2014). This study should add context to the ways in which society considers victims status and allow for evaluation of these gaps in understanding. This research is also timely, in that there are many conversations at the forefront of Canadian society considering the role of Indigenous peoples in relation to the criminal justice system

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[1] This study found that i) more first-degree murder charges were imposed as a result of the death women, and ii) three more years were imposed for the death of a women when compared to male victims.
[2] This is the term decided by Dr.M. Dawson in her published 2015 work.

(MMIWG, 2019). This research intends to add to these important conversations by specifically considering how there may be differing constructions of victimization on the basis of race. Finding and correcting bias in the Canadian judicial system is one step to ensuring the justice system works for all Canadians regardless of social characteristics.

This research is also necessary to consider sentencing discounts which may be present among the murder of women in domestic violence sentencing. In principle, the Canadian judiciary constructs itself as an entity that is equal to all (Berger, 2016). Though, the work of Dawson (2015) has demonstrated there is some bias within Canada's courts on the basis of victim status, specifically in regard to gender and the role of victim offender relationships. As outlined by Kleinstuber et al., (2020) such bias may be woven into the socialization of judges, and broader society, meaning there will have to be more complex recommendations made to accommodate such practices.

<center>**RESEARCH DESIGN AND METHODS**</center>

Research Question and Hypotheses

This study asks the following question through a social constructionist framework; "*What impact does gender, race and domestic violence have on second degree murder sentencing in Canada".* Social constructionism and legal rationalism orient this research. Socially constructed stereotypes such as "ideal victims" arise as a means to understand the world, and how that might influence thinking at the point of sentence (Gekoski, et al. 2012, Surette, 2015). In contrast, legal rationalism acts as a means to explain how the law and legal aspects of a case may work to create more consistent sanctioning of serious crimes like homicide.

Gender and Race-Based Hypotheses

Among other features, ideal victims are vulnerable. For example, Gekoski et al., (2012) suggest that younger victims of crime are characterized as ideal victims and are more likely to receive increased media attention as their death is considered highly newsworthy. Other statuses related to vulnerability are being very old, disabled, and of interest for this study, being female. Harding (2006) and Jiwani & Young (2006) focus on the role of Indigenous victimization and the construction of Indigenous peoples as crime victims. In this sense, it is possible that based on the construction of Indigenous peoples, specifically women, are not considered ideal victims, at least compared to White women.

More punitive sentencing imposed for the death of women compared to men has been demonstrated empirically in both Canadian (Dawson, 2015) and American research (Stauffer et al., 2006; Kirkland, 2010;). This increase in harsher sentencing for Dawson (2015) was partially attributed to the role of the chivalry hypothesis in the construction of female victimization.

As previously noted, the chivalry hypothesis can be conceptualized as either women being seen as weak and need of protection from men, with those who victimize women being punished more harshly as per Dawson (2015). Alternatively, Blekamp (2001) suggests that Dawson's definition defines paternalism, rather than chivalry, which would alternatively view women as placed on a pedestal with one behaving gallantly. As discussed, within the social construction of gender, this definition works in tandem with gender norms which rely on women having less power. A hypothesis which compliments the chivalry hypothesis is that of the (White) female victim effect.

The female victim effect posits that those who cause the death of female victims receive more punitive sanctions (Holcomb et al., 2004; Dawson, 2015). Tomsich et al., (2014) argues that there is some element of the chivalry hypothesis in the construction of the female victim effect, and that this effect is produced through the need to protect women. This effect can be found in other offence types beyond murder, as it aids in the construction of the victim (Gillespie, et al., 2013).

Holcomb and colleagues (2004) combine race with gender in theorizing sentencing outcomes. The White female victim effect advances the notion that they have higher status as victims based on the social position of them being both female and White. Females are seen as in need of protection, but White female victims are most in need of protection (Holcomb et al., 2004; Dawson, 2015). The social constructions of whiteness and gender means that women of higher social status are in need of protection which can be achieved through the actions of the state, working through the courts (Curry et al., 2004; Dawson, 2015).

Alternatively, the social construction of race allows for the perception that violence is part of the racialized female experience for Indigenous compared to White women (Crenshaw, 1991;

Holcomb et al., 2004). As per the MMIWG, Indigenous women are less valued socially and hence they do not merit the same protection and their assailants do not merit the same punishment. This leads to my first two hypotheses:

> **Hypothesis 1a:** More punitive second-degree murder sentencing will result for the killing of women (ideal victim, chivalry).
>
> **Hypothesis 1b:** More punitive sentencing will result for the killing of White female victims than Indigenous female victims (White female victim effect).

Ideal Victim and Domestic Violence Hypotheses

The ideal victim preferred attributes are thought to encourage stronger sanctions from the courts (Strobl, 2010). Strobl argues that the construction is based on beliefs about vulnerability and assumed decisions such that the victim cannot be blamed (p.9). Thus, a baby being assaulted while being walked in a carriage would assume ideal victim status. Women were identified as a vulnerable category earlier, but it is anticipated that the very old and very young would be considered vulnerable and incur stiffer sentences for perpetrators.

> **Hypothesis 2a:** More punitive sentencing will be imposed for vulnerable victims who are very young or very old.

But the offender also plays a role in establishing ideal status. Where the offender and homicide victim know each other, the victim can be second guessed for their choice of companion. If the offender and victim have a close relationship, such as marriage or a common-law relationship, the judgement of the victim can be questioned. If the victim and offender live together, the victim can expect some blame.

> **Hypothesis 2b:** Less punitive sentencing will be imposed for victims involved in relationships with offenders and who live with offenders.

Conversely, the homicide victim becomes more ideal if they are murdered in a place where they cannot be blamed, such as their residence. If the offender is a stranger and offender apparently more easily perceived as "evil" by way of having a criminal history, the victim becomes a more sympathetic figure.

Hypothesis 2c: More punitive sentencing will be imposed if victims are killed in their residences, when offenders are strangers and have criminal histories.

One could lose ideal victim status because of domestic violence. Victims in such situations may in some way be thought to be to blame for their death because of their inability or perceived unwillingness to leave a potentially volatile situation (Rapaport, 1996, Schneider, 2000, Jacobson et al., 2007). Such victim blaming attitudes then provide a rationale as to how or why a victim of domestic violence might be devalued as a victim.

Dawson (2004, 2006, 2015) has outlined that there is a decrease in sentencing when the victim and offender share a more intimate relationship. Being termed the "domestic discount" Rapaport (1994, 1996) has also outlined the stereotyped application of sentencing domestic homicides to result in less punitive sentencing than those who murder strangers. Statistics Canada suggests that Indigenous women are at the highest rate of victimization in Canada, and in 2006 were eight times more likely to be murdered by an intimate partner than their non-Indigenous counterparts. Domestic violence victims have been subject to various victim blaming attitudes through the last few decades, with many questioning "why she just didn't leave". This construction of domestic violence victims has the potential to lead to less severe punishments to be imposed as the victim is seen as more blameworthy of their victimization (Rapaport, 1994,1996; Dawson, 2004). As a result, the third hypothesis is:

Hypothesis 2d: Less punitive sentencing will be imposed for victims involved in domestic violence.

Legal Factor Hypothesis

A consensus view of the criminal court process sees existing structures such as the criminal code, case law and principles of sentencing influencing each case and ensuring an individualized approach to justice (Engen et al., 2002). Thus, it is expected that punishment would be more extensive for offenders with more aggravating factors present at sentence, as well as for those perpetrators with criminal histories (hypothesized earlier), who committed other crimes along with homicide, and who had multiple murder victims. Conversely, sanctions will be reduced by a greater presence of mitigating factors at the point of sentence.

Hypothesis 3a: Punitive sentencing will increase as aggravating factors increase. Punitive sentencing will also be imposed more frequently when there are additional convictions for other crimes along with the homicide or having multiple murder victims.

Hypothesis 3b: Punitive sentencing will decrease as mitigating factors increase.

Sample

This study used secondary data, reported legal cases from Lexis Quicklaw and media sources accessible through internet searches. Each offender was only represented once along with each victim.

The sampling frame was reported court cases from 1980-2017 (most were post 2000) generated through Lexis Quicklaw and is part of a larger study of victim status and second-degree murder. All cases were second-degree murder cases decided in a Canadian provincial or territorial court, provincial or territorial superior court, provincial or territorial court of appeal, or at the Supreme

Court of Canada. Each case is reported by the respective province or territory and included within Lexis Quicklaw. Reported cases are judgements which are released by the court which it originated in.

Judicial judgements when crafted, have no specific formulae. A justice is to put the information they deem appropriate in the judgment which is then released, which may or may not provide details on offender or victim attributes. As a result, there was more missing data for victims compared to offenders, especially that of victim demographics. Overall, the sample should not be considered representative but still constitutes a significant cross-section of 2nd degree murder cases in Canada.

To gather specific cases, "'second degree' & murder & sentenc*" was used yielding 4,821 cases from 1976 – 2019. There were 1,279 second degree murder cases gathered. This was further refined to a sample of 259 cases which appeared to have the least missing data for each of the variables being assessed. With this said, as outlined, there is still significant missing data for some variables. The majority of cases from the tally of 259 were post-2000 (82.6%).

Data Collection

Each of the cases generated from Lexis Quicklaw was gathered into an Excel database by a team of researchers, most of whom were taught by me. They had their work reviewed by myself to ensure consistency in data collection. Each of the cases was examined for the presence of social and legal variables outlined below. All of the cases in the dataset were then verified by me and loaded into the Statistical Package for the Social Sciences (SPSS), which was then used for analysis.

Operationalization of Variables

Dependant Variable

Parole Ineligibility Period: is the dependent variable. Second degree murder incurs a life sentence but there is some judicial discretion in the designation of a parole ineligibility period, which can range from a minimum of 10 to a maximum of 25 years. This period is applied in combination with a sentence of life in prison. This continuous variable was collected from case judgments and reported numerically in SPSS as a (10, 11,12, …25). In cases of multiple murders exceeding the 25 year maximum[3], the parole ineligibility was truncated at 25 years to minimize the influence of outliers on analysis.

Independent Variables: Gender, Race and Domestic Violence

Gender: was determined through information from collected judgments and media reports. Use of pronouns within the judgment were used to infer gender if it was unclear, or it was left missing if still unclear. Both offender and victim gender were collected. The original variable was coded Heterosexual, Homosexual, Bi-Sexual and other, but for analysis was dichotomized into Female =2, Male = 1. There were simply too few cases for analysis to include other categories of gender.

Race: Statistics Canada dataset definitions were used to categorize race (e.g., Caucasian, Black, Indigenous). Race was collected as both a string and numerical variable to be analyzed in SPSS. For analysis, Indigenous offender was created (1=yes, 0 = no), and Indigenous female (1) and White female (1).

Domestic Violence: A second degree murder that involved any form of intimate partner violence was coded nominally (1=yes, 0=no). This term considers that violence is inflicted by a current or

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[3] As a result of the *Ending Sentencing Discounts for Multiple Murders Act (2011)* multiple murders can be sentenced consecutively, concurrently, or a combination thereof, depending on the will of the justice at the time of sentencing.

previous intimate partner (Dawson, 2015; WHO, 2005). This definition collapsed the experiences

of victims into one category from specific forms of violence such as intimate partner, spousal, or

dating violence (Beaupré, 2015).[4]

Independent Variables: Ideal Victim
The following features of the ideal victim were captured focussing on the following:

a) *Vulnerability*: Age in years was used to help indicate those very young. Vulnerability for

being female was captured in the gender variable outlined above.

In a place where you cannot be blamed: victim's residence = 2, not = 1.

In a place where you could be blamed: victim-offender share residence (1).

Offender-victim relationship known: victim is in married/common-law relationship with offender

(1).

b) *Offender is a stranger:* yes=1, no=0.

c) *Offender is evil:* Offender has prior criminal history (2= serious record, 1=record, 0=no

record). The serious record was determined by the presence of serious violence or a long

history of convictions. Having a record for only minor assaults or break-ins was coded 1.

For descriptive purposes marital status was collected as a nominal variable (married,

common-law, divorced, separated, widowed) as was Canadian citizenship.

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[4] Statistics Canada, as per Beaupré (2015), defines such violence as per the following: *1) Intimate Partner Violence (IPV):* "Violence committed by spouses and dating partners, that is violence committed within an intimate relationship. This category includes victims aged 15 to 89"; *2) Spousal Violence:* "Violence committed against a spouse (married or common-law) or an ex-spouse (from a marriage or common-law relationship). This category includes victims aged 15 to 89"; and *3) Dating Violence:* "Violence committed by a boyfriend or girlfriend (current or former), or by a person with whom the victim had a sexual relationship or a mutual sexual attraction, but who was not considered the victim's boyfriend or girlfriend. This category includes victims aged 15 to 89".

Independent Variables: Consensus Legal Factors

As discussed, legal factors such as offence severity, aggravating and mitigating circumstances and prior criminal history have been found to explain a majority of variability in sentencing, supporting consensus theories that the legal system generally operates within agreed up principles. To rigorously assess the veracity of hypotheses concerning gender, race and the ideal victim, a number of legal variables were identified for inclusion in the analysis. There is overlap between these theoretical perspectives, of course, and the variable prior criminal history was operationalized above, but fits both theoretical perspectives.

Aggravating Factors Index: were gathered from both judicial judgments and media reports. Aggravating factors were operationalized as factors which encourage more severe punishment is to be imposed, such as a particularly brutal homicide. Grant (2010) outlines that domestic homicides are a breach of trust, similarly, killing a domestic partner should be considered an aggravating factor. Another aggravating factor is victimizing those who are considered vulnerable, as per case law (*R. v. Taylor,* 2016 BCSC 1326). These factors conceptually differ from simple demographics, however. To be included as an aggravating factor the judge had to mention it as such in his report. So for example, a victim might be young, but it would not be defined as an aggravating factor unless mentioned in the decision.

Using a yes (2) and no (1) response, the following factors were identified: brutality, criminal record, vulnerable victim, lack of remorse, avoiding detection, use of weapon, position of trust, other offence beside the murder, in addition an overall "other factors" category was also utilized. This category encapsulated a wide variety of aggravating factors such as disobeying orders of the court, degree of planning, coverup afterwards, the accused being manipulative, future risk, as well as consideration for the general public and risk to society. Generally, if an aggravating

factor was not mentioned more than 5 times it was consigned to the "other" category. These aggravating variables were summed to create an aggravating factors index. The inclusion of vulnerability and criminal record appears to double or repeat the influence of these indicators, as they were already created in slightly different form (young/old, female, criminal history 3 categories) for the ideal victim hypothesis test. There is a conceptual distinction however, as the aggravating factors are those noted in the report from the sentencing judge, so it is confirmed that they were considered. So, age, gender and criminal history are known to the sentencing judge at the time of sentence, but only the reported narrative confirms that the judge formally considered these as aggravating factors.

Mitigating Factors: Mitigating factors were operationalized as factors which encourage leniency, an example could be addiction. Dawson (2006) outlined remorse as a mitigating factor, as well as the overall attitude of the offender. Rapaport (1994,1996) suggests that if a murder is conducted in the heat of passion, it is less blameworthy, and therefore less punishable that murders which are planned and calculated. The following factors were identified as yes-no variables for mitigating factors: Age of offender, plea (guilty), remorse, no criminal record, mental health, education, rehabilitation potential, addiction, intoxication, and other. Again, the variables were summed into a mitigating factors index variable. Mitigating factors such as employment record, difficult childhood, cooperation, Indigenous background were collapsed into other if they did not occur more than 5 times.

Other Offences: The presence of other crimes was recorded using a nominal yes-no indicator.

Multiple Victims: A yes (1) was recorded for cases where more than one victim was killed.

Plan of Analysis

First, descriptive findings will outline the background characteristics of study sample offenders and victims, ideal victim characteristics, offence circumstance variables and legal history and sentencing related indicators. Bivariate associations will then be assessed between the dependent variable, parole ineligibility, and gender, race, ideal victim and legal variables related to study hypotheses. Spearman's Rho will be utilized to accommodate the nominal and ordinal independent variables in the sample. The strength and stability of these associations will be used to help build four multivariate equations to test study hypotheses. Ordinary least squares (OLS) regression will be used to regress parole ineligibility against offender and victim gender and race status, victim location and victim-offender relationship(s), and sentencing considerations. Interaction terms for Indigenous female victims and White female victims will be created for equation 2.

Missing values were a challenge with respect to victim age, an important ideal victim feature (31 missing). The mean imputation method was used to ensure at least 259 cases were available for analysis. In comparing equations with and without the missing age cases, results were the same, but there were more statistically significant relationships with the addition of the imputed values and slightly larger sample.

RESULTS

Descriptive Statistics

The following outlines offender and victim demographics, followed by important legal features of the homicides, and finally aggravating and mitigating factors likely considered for sentencing of second-degree murder.

Of the 259 offenders in this dataset study subjects were younger, most commonly between the ages of 19 and 38 (66.0%), male (93.4%), White (42.1%), likely to be single (40.5%) and Canadian (81.6%).

The mean age is just over 35 years old, which is a fairly young average age (Table 1). The range is from 19 - 73 years. An overwhelming majority of the sample is male (93.4%). Men are overrepresented in the sample accounting for roughly 50% of the population between 1990-2017 (Statistics Canada, 2021). Eighty-eight (88) offenders are White, representing 42.1% of the sample population. The fifty Indigenous offenders in this sample comprise 23.9% of the sample. In the Canadian population, Indigenous peoples consisted of 2.8% of the population in 1996, rising to 4.9% of the population in 2016. This makes Indigenous offenders overrepresented in the study sample, as they are almost five times more prevalent than in the 2016 census figures. There are 21 Black offenders, accounting for 10.0% of the population in this study. For comparison, the 2016 census suggests Black individuals accounted for 5.2%, thus this group is also over-represented.

The majority of offenders, 40.5% (87), were single at the time of the murder. There were 25.6% of offenders in married relationships, and just under 10% of offenders are in a common law relationship. The exact same proportion of offenders are common law as they are in a dating relationship. There are just over 13% of offenders who are either divorced, separated, or widowed. There are 44 offenders of whom their marital status could not be located.

Table 1: Second Degree Murder Offender Characteristics in Canada 1980-2017

Variable	*n*	*%*	*Variable*	*n*	*%*
Offender Age at time of Sentencing			**Marital Status**		
19-28	96	37.1	Married	55	25.6
29-38	75	29	Common Law	21	9.8
39-48	48	18.5	Single	87	40.5
49-59	27	10.4	Divorced	10	4.7
60+	13	5	Separated	19	8.8
Total	259	100	Widowed	2	0.9
Median	33.0 years		Girlfriend/Boyfriend	21	9.8
Mean	35.4 years		Total	215	100
Range	19-73 years		Missing	44	
Offender Gender			**Citizenship**		
Male	242	93.4	Canadian	209	81.6
Female	17	6.6	Non-Canadian	47	18.3
Total	259	100	Total	256	100
Sexuality			Missing	3	
Heterosexual	254	97.3	**Offender Race**		
Homosexual	3	1.2	Indigenous	50	23.9
Bisexual	2	1.3	White	88	42.1
Total	259	100	Black	21	10.0
			East Asian	17	8.1
			South Asian	18	8.6
			Middle Eastern	8	3.8
			Hispanic	4	1.9
			Other	3	1.4
			Total	209	100
			Missing	50	

Second degree murder victims tended to be younger (35.9% of the sample is under 25 years old), male (53.9), white (51.4%), in a common-law or married relationship (40.3%) and Canadian (74.5%). They ranged between under the age of 1 and 85 (Table 2), with a mean age of 32.3 years, indicating a tendency for younger adults to make up the majority of victims. Few victims were over the age of 56 (8.1%%) or under the age of 15 (10.4%). Victims were white (51.4%) or Indigenous (18.5%), with groupings of Black (9.3%), South Asian (7.7%), and East Asian (6.2%) making up smaller but relatively similar proportions of victims. Other visible minorities such as Middle Eastern and Hispanics, made up 6.9%. Indigenous peoples in Canada are overrepresented in this sample, as they make up almost one quarter of the sample, but only 4.9% of the Canadian population in 2016. An overwhelming 94.4% of victims were thought to hold Canadian citizenship.

In analyzing gender, men (53.9%) outnumbered women (46.1%) as victims. Dawson's (2015) study looking to 3425 Ontario homicide victims from 1985-2013 also saw more male victims, though the divide was not as evenly split with 35% of victims being female. In the Canadian population, the national Statistics Canada Homicide survey indicated that between 1990-2017, 43.4% of homicide victims were female, which is close to the proportions outlined in this study (Statistics Canada Homicide Data Table, 2018). About 98.8% of victims were heterosexual, with 1.2% identifying as homosexual. Pivoting to the relationship of victims in this study, 34.7% of victims were in a married relationship.

Table 2: Second Degree Murder Victim Demographics in Canada, 1980-2017

Variable	n	%	Variable	n	%
Victim Age at Time of Death			**Marital Status**		
Under 1	1	0.4	Married	68	34.7
2-15.	26	10.0	Common Law	11	5.6
16-25	66	25.5	Single	55	28.1
26-40	68	26.3	Girlfriend/Boyfriend	18	9.2
41-55	46	17.8	Divorced	3	1.5
56- 66	11	4.2	Widowed	2	1.0
67+	10	3.86	Other[5]	1	0.5
Total	259	100.0	Total	196	100.0
Median		30 years	Missing	63	
Mean		32.34 years			
Range		Under 1 year - 85	**Citizenship**		
Gender			Canadian Citizen	193	86.5
Male	128	53.9	Foreign National	30	13.5
Female	131	46.1	Total	223	100.0
Total	259	100	Missing	36	
Sexuality			**Race**		
Heterosexual	256	98.8	Indigenous	48	18.5
Homosexual	3	1.2	White	133	51.4
Total	259	100.0	Black	24	9.2
			East Asian	16	6.2
			Middle Eastern	5	1.9
			Hispanic	2	0.8
			South Asian	20	7.7
			Other	11	4.2

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[5] In this case, the marital status of the victim was coded as "Other" since the victim and the offender's wife were thought to be having an affair, though the specifics themselves are unclear within the case.

We can construct a general description of the who, how and where of Canadian second degree murder from the findings in table 3. Most victims were either stabbed (35.2%) or shot (23.6%), and this occurred most often in their own residence (31.2%). It was equally likely for the offence to take place in a shared residence, or in a public place (23.1%). Romantic partners and familial relationships as a collective group (93 cases, 35.9%) represented the greatest proportion of murders. There were more victims in this sample murdered by strangers (27.4%) than acquaintances (15.1%). Very few victims died at work (22, 8.9%). Seven (2.8%) victims died in an altercation which took place in their own car, or the offenders car. Very few individuals (6.9%) died in a location other than those already identified for the purpose of this study. An example of such an outlier was the residence of a third party.

The 1990 Homicide Survey indicated that 35.2% of all homicides in Canada involved familial relationships. There was a moderate decrease in this rate by 2017, to 29.7% of victims.

Table 3: Situational Factors of Second Degree Murder in Canada, 1980-2017

Variable	*n*	*%*	*Variable*	*n*	*%*
Victim Offender Relationship			**Location of Murder**		
Married partners	28	10.8	Victims residence	77	31.2
Common Law partners	7	2.7	Offender's residence	14	5.7
Former partners	20	7.7	Shared residence victim and offender	55	22.3
Other family	38	14.7	Public space	55	22.3
Acquaintance	39	15.1	Victim's place of work	20	8.1
Strangers	71	27.4	Shared workplace victim and offender	2	0.8
Girlfriend/boyfriend	18	6.9	Victim's car	5	2.0
Other, known[6]	18	6.9	Offender's car	2	0.8
Other	20	7.7	Other	17	6.9
Total	259	99.9*	Total	247	100.1*
			Missing	12	
Killing Method					
Stabbing	88	35.2			
Shooting	59	23.6			
Beating	48	19.2			
Strangulation	32	12.8			
Fire	5	2.0			
Other	18	7.2			
Total	250	100.0			
Missing	9				

*Does not add to 100% as a result of rounding

[6] The label "Other, Known" refers to relationships whereby the victim and offender are anticipated to be well known. Knowledge of the offender or victim would be beyond that of an acquaintance but are not in a romantic union or family. This would include roommates or business partners, among other victim offender relationships.

Most murders in the sample were reported by courts came from Canada's more populous provinces (Table 4). Ontario (35.9%) was first, followed by British Columbia (21.6%), Alberta (8.5%) and Quebec (6.9%). Perpetrators were more likely to be charged with second degree murder and then convicted as charged (66.9%), rather than have a charge of first degree murder reduced. Offenders in the sample were most likely to have gone to trial (63.3%). About nine out of ten murders had only one victim. Three quarters of cases had one accused (74.9%). Sentences were most often imposed through a written judgement dispersed by the court (51.0%).

The reporting style for second degree murder cases were roughly equivalent, with those written by a justice and released by the court totalling 51.0%, compared to those read to the offender (49.0%). The majority of offenders (63.3%) elected to go to trial, with 36.7% pleading guilty to second degree murder. Bressan & Coady (2017) indicated that there is no nationally collected record of pleas in Canada. It should be noted, it is quite significant that four out of ten perpetrators would rather plead to one of the most serious offences in the *Criminal Code* than go to trial. The vast majority of offenders (66.9%) were charged with second degree murder, while about a third had their convictions reduced from the initial charge of first degree murder.

Table 4: Legal Factors, Second Degree Murder in Canada, 1980-2017

Variable	n	%	Variable	n	%
Jurisdiction			**Judgment Year**		
British Columbia	56	21.6	1980-1984	6	2.3
Alberta	22	8.5	1985-1989	9	3.5
Saskatchewan	9	3.5	1990-1995	14	5.4
Manitoba	13	5.0	1996-2001	24	9.3
Ontario	93	35.9	2002-2007	56	21.6
Quebec	18	6.9	2008-2013	73	28.2
Nfld & Labrador	12	4.6	2014-2017	77	29.7
New Brunswick	6	2.3		259	100.00
Prince Edward Island	1	0.4	**Mode of Plea**		
Nova Scotia	19	7.3	Plea	95	36.7
Yukon	1	0.4	Trial	164	63.3
Northwest Territories	5	1.9	Total	259	100.0
Nunavut	4	1.5	**Charge Laid**		
Total	259	100.0	First Degree Murder	83	33.1
Oral or Written Delivery			Second Degree Murder	168	66.9
Oral	127	49.0	Total	251	100.0
Written	132	51.0	Missing	8	
Total	259	100.0	**Multiple Murder**		
Multiple Offenders			Yes	31	12.0
Yes	65	25.1	No	228	88.0
No	194	74.9	Total	259	100.0
Total	259	100.0	**Criminal Record**		
			Yes, Non-Violent or General	62	23.9
			Yes, Serious record[7]	38	14.7
			Yes, Violent	35	13.5
			No Record	124	47.9
			Total	259	100.0

Finally, by way of table 5, sentencing of second degree murder offenders in my sample finds in about 2 out of 3 cases judges set parole eligibility at 10 - 15 years (68.4%). The mean parole ineligibility period was 14.7 years. Perpetrators appeal convictions in half of all cases

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[7] "Serious Record" incudes criminal records of offenders which are either violent or extensive or the combination thereof.

(38.1%), as 138 of the 259 cases were reviewed. Of 107 known outcomes, (nearly 83%) did not experience a change in the ineligibility period imposed. If an ineligibility period was successfully appealed, it was more likely to be decreased (10.1%) than increased (7.0%). There was a victim impact statement noted in just over 36.3% of second degree murder cases.

Table 5: Sentencing Factors, Outcomes and Appeals, Second Degree Murder 1980-2017

Variable	*n*	*%*	*Variable*	*n*	*%*
Aggravating Factors	Yes	%	**Mitigating Factor**	Yes	%
Brutality	132	51	Age of offender	49	18.9
Criminal Record	54	20.8	Plea	65	25.1
Vulnerable Victim	106	40.9	Remorse	69	26.6
Lack of Remorse	37	14.3	No Criminal Record	81	31.3
Avoiding Detection	54	20.8	Mental Health	22	8.5
Use of Weapon	52	20.1	Education	7	2.7
Offender in Position of Trust	61	23.6	Rehabilitation Potential	27	10.4
Other Offence than Murder	33	12.7	Addiction	10	3.9
Other Aggravating Factors	138	53.3	Intoxication	7	2.7
			Other Mitigating Factors	90	34.7
Victim Impact					
Yes	94	36.3	**Appeal Type**		
No	185	63.7	Sentence	42	33.3
Total	259	100	Conviction	48	38.1
			Both Sentence and Conviction	36	28.6
Parole Ineligibility			Total	126	100
10 years	41	15.8	Missing	12	
11 years -12 years	43	16.6	No Appeal	121	
13-15 years	93	36.0			
16-18 years	52	20.1			
19-22 years	20	7.7	**Change in Eligibility**		
23-25 years	10	3.9	Increased from Trial	9	7.3
Total	259	100	Decreased from Trial	13	10.4
Mean	14.7		No change	102	82.3
Standard Deviation	3.65		Total	124	100
Range	10-25		Missing	13	

As outlined by the *Criminal Code* judges must take into account aggravating and mitigating circumstances to arrive at an individualized sentence. Looking to table 6, most frequently brutality of the crime was an aggravating factor, accounting for 132 cases or 51%. Inflicting harm toward a vulnerable victim (40.9%), having a criminal record and avoiding detection were other frequently cited aggravating factors accounting for 20.8% of cases respectively. Over half (53.3%) of cases had a justice consider other aggravating factors than originally set out for the purpose of this study. Some of these factors include, but are not limited to, the location of the offence, having a child present for the murder, as well as the character of the offender not being conducive to rehabilitation. Common mitigating factors were lack of criminal record (31.3%), remorse (26.6%) and pleading guilty (25.1%). Addiction (3.9%), intoxication at the time of offence (2.7%), as well as educational background (2.7%) all appeared to be the least common mitigating factors to be considered by the court. Mitigating factors which the court noted under the "other" category (34.7% of cases) included a diversity of factors, such as a young child being deprived of a parent, poor childhood, and cooperation with the criminal justice system post murder, among others.

Bivariate Spearman's Rho Correlation

Spearman Rho – Offender and Victim Characteristics, Bivariate Correlations

Spearman's Rho was selected over other correlational tests as the study variables included original as well as nominal indicators (Akoglu, 2018). There appears to be few substantive or statistically significant associations among the offender and victim characteristics analyzed in this study (Table 6).

Age is the only statistically significant predictor, showing a small positive correlation, as older offenders are more likely to have their parole eligibility raised ($r_s = .19$, p. $<.01$). An offender being either male or female had negligible effects. Offender Indigeneity is the only race variable

with a negative correlation, while being White, Black or a Visible minority all have a weak positive correlation. The offender being divorced or dating has a weak positive effect on the parole ineligibility imposed. It should be noted, the "visible minority" category contains all racial profiles other than Indigenous, White and Black individuals. This includes Middle Eastern, Hispanic, East Asian and South Asian individuals.

As for victims, males and females have opposite effects on parole ineligibility, but neither are large or significant. Being female results in a weak positive correlation towards parole ineligibility. This finding does not support the hypothesis that women are more ideal victims than men, nor the chivalry hypothesis. When considering race, a victim being Indigenous, White, Black or a visible minority showed no associations. This did not support Girgenti (2014) notion of a hierarchy of deathworthiness by race. When combining gender and race, again no substantive associations were observed (Indigenous female, r_s=.06, ns; White female, r_s = .10, ns).

When further considering the role of gender, race, and domestic violence there are also negligible results. Indigenous women in domestic violence situations who are murder victims do not see an increase in sentencing of perpetrators. Likewise, White women in domestic violence situations see only minimal effects.

When considering victim marital status there were only insignificant negative correlations with parole ineligibility.

Table 6: Spearman's Rho Correlations Parole Ineligibility by Offender and Victim Demographic Characteristics

	Parole Ineligibility
Offender Demographic Factors	
Age	.19**
Female	-.03
Male	.03
Indigenous	-.02
White	.02
Black	.05
Visible Minority	-.05
Married or Common Law	-.08
Dating	.10
Divorced or Separated	.15*
Single	-.08
Victim Demographic Factors	
Age[a]	-.03
Female	.11
Indigenous	-.04
White	.03
Black	.03
Visible Minority	-.02
Indigenous Female	.06
White Female	.10
Indigenous Female + Domestic Violence	.02
White Female + Domestic violence	-.05
Married or Common Law	-.04
Dating	.07
Divorced or Separated	.11
Single	-.02

[a] *31 cases missing age*
p <.05*, p < .01**, p < .001***

Spearman's Rho – Situational Characteristics, Bivariate Correlations

In regard to situational characteristics (Table 7), there appeared to be few correlations of note. The majority of victim offender relationships result in weak, nonsignificant negative correlations with parole ineligibility. Being married or common law (r_s=-.12, ns), dating partners (r_s=-.03, ns), acquaintance (r_s= -.03, ns) and other family (r_s=.02, ns) all result in weak negligible correlations.

In the same vein, the domestic discount hypothesis at least in part lends itself to the location of the murder. There appears to be a minimal correlation to the location of a murder and the imposed parole ineligibility. However, murder in a shared residence has a small negative correlation ($r_s= -.16$, $p<.01$) with an imposed parole ineligibility period. Though not large, this finding potentially supports the domestic discount hypothesis as parole ineligibility as the victim and offender living together would often involve a domestic situation.

Table 7: Spearman's Rho Correlations Parole Ineligibility by Victim-Offender Relations and Murder Location

Situational- Location of Murder

Victim's Residence	.13*
Offender's Residence	.06
Shared Residence	-.12*
Public Space	.01
Victim's Workplace	-.04
Shared Workplace	.06
Victim's Car	-.07
Offender's Car	.01
Other Place	.02

Situational- Victim Offender Relationship

Married or Common Law	-.12*
Former Partners	.11
Dating Partners	-.03
Acquaintance	-.03
Other Family	-.02
Other Known	.02
Stranger	.11
Unknown	.02

Legal Factors

Prior Record	.14*
Prior Provincial or Federal Custody	.10
Multiple Victims (1 off, multiple victims)	.27***
Multiple Offenders (1 victim, multiple offenders.)	-.04
Other Convictions	.24***

p. <.05*, p. < .01**, p. < .001***

Spearman's Rho- Aggravating and Mitigating Factors, Bivariate Analysis

The associations between aggravating and mitigating factors are generally in the predicted direction, with small or negligible correlations, with a few exceptions (Table 8). There is a moderate positive correlation between brutality and imposed parole ineligibility, which is in the predicted direction (r_s=.28, p< .001). This was followed by the "other" category, which produced a modest positive association (r_s= .23, p<.01), having a criminal record (r_s= .19, p<.01), committing another offence at the time of the murder (r_s= .18, p<.01) and preying on the vulnerability of a victim (r_s=.16, p<.05). Avoiding detection produced a small and non-significant association (r_s=.12, ns), and lack of remorse, breach of trust and use of a weapon produced small and non-significant effects. The aggravated factor index showed only a limited additive effect, as its moderate correlation coefficient of .31 (p<.001) on imposed parole ineligibility is only slightly higher than the association with the single factor of brutality.

Mitigating factors demonstrated effects in the predicted direction but only age was significant, and its correlation was small in magnitude (r_s= -.15, p<.05). Intoxication (r_s= -.12, ns) and remorse (r_s= -.10, ns) showed weak and non-significant effects, while the remaining mitigating factors had only negligible correlations with parole ineligibility (Table 8). The mitigating factor index, summating all factors showed a fair sized additive effect, as its correlation of -.20 was higher than age and statistically significant (r_s= -.20, p<.001).

As anticipated all aggravating factors have a positive effect, thereby increasing parole ineligibility, while mitigating factors had a negative effect, thereby having a decreasing parole ineligibility.

Table 8: Spearman's Rho, Parole Ineligibility by Aggravating and Mitigating Murder Factors, Femicide, Victim Impact, Crown and Defence Recommendations

	Parole Ineligibility
Aggravating Factors	
Brutality	.28***
Criminal Record	.19**
Vulnerability of Victim	.16**
Lack of Remorse	.09
Avoided Detection	.12
Use of Weapon	.08
Breach of Trust	.09
Commission of Another Offence	.18**
Other	.23**
Aggravated Factor Index	.31***
Mitigating Factors	
Age	-.15*
Plea	-.07
Demonstrated Remorse	-.10
Lack of Criminal Record	-.08
Mental Health	-.07
Education	.02
Rehabilitation Potential	-.02
Addiction	-.02
Intoxication	-.12
Other	-.08
Mitigating Factor Index	-20***

p <.05*, p < .01**, p < .001***

Multivariate

Four equations representing the heart of this analysis are presented in Table 9. Many of the variables from the correlational analysis were not utilized because there were no relationships that merited further inquiry. Some variables that looked promising in bivariate equations did not produce strong or statistically significant relations in multivariate testing and were not pursued further. Variables such as offender gender and race did not show strong associations with parole ineligibility but were included because they are of theoretical interest and have frequently been considered in the sentencing research literature.

Equation 1 provides an overall variance explained of 14%, a modest amount. Offender age exerted by far the most substantive effect on parole ineligibility – older perpetrators received longer periods of ineligibility (b=.11, p<.001, β =.36). Being male or Indigenous had no apparent impact. Domestic violence murders did not influence sentencing. With respect to ideal victim attributes, being older (not young) decreased punitivity (b = -.04, p<.01, β = -.19), thus it was not viewed as a vulnerability that demanded a harsher ineligibility period. Being female (b=1.04, *p<.05, β = -.19), increased sentence severity by at least an additional year, an effect that was in the predicted direction. Indigenous victims saw perpetrators averaging 1.4 years less for parole ineligibility, indicating they were not as valued as other victims (β = -.15.0, p<.05, one-tailed). Being killed at a victim's residence (place where you can't be blamed for poor judgement) showed a modest effect in the predicted direction (increase in sentence severity), while sharing a residence with a perpetrator (blameworthy) was also in the anticipated direction (negative) but neither were statistically significant. Knowing a perpetrator made a difference: victims in a married or common-law relationship with an offender saw almost two years less in eligibility (b=-1.72, p<.05, one-tailed, β = -.17), while if an offender was a stranger (b=1.27, p<.05, β = .16) or had a criminal history (b=.68, p<.05, β = .16) judges were more punitive.

Equation 2 is intended to test this study's central hypotheses, on White woman privilege and the negative intersection of Indigenous race and gender on sentencing. Offender gender and race were removed from equation 2 because they did not impact sentencing in equation 1. There were few changes from equation 1 to 2 for the direction, magnitude and stability of effects for offender age, domestic murder, victim age, victim killed at home residence, shared residence victim-offender relationship, stranger, or prior record. The introduction of Indigenous female and

White female victim weakened effects for female victim and Indigenous victim. Neither being an Indigenous female, nor a White female victim had any discernable impact on parole ineligibility. For equation 3, a variable indicating Indigenous female domestic victim status and another indicating White women domestic victim status were entered, further specifying background factors that might influence sentencing. Again, most predictor effects did not change much in equation 3, and the total variance explained was again a fairly low total of 13%. However, there were no consistent effects for status as an Indigenous female domestic victim or White female domestic victim. Indigenous female was in the predicted direction (negative), but the effect was not stable and did not achieve statistical significance. The introduction of the two interaction terms weakened the effect for Indigenous victim status (b= -.75, ns). Likewise, female White victims did not present as advantaged over other female victims.

Equation 4 allows for a test of study hypotheses with stricter controls introduced on legal sentencing factors that could influence parole eligibility. The variance explained jumps substantially, from 13% in the previous two equations to 35% in equation 4. The large beta weights for multiple victims (b=2.83, ***p<.001, β = .25), presence of other crimes (b= 1.60, ***p<.001, β = .20), aggravating factors summed (b = 1.60, p<.001, β = .25) and mitigating factors summed (b = -.49, p<.001, β = -.20) explain a large proportion of the variance in the equation. Offender age, victim age, offender is a stranger and prior record are all attenuated but remain in the predicted direction and statistically significant. Indigenous victim and victim-offender married/common-law show smaller effects in the predicted direction but are no longer statistically significant. Victim residence is consistent, in the predicted direction and achieves a modest degree of statistical significance (b= .80, p<.05 one tailed, β = .10) while shared residence is strengthened and in the

predicted direction but does quite achieve statistical significance (b = -.99, p<.059 one tailed, β = .11).

Results show some evidence of the ideal victim construct influencing sentencing, and some evidence of devaluing of Indigenous victims, but most effects were not large or stable. Consistent with the sentencing literature, prior record and severity of the offence has the largest impact on punitivity. Court consideration of specific aggravating factors also impact sentencing severity, while judicial attention to mitigating factors tends to limit sanctions.

Table 9: OLS Regression of Parole Ineligibility by Demographic, Prior Crime and Current Crime Attributes, Victim-Offender Relations and Murder Sentencing Factors

Variables	Equation 1 b(SE)	Beta	Equation 2 b(SE)	Beta	Equation 3 b(SE)	Beta	Equation 4 b(SE)	Beta
Constant	10.36 (2.59)		10.32 (.11)		11.60 (1.94)		6.21 (2.50)	
Offender Controls								
Offender Age	.11*** (.02)	.36	.11*** (.02)	.36	.11*** (02)	.36	.09*** (.02)	.28
Offender Male	.54 (.90)	.04						
Offender Indigenous	.68 (.78)	.07						
Ideal Victim Attributes								
Domestic Murder	-.14 (80)	-.02	-.17 (.80)	.02	.07 (.1.07)	.00	-.28 (.70)	-.03
Victim Age	-.04** (.02)	-.19	-.04** (.02)	-19	-.04** (.02)	-.19	-.03* (.01)	-.12
Female	1.04* (.52)	.14	.62 (.80)	.09	1.01* (.52)	.14	1.04* (.46)	.14
Indigenous Female			.83 (1.23)	.07				
White Female			.39 (.75)	.05				
Indigenous Female Domestic					-1.11 (1.55)	-.06		
White Female Domestic					-.03 (1.05)	-.03		
Victim Indigenous	-1.4[a] (.80)	-.15	-1.23 (-.86)	-.13	-.75 (.65)	-.08	-.80 (.52)	-.09
Ideal Victim Location								
Victim's Residence	.85 (.54)	.11	.85 (.54)	.11	.80 (.53)	.10	.80[a] (.46)	.10
Vic-Off Share Residence	-.69 (.72)	-.08	-.75 (.71)	-.08	-.74 (.71)	-.08	-.99 (.63)	-.11
Vic-Off Relations								
Vic-Off Married/CL	-1.72[a] (.84)	-.17	-1.60[a] (1.01	-17	-1.72[a] (1.00)	-.16	-.61 (.87)	-.06
Off-Vic Stranger	1.27* (.53)	.16	1.20* (.69)	.15	1.24* (.53)	.15	.91* (.46)	.11
Offender Prior Record	.68* (.28)	.16	.67* (.28)	.16	.72* (.28)	.17	.62* (.25)	.15
Legal Factors Sentencing								
Multiple Murder Victims							2.83*** (.60)	.25
Other Convictions Incident							1.60*** (.44)	.20
Aggravating Factors Sum							.57*** (.13)	.25
Mitigating Factors Sum							-.49*** (.14)	-.20
R^2	.14		.13		.13		.35	
N	259		259		259		259	

DISCUSSION

This study provided partial support to the concept of the ideal victim and its influence on Canadian second degree murder sentencing. Features of victim vulnerability such as age and gender and victim crime location, victim-offender relationship and offender evil (criminal record), increased parole ineligibility. Gender and race had an impact but not as substantial as anticipated. There was no interaction between race and gender, as Indigenous women appeared to be valued as much as White women and females of other racial identities. Consistent with the literature, prior record and offence severity showed stronger effects on increased parole ineligibility, while the introduction of aggravating and mitigating factors considered at the point of sentence also impacted sentencing, more so than the victim attributes assessed.

In this chapter I will review hypotheses, link findings to the broader literature and provide further context to where this research may situate itself in the academic study of sentencing. Practical policy implications will be evaluated, study limitations outlined, and a path charted for future research.

Gender and Race Based Hypotheses

The next section will outline each of the hypotheses posed in this study and link findings to the broader research.

The first two hypotheses addressed the role of victim gender and race in Canadian murder sentencing judgments. Specifically, these hypotheses considered the role of womanhood, and the combination of victim gender and race. First, it was predicted that offenders who murder women will have more punitive sentences imposed. This is in line with literature from Baumer et al., (2006); Kirkland (2010) and Johnson et al. (2010) who suggested female victims will see the most punitive punishments imposed on perpetrators as a result of their death. This approach favours

social construction based theoretical constructs such as the ideal victim that sees women as more vulnerable, as well as the chivalry hypothesis that likewise sees women being treated more deferentially. This study revealed that at the bivariate level there was a weak impact of victim gender on parole ineligibility, though, as predicted, sentencing of offenders with female victims was more punitive. Multivariate analyses demonstrated a larger effect once controls were introduced: victim gender saw an increase of approximately one additional year imposed as a result of a femicide, net of the effect of other predictors.

This is in line with the Canadian research of Dawson (2015), who found in Ontario there was more punitive sentencing imposed as a result of femicide. In contrast, Stauffer and colleagues (2006) found that a female victim effect was negated when controlling for legal factors. Stauffer et al's (2006) study was strong in its ability to assess bias in the justice system by focusing on the role of juries in wanting to impose either the death sentence or life in prison to those convicted or pleading to first degree murder. Death penalty sentencing in North Carolina requires that the jury unanimously agree to at least one of eleven predetermined aggravating factors, which may have led to factually more serious murders being considered within that study. This would then potentially mean that the facts of the case were so abhorrent, that the social factors did not have the same emphasis. Analysis presented here also showed the importance of aggravating factors, but unlike Stauffer et al., I did find even when introducing controls, women victims prompted more severe sanctions

The hypothesized interaction of gender and race (White women victims valued, Indigenous women not) did not provide statistically significant results either at the bivariate or multivariate

level.[8] Bivariate correlations for the role of being a White female or Indigenous female had weak associations to the sentence imposed. This finding suggested that judges aimed to protect both White and Indigenous women.

This study mirrors the findings of Girgenti (2015), whose study of capital murder cases also found no support for a White female victim effect. Williams and Holcomb (2004) were able to find a female victim effect in their homicide study, even when considering legal controls. They concluded, after controlling for various gender and race combinations of both victims and offenders, that specific gender and race combinations have a greater impact on sentencing than gender and race alone. This Canadian study does not support Williams and Holcomb's (2004) findings. Not only did this study find no support for the White female victim effect, it appears the role of gender is a much greater predictor of more punitive punishment than race as a lone factor.

In general, study findings concerning the first two hypotheses supports the assertions of Kleck (1981) who argued that the role of race in the victim offender combination is not of prime consideration in sentencing, rather legal factors better explain punitivity in sentencing.

More will be discussed later with respect to study limitations; however, it is important to note here that there were only 27 Indigenous women included in the sample, compared to 102 White women. In comparison, there were only 9 cases of Indigenous women killed in domestic situations compared to 28 White women. In a larger sample of second degree murders in Canada, it is possible that there a greater discrepancy in sentencing by race will be found.

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[8] In the first OLS equation, Indigenous status was related to lesser parole ineligibility, suggesting that Indigenous victims were not valued as much as others. However, this effect disappeared once aggravating and mitigating circumstances were considered.

Ideal Victim and Domestic Violence Hypotheses

Hypotheses 2 and 3 consider the construction of the ideal victim and the influence of domestic violence in Canadian murder sentencing. This study confirmed that those in less blameworthy situations have more punitive sanctions imposed as a result of their death. At the bivariate level, a victim's residence as the murder scene saw the strongest positive correlation of the location variables assessed, albeit a weak but statistically significant relationship.

Being in a place that you can't be blamed made a difference. At the multivariate level, being murdered at a victim's residence saw an increase in sentencing of between .80-.85, or about a 9-month increase. The effect was small and unstable though, only statistically significant in a one tailed test in one of the 4 equations used. The victim and offender knowing each other increased blameworthiness, as being married or common-law with each other decreased punitivity. Consistent with this, more punitive sentencing was imposed between .92-1.27 years as a result of a victim and offender being strangers. This finding supports the general ideal victim framework laid out by Nils Christie and others, that a victim must not only be seen as blameless, but the offender must also paint a more troubling image, being a stranger and having a criminal record are important.

Another aspect of blame is tested in hypothesis two, regarding the suggestion that there is a domestic discount in Canadian second degree murder sentencing. Recall that Rapaport (1994, 1996) used the term "domestic discount" to describe a decrease in punitive sentencing as a result of a death due to family violence. Analysis showed no direct effect of domestic murder on sentencing in bivariate or multivariate analysis. This effect persisted even when race and gender were introduced (White domestic violence victim, indigenous domestic violence victim).

When combining gender, race and domestic violence there were not statistically significant results. In line with the domestic discount hypothesis however, this study did find that when victims and offenders were married or common law partners there were less punitive punishments imposed. The domestic relationships appeared to have to be quite close, as girlfriend/boyfriend, dating, past acquaintances and other domestic violence designations were not associated with more punitive sanctions. Furthermore, the effect for married/common-law victim-offender disappeared once aggravating and mitigating factors were introduced in the 4th equation. Thus there is only partial support for a domestic discount in Canadian second degree murder sentencing.

There are two caveats to consider here. First, sampling is limited. There were only 9 Indigenous female domestic violence victims and 28 White female victims. A larger sample might find larger and more consistent effects. The choice of second degree murder as the study focus also might not be the best dependent variable to test this hypothesis. It is possible a domestic discount may occur when second degree murder charges are reduced to manslaughter, effectively reducing the likelihood of a strong punishment. For example, in the recent work of Dawson (2015) points out that further analysis needs to be completed to see whether femicides are inherently more violent (or aggravating) than the murder of men. This could also then be alternatively demonstrated in the ability to plead second degree murder down to manslaughter to get a less punitive sanction imposed.

Legal Factor Hypotheses

Very few studies in sociolegal sentencing literature have looked to the role of aggravating and mitigating circumstances in criminal sentencing, a serious omission as this study and others show how these factors can have a significant impact on the sentence imposed (Kleck, 1981; Evans, 2005; Stauffer et al, 2006). Presence of multiple victims, committing other crimes while

involved in the murder and having a more severe criminal history all increased parole ineligibility, showing moderate to strong positive effects in both bivariate and multivariate analysis.

Brutality, in combination with criminal record, vulnerability of the victim, commission of another offence, as well as case specific "other" factors were used to create an aggravating factor index which increased harsh sentencing at the bivariate and multivariate level. Amongst aggravating factors, brutality was the most consistently strong predictor of more punitive sentencing. Amongst mitigating factors, judicial consideration of offender age appears to be the most noteworthy predictor at the bivariate level. The mitigating factor index showed a negative association with parole ineligibility; as mitigating factors increased, the parole ineligibility decreased, at both the bivariate and multivariate level. Analysis showed that for each aggravating factor a sentence is increased by .63 years. A slightly smaller effect was observed for mitigating factors, as the presence of each factor only decreased the sentence by .54 years.

From a sociolegal perspective findings supported the legal rationalist concept of sentencing in a Canadian court of law. Sentencing is individualized and those who are more blameworthy, such as those who have more aggravating factors in consideration of their case, have more punitive sentencing imposed, consistent with principles of sentencing (*Criminal Code,* s.718.1). As per the *Criminal Code,* s. 718 outlines the principles used to ensure consistent sentencing. including accounting for social factors such as gender, race, or religion and being sure to consider aggravating circumstances

Much like the findings of Kleck (1981), this study demonstrates that brutality is very strong as a lone factor at the bivariate level and was likely the driver in the aggravating factor index. However, the index did contribute to more variance explained, compared to just entering factors individually, so it was decided to use the index in the multivariate analysis (results available on

request). The concept of brutality in particular has implications for the construction of the ideal victim.

From a social constructionist perspective, the imposition of more punitive sentencing in the case of certain aggravating factors, particularly in the case of brutality, suggests that how a crime like murder in conducted is a potential additional factor in creating the "ideal" victim. Brutality is the most consistently strong predictor of more punitive sentencing, which is consistent with the ideal victim construct as it does involve attributes that do not have anything to do with the victim: i.e., if the offender is a stranger and evil (prior crimes). Those who are brutally attacked will have their victimization seen as more serious, and their status as a blameless "victim" elevated. Those who suffer the most brutal deaths cannot help but elicit sympathy from others.

Brutal killings inevitably lead to more punitive sentencing imposed to denounce such an act to both the offender and general public. The role of brutality also has a means of influencing the construction of individuals as more "evil" or "bad" in a way that criminal history alone cannot do. When considering the work of Nils Christie, this would then suggest that a victim is automatically less blameworthy for their own victimization, and increasingly ideal, as they were implicated by someone who has already been constructed as "a stranger, very bad, and/or evil". This paints an egregious victim status, showing that the crime was a significant abuse of power and control over the victim.

POLICY IMPLICATIONS

Findings partially indicate that being more or less of an ideal victim influences Canadian second degree murder sentencing, though not to the degree predicted at the outset of this study. Results suggest that there are some implicit biases in sentencing concerning victim status, but these attributes tend to be additive, not interactive, and they often disappear or are attenuated when legal

factors are controlled. The findings indicate that aggravating and mitigating factors tend to have a significant impact when compared to victim attributes and situations. This means that principles of sentencing, legislation and case law matter.

Sentencing amendments such as 718.2 and 718.3(8) are intended to get the courts to more carefully weight victim attributes such as Indigeneity, gender and highlight the importance of domestic violence and the need for escalating punishments. The MMIWG contains recommendations for more punitive sanctions for the killing of Indigenous women in domestic violence situations (Calls to Justice, 5.18 – 5.19). But given this study's findings, do more punitive sentencing amendments do more harm than good? In this study there was support for the female victim effect increasing sentencing severity. While there was a decrease in parole ineligibility when the offender-victim were married or common law partners, this effect disappeared when the courts considered a broad swath of aggravating factors.

Rather than keep adding more punitive legislation that adds yet more aggravating factors, I would argue, the imposition of such punitive sentencing frameworks fails to address issues underlying the problem of domestic violence. Sentencing reforms, though appearing at face value to support victims, fail to address the context and prevalence of domestic violence within society. More punitive sanctions provide little consideration for how domestic offenders are to conduct themselves upon release back into the community. This leaves the potential for the cycle of domestic violence to restart with another victim, as in the case of Judy Ogden's spouse outlined at the start of this paper. Likewise, programs supporting Indigenous victims of domestic violence are also important, to help ameliorate the difficult social situations that ensue from the violence.

It can be argued another foci of the MMIWG was to address the need to address issues around healthcare, social supports and cultural inferences by Canadian society to make conditions

better for Indigenous women. The report aimed to do this by assessing the conditions Indigenous women currently see themselves in, and the direction which can be taken by Canadian society and government to better address the needs of Indigenous women. The imposition of more punitive sanctions, without addressing the underlying conditions that women are situated in, is at odds with the overall aims of the MMIWG. As a result, it is unclear how punitive sanctions as a societal goal, could at the same time better society and the condition of Indigenous womanhood.

Similarly, the addition of more punitive sanctions in society ultimately furthers the prison industrial complex and society's reliance on prisons to alleviate and mitigate the harm of social deviants. It is unclear how this consistent reliance on prisons to house those who are already stigmatized, aids in the ability to truly better society and fulfill the goal of rehabilitation (Hill, 2013; Calathes, 2017). Partially using this framework, though I understand there is a place for punishment, especially in the case of murder, the application of such punishment must be nuanced on the ability to meaningfully rehabilitate (domestic) murderers.

It should also be noted, this study does not intend in any way to invalidate the findings of The Missing and Murdered Indigenous Women and Girls Inquiry, and specifically the recommendations related to justice. There have been many examples of horrendous treatment of Indigenous women in Canada, and as per the recommendations, outstanding cases should be reviewed vigorously, and its worthy recommendations pursued. This study should not act as a complete conclusion that Indigenous peoples are treated equally by the justice system, nor that their quest to seek "justice" is not valid. Rather, this study should add to a further nuanced understanding of Indigenous women as victims in the Canadian judicial system.

LIMITATIONS

There are several limitations in this study. Sampling was challenging. A limitation came from using Lexis Quicklaw. The reported cases found there are likely not typical of all second degree murder cases, there were probably factors within the case that led a judge to decide to provide a written report. It is possible, from a sentencing standpoint, that reported cases have types of victims and legal facts which are distinct and different from those which are unreported. It may be that the cases were more serious on average, and the reported parole ineligibility periods longer than might usually be the case in less complex cases. I would argue that there still was value in using Lexis Quiklaw. Consider that reported cases are more likely to be read by other judges and may influence how sentencing is conducted, making these cases important for researchers to study.

The final usable sample was small relative to the original sample that was created, although efforts were made to show the comparability of the study sample to existing national homicide survey reports. Many findings were consistent with the extant literature, but it remains the study would have benefited from a larger sample of reported cases and less missing data in areas such as ethnicity and age.

Homicide is generally quite rare when compared to commission rates for other offence types (Geksoki et al., 2012). Future studies may want to explore other more common offence types such as assault to consider the context, and potential discounts of gender-based violence, or even consider lesser homicides such as manslaughter. This is important because second degree murder has limitations as an outcome that can capture bias in sentencing. Second degree murder is often the result of a plea deal where first degree murder is reduced, but the evidentiary burden is still high enough that the offender and counsel have limited options in negotiating a lenient sentence. For a second degree murder charge to proceed it is possible that aggravating factors become more

important, hence, any charge that results in a conviction may be more egregious and incur less variability in the penalty. The circumstances will be more serious and discretion more limited.

Manslaughter is a less blameworthy offence with no mandatory minimum and will produce more significant variation in outcomes, and race and gender and victim attributes may influence bias more. In other words, it may be that second degree murder is not the best crime to assess gender or racial based bias.

Finally, there are methodological issues related to the use of official legal reports and media as data sources. Researchers were trained and efforts made to ensure inter-rater reliability, but investigators had to interpret many of the variables based on whatever a judge had to say in a particular case and what was available in the media. Researchers may have chosen to code cases in different ways based on their interpretation of the facts. Random error may have impacted final results.

FUTURE RESEARCH

Future research should look at the role of the ideal victim in other criminal offences such as manslaughter. It is generally accepted that second degree murder can be plead down to manslaughter which is a less blameworthy offence resulting in less serious punishments (Dawson, 2015). In this way, manslaughter may be an ideal offence type, as there is no minimum punishment. Additionally, using this offence type may more significantly highlight the role of domestic violence, as such situational offences where accused and victim know each other may be plead down more readily.

Future research could also take a qualitative understanding of the role of victim status in criminal sentencing. The views of a judge are one aspect to the construction of a crime victim. Possibly considering the construction of crime victims in the media may allow for consideration

of how victimization is portrayed for certain social groups. This could be evidenced by how those attempting to leave domestic violence situations are portrayed. A specific focus might be the news media's ability to construct domestic violence victimization in accordance victim blaming attitudes (i.e., "if the victim had left, she wouldn't have been murdered").

Not considered in this study were the recommendations by crown prosecutors or defence counsel. They have significant power in identifying ranges for judges to consider (e.g., crown recommended 14 years parole ineligibility, defence 10 years, judge picks 12) and this might make many factors considered in this study moot. both the crown and defence counsel and the suggested sentence which is presented to a judge. Future research may also want to evaluate specific bias in these positions, while also adding to the sociolegal literature on prosecutorial discretion and the courtroom working group.

CONCLUSION

The overall aim of this study was to assess how victims in Canadian murder sentencing might be constructed and how their construction might influence sentencing. Specifically, there was consideration of victim status such as gender, race, the affliction of domestic violence and various victim situations.

This study found partial support for an ideal victim framework, namely the role of age (younger more vulnerable) and gender and the importance of victim situation, i.e., being in a place less blameworthy and social distance (or lack) from the offender. Findings indicate that Canadian judges view women as victims who are in need of protection. There was no support for the role of victim race in Canadian murder sentencing. This study then, disconfirms the White female victim effect suggesting White women are more valued than Indigenous women. Results do not suggest the findings of the MMIWG were illegitimate, nor downplay the difficult experiences of Indigenous peoples, specifically Indigenous women in the justice system. This study's methodology cannot affirm or disconfirm the subjective experience of Indigenous peoples. Further, there are study limitations with respect to sampling that limit the validity of findings and offences other than second-degree murder might be more likely to identify sentencing bias.

When considering the role of domestic violence, this study found very limited support for a domestic discount, but only for those victims who are in a married or common law relationship with an offender, as they saw less punitive sentencing. But even this effect disappeared after aggravating and mitigating factors were introduced. It also appears victims who are killed in shared residences with offenders receive less punitive sanctions. When considering the relationship between a victim and offender and murder location, this suggests that those in domestic situations have less punitive sanctions imposed.

In the context of domestic violence as a social phenomenon, how a judge views a victim is one small piece. There is a larger context of domestic violence, in which one would hope troubled domestic situations do not have to result in homicide. Seeing as there is no strong conclusive effect in this study suggesting a domestic discount, it may be beneficial for the state to explore remedies to correct social situations and better support domestic violence victims.

Finally, legal factors definitely an impact on sentencing and highlight the role of both aggravating and mitigating factors. Further sentencing studies should examine the role of these factors in the imposition of sanctions to provide more confidence in explanations of court outcomes.

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