



THE HARPER RECORD

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Harper and Crime

The great distraction

Dawn Moore and Erin Donohue

CRIME IS A great target in an election strategy. Everyone hates crime. No one wants crime. People are very upset by crime. It is relatively easy, then, to put together a tough-on-crime agenda that will play on people's visceral reactions to the crime segment on the evening news.

This is exactly what the Harper government successfully did in the 2006 federal election. Picking up the momentum of a few flash points — the “summer of the gun” in Toronto, high-profile murders in Ottawa, a serial killer in Vancouver, and climaxing with the boxing day murder of a teenage girl on Yonge Street in Toronto — the Harper camp was exceedingly effective in pulling together a campaign using these crimes to create the impression that Canadian cities were undergoing a crime wave, and offering tailor-made solutions.

True to its word, the Harper government made good on its election promises to “get tough on crime” with the 2008 *Tackling Violent Crime Act*. This omnibus bill ushered in a raft of changes to the *Criminal Code*, all framed by the promise that Harper and his team will get rid of crime.

Getting rid of crime is an interesting promise given that, despite a long history of interventions, crime has never been eradicated from any society anywhere in the world, ever. Flying in the face of all reason and knowledge about crime, Harper in the next election will no doubt ride

the tide of his successful crime strategy. The Conservative government already has more “get-tough” plans in the works.

The Harper crime policy is pitched to respond to what we think of as “prime-time crime”: serial killers, gangland executions, home invasions, and child abductions. These are all scary crimes, but the reality is that, while most of us will be touched by crime in our lives, these are not the kinds of crimes we are likely to experience. So the Harper crime plan is a piece of legislation set up to respond to a problem that isn’t really there and that doesn’t really affect the vast majority of Canadians.

Canada is home to a wealth of researchers, scholars, and community leaders who know a great deal about the reality of crime and the impact of law enforcement in our communities. Harper made almost no consultations with any of these crime experts in drafting his legislation, citing his distaste for the “ivory tower” and appealing to “common sense.” The problem is that common sense, especially about crime, is usually very far from sensible.

This chapter is an attempt to correct that misinformation by offering readers a brief guide to the “crime scene” in Canada. Here we cover the Conservative crime plan, offer careful criticism of some of its most worrying features, and raise some serious cautions which ought to give every informed voter pause to consider what sort of society she or he envisions when filling out a ballot. It may be a society that uses the justice system as a justice system. Alternatively, voters may choose to support the social, economic, racial, linguistic, gender-based, and geographic interests of those in power.

What is Harper’s crime plan?

In the spring of 2008, Bill C-2, the *Tackling Violent Crime Act*, became law. The omnibus legislation included a number of amendments to the *Criminal Code*, including initiating more mandatory minimum sentences and tightening up on parole eligibility criteria. It is worrying that the legislation met with very little resistance in Parliament, signalling an “if you’re not with us, you’re with the criminals” attitude in the House of Commons. This poses a dangerous threat to the democratic process.

The Harper government indicated the direction of its revision of Canada's drug policy, by re-naming the long-standing *Drug Strategy* the "*Anti-Drug Strategy*." It shifted responsibility for federal drug policy from Health Canada to the Department of Justice, and virtually erased harm reduction initiatives. Meanwhile, the Conservatives added billions of dollars to law enforcement.

In the summer of 2008, Minister of Health Tony Clement made public his desire to override the B.C. Supreme Court decision protecting the nation's only safe injection site (Insite) in a bid to shut it down. This, despite several reports including the site's independent evaluation crediting Insite with saving hundreds of lives and filling a gaping void in B.C.'s health care services.¹

In order to accommodate the large-scale social changes that will be the inevitable fallout of this legislation, the Conservative government also plans to build more prisons, hire more police, and create more addiction treatment facilities. At the same time, the plan is to shut down community-based correctional organizations and bind the hands of judges who would apply discretion in sentencing to accommodate different circumstances.

Five problems with Harper's crime plan

1. *There is no new crime problem*

The major assumption on which Harper's crime agenda rests is that crime, especially violent crime, is on the rise. This simply is not the case. *Juristat*, the arm of Statistics Canada responsible for justice statistics, has reported a *decline* in virtually every category of reported violent crime consistently over the last ten years. Canadians now face less of a threat when it comes to crime. The crime rate is approximately 30% lower than it was in 1991 and continues on a steady decline. Crime rates haven't been this low in Canada since the 1950s.²

One exception to this overall trend is a moderate rise in youth-accused homicide (up 3% as of 2006). Even as we see a rise in the number of youth accused of the most violent crimes, note that an accusation is quite different from a conviction. The overall rate of youth crime follows the same trend as adult crime in Canada. The rate of youth crime

in 2006 was 12% lower than that of a decade earlier, and is 25% lower than the 1991 peak.³

The rise in numbers of youth implicated in violent (non-homicide) crimes is likely explained by the implementation of zero-tolerance policies in schools rather than by any actual increase in violent incidents. Thus, it is likely that Canadian youth are not committing more violent crimes, rather that they are now being charged for violent crimes that would have been otherwise dealt with through informal means in the past.

The other exception comes in the areas of domestic violence and sexual violence. While Statistics Canada does not note any substantial rise in these sorts of crimes, social science research, as well as the work of those involved in the anti-violence against women movement, reminds us that most women do not report experiences of violence and assault. Despite this silence, sadly we know from self-report studies that anywhere from 25-to-75% of women and children have been or will be victims of sexual or domestic violence at some point in their lives. This includes molestation, physical assault, rape, emotional abuse, threats, intimidation, humiliation, unwanted sexual touching, harassment, and murder. In the majority of assaults carried out on women and children, the perpetrator is a male who is known to and often related to the victim.

2. Getting tough doesn't deter people from committing crimes

Tough sentencing policies rely on the assumption that a person who is considering committing a crime will pause to take stock of the gravity of the penalty should she or he get caught. This “rational actor” realizes that committing a crime is simply not worth the penalty. Now think for a moment about whatever petty crime you committed in your life. Did you drink under age? Use an illicit substance? Steal a chocolate bar? Trespass? Give a fake name or use a fake ID? Fudge the numbers on your tax return? Get in a bar fight? Purchase something even though you suspected it was stolen?

There are few of us who have lived lives that are totally free of crime. All of these activities carry legally prescribed penalties of varying severity. For whatever the crime committed, when you contemplated doing it,

did you give any thought to the penalties? If you did, did you figure you would get away with it, anyway? Most of the time, when people commit crime, they do it without a lot of calculation about how the justice system might respond. Put simply, tough sentences do not deter people from committing crime.⁴ When we compare crime rates for jurisdictions that carry harsh sentences with those that are more lenient, almost invariably there is no notable difference in the two crime rates. If there is a difference, it is often in favour of the more lenient jurisdiction.

The lack of what's known in criminal justice as a "deterrent effect" is most obvious with regard to the most serious of crimes. The vast majority of violent crimes — aggravated assault, sexual assault, assault causing bodily harm, manslaughter, and the varying degrees of murder — fall into the category of crimes of passion. This means that most of these crimes are committed by people in heightened emotional states and/or in the heat of the moment. By their very nature, these are not crimes born of rational calculation and as such would not be affected by tougher sentencing provisions.

3. Intense policing does not lower crime rates

One of the strategies advocated and receiving funding through the Harper crime bill is the practice of targeted policing. Here police concentrate surveillance and sting operations in a particular neighbourhood, usually emphasizing the sex and drug trades. Criminal behaviour around the sex and drug trades is quite visible and often very active, which is why it draws the ire of the community in which these activities are taking place. Police respond to community concerns by coming in and "sweeping" the area by conducting mass arrests and crackdowns.⁵ While this strategy may well have the effect of cleaning out a community temporarily, it does not lower rates of crime. Most often, in the wake of a sweep, the sex and drug trades simply move on to other communities or return to the same community within a matter of months.

In the end, intensive policing initiatives are extremely expensive, and often serve as the justification for increasing policing budgets, but are largely ineffective at decreasing crime. On the contrary, such initiatives typically increase crime in certain areas. They may also make neighbourhoods in which criminal activity is taking place less safe as

the increased police presence works to drive criminal behaviour underground. The chain reaction here is that crime becomes more hidden and has higher stakes. Higher stakes often mean an increase in the violence associated with certain kinds of criminal behaviour as experienced by those involved in crime.

4. The War on Drugs doesn't work

Addiction is a public health issue, not a crime issue. Criminalizing a heroin user is the same as criminalizing a cigarette smoker, and if we follow that logic through we should incarcerate cigarette dealers in the same way we incarcerate heroin dealers. There is no medical or social reason to criminalize one set of substances while we regulate others, such as prescription drugs, alcohol, tobacco, and energy drinks. All of these substances can be harmful, but only a select few are confined to the justice system. Tobacco kills more people than all illicit drugs combined; alcohol is the second most lethal substance and also the one most readily linked to social problems, including violence, unemployment, property crimes, and vandalism.

Canada's history of anti-drug law is rooted in anti-Chinese sentiments born at the start of the last century. The control of the opium trade was first introduced as a means of controlling the Chinese who were no longer needed for labour on the railways and were thus becoming a "problem" in cities like Vancouver. The trouble posed by the Chinese was that they were willing to work for lower wages, edging out their white counterparts in the job market. The application of the criminal law to opium meant that the Chinese could be swept up, charged and deported in the name of protecting good (white) Canadians from the scourge of the Chinese drug.

Criminalization of the Chinese was so effective as a means of controlling and eliminating the population that the government began criminalizing other substances (first cocaine and then marijuana) as they became affixed with problematic behaviours and populations. We see this pattern over and over again as new substances are added to the drug schedule, even up to the present day.⁶ Ghat, a mild stimulant used by North Africans, is a case in point. Ghat does not cause any serious addiction, and it is not associated with crime or violence, yet it was added

to the drug schedule three years ago, coincidentally at the same time as the North African population in many Canadian cities grew. The criminalization of what has proved an effective means by which to control and criminalize this population of people.

The U.S. and Canada have both been fighting a war on drugs for the last 30 years. They are both losing. Greater enforcement has no discernible impact on levels of drug use, which remain more or less constant over time. The point is: people are going to use drugs. Some people are going to get addicted to drugs. If the goal of the government is to protect people's health and safety, then a public health response makes sense. This is one that offers people health care, treatment, and clean equipment to help stop the spread of diseases. It is one that treats drug users like respectable citizens so that they do not face shame and public stigma and are forced to go underground and engage in criminal activity to support themselves.

If, however, the goal of an anti-drug strategy is to create a burgeoning prison population, to isolate, stigmatize, and ultimately marginalize people to such an extent that crime is their only method of survival, then by all means, a drug war it is. However, we need only to look south of the border to know how very ineffective a drug war is. The U.S. has a crime problem, it has a massive over-incarceration problem, and it is one of the most violent and insecure places to live in the global North. The U.S. also heavily embraces a tough-on-crime stand and has spent hundreds of billions of dollars on the drug war.

5. Guns, gangs and drugs are not the biggest problems facing Canadians

A crime plan comes down to one thing: keeping citizens safe. This mandate demands the question "safe from what?" The answer: safe from the things that threaten their well-being and ability to enjoy life. If a crime plan is meant to keep citizens safe, then it ought to address things that make citizens *unsafe*. Consider the following numbers.

- In 2006, 2,889 were killed in motor vehicle fatalities.⁷
- In 2008, 73,800 will die of cancer.⁸
- As of 2006, 4,614,000 live in poverty.⁹

- 90 people a year die from unsafe drinking water.¹⁰
- In 2004, 74 were killed by abusive spouses.¹¹
- In 2006, 786 were killed in workplace accidents.¹²

Some of these things, like cancer and drinking water, do not obviously fall under the purview of the justice system, unless you count the relatively lax enforcement of environmental protection laws and the lack of interest in white collar crime, both of which could easily be implicated in cancer and poverty rates. They are, however, issues that require funding to address. Imagine if the amount of additional funding recently allocated to enforcing drug laws alone (\$22 million over two years) was re-directed to clean water initiatives or cancer prevention campaigns. It doesn't take a degree in economics to figure out that, if you pour a lot of money into one area (like law enforcement), it has to come out of another (like community development).

Of the issues which are related to the justice system — motor vehicle deaths, abusive spouses, workplace accidents — the system is woefully ill-equipped to offer meaningful remedies. In fact, despite legislative amendments to “toughen up” judicial responses to all of these crimes, there is little notable change over the last 20 years. The one exception here is with regard to driving under the influence, where we have seen a reduction in incidents. The cause of this reduction is more likely the result of shifts in society attitudes than tougher sanctions for those who commit the crimes. That's because, as noted above, people are rarely deterred by harsh sentences. On the other hand, people are deterred by strong disapproval of their friends and relatives, as well as a generally accepted and widespread social belief that certain behaviours, like drinking and driving, is wrong.

Ultimately, issues like guns, gangs and drugs serve as distractions from more pressing issues like health care, community safety, economic security, and misuse of public funds. Governments routinely use crime as a way of distracting the public from larger areas of concern. Richard Nixon campaigned on a tough-on-crime platform to distract public attention from Viet Nam. Ronald Reagan did the same to shroud a recession, an energy crisis, and his own flagging popularity. Both Bushes

did this to distract from hugely problematic foreign relations (especially in the Middle East), as well as tough economic times, and Harper did it in the last election to deflect hard questions about Afghanistan and the environment.

The handy thing about a crime problem is that, if it doesn't exist, it's easy to solve. If the crime rate is already on a decline, it is very simple to claim that it is new legislation, and not changing demographics, that is responsible. Also we are so well trained to fear crime that it makes good sense to the electorate to want to address crime. On this issue, however, perhaps more than any other, citizens are grossly misled. By focusing on crime, we allow ourselves to be totally distracted from the social, economic, and environmental issues that really matter.

Four possible outcomes of Harper's crime plan

1. We become more like the United States

The United States has some of the toughest crime legislation in the world. They have now beat out the former USSR for the dubious distinction of being the world leader in incarceration. Their crime rates also contend for the "world's highest" title. Most social scientists will draw the connection between those facts to postulate that getting tough on crime results in two things: higher rates of incarceration and higher rates of crime.¹³ If it didn't, then America would be the safest place to live in the world. It isn't.

American governments have been obsessed with crime since World War II, and that obsession has achieved exactly the inverse of what Americans set out to attain. American cities are notoriously violent and dangerous. American prisons are incredibly overcrowded, becoming veritable breeding grounds for all manner of illness, including tuberculosis and HIV/AIDS. Three times more Americans, per capita, are murdered than Canadians. There are American children who go to school under armed guard and many Americans spend much of their time being watched by Closed Circuit Television (CCTV) cameras and private security agencies, to the detriment of personal liberty and privacy. These are huge costs to society with very little in return.

2. We spend heaps of money

The removal of judicial discretion through the implementation of mandatory minimum sentences means that many of the people who will now be incarcerated would have otherwise received a shorter jail term or have been sentenced to a community sanction like probation. This distinction is important: By putting more people in jail for longer we not only increase our incarceration rates, but we also considerably raise the costs of doing justice. Recidivism rates for those sentenced for the same crime but sanctioned differently (one in prison, one in the community) are comparable; but it costs almost four times as much — \$83,000 compared to \$23,000 — to incarcerate someone than it does to supervise her or him in the community. Every person in custody costs the government the equivalent of four people on social assistance.¹⁴

Dawn was once visiting a prison, and a parole officer working at the institution said to her, “You know, for what it costs to keep one guy in this place, I could have him working out in the community, earning money, supporting himself, and pay also to have a team working just with this one guy, watching him 24 hours a day.” Food for thought.

In 2006, Canadian governments (both federal and provincial) spent approximately \$3 billion on punishing law breakers. Those billions could have built a lot of affordable housing, supported a lot of community building initiatives, funded a lot of children’s education, or run a lot of recreation centres.

3. We increase marginalization in our society

The typical profile of someone in conflict with the law in Canada is a young man who comes from a marginal socio-economic status, with little education. Given that we know criminal behaviour is not bound by class or social status, the fact that this profile fits the majority of people in Canadian prisons tells us that the criminal law is applied unevenly. This observation is especially true when we factor in the question of race.

Even though the majority of people in conflict with the law are white, the justice system currently has an exaggerated over-representation of Aboriginal people and people of colour. In 2006, Aboriginal people

made up 13% of the population of people in conflict with the law, but only 3% of the total Canadian population.¹⁵

Since the Ontario Commission on Systemic Racism in 1992, no other statistics on race and the justice system have been kept. That being said, the Commission's own findings, as well as more recent research, underscore the unfortunate observation that it is not just Aboriginal people who are overrepresented in the system. On the contrary, people of colour (largely those of African, Caribbean and Latin American descent) are also notably overrepresented. Likewise, the practice of racial profiling, whereby police deliberately target members of specific racial groups, is practised by both Canadian police and border security guards.¹⁶

If we continue on the road to toughening up the justice system, the problem is likely to get worse. In the U.S., one in ten young black men is, or has been, in prison. There are communities in which an entire generation of men has been lost to the justice system, and a damaging ripple effect is felt throughout communities. This ripple splits families and communities, causes greater economic disparity, and in many ways contributes to, if not mandates, criminality in the coming generations as children struggle to overcome the tremendous obstacles erected by the loss of one, sometimes both, parents.¹⁷

4. We devitalize our communities

Many social scientists worry that get-tough strategies create a climate of punitiveness and segregation that fosters a bunker mentality which ultimately weakens the fabric of communities and also disempowers citizens, removing from them the ability to play an active role in creating and maintaining the places where they live, work and play.

Dawn: Here's an example from my own downtown neighbourhood. My partner and I left our house one day to find two police cars blocking our street. Our neighbours had called the police because some kids from the local high school were smoking pot outside their house on their lunch hour. My partner and I, on bikes, rode on the sidewalk to avoid the police cars. I was stopped by the same police and given a ticket for riding my bike on the sidewalk. Kids still smoke pot on the street and I still ride my bike on the sidewalk.

In this example, the law is invited into a community to solve a problem. The problem is not solved, and other members of the community feel like they (me) were placed at a disadvantage by having the police called. There was no community consensus on how to respond to the problem of kids smoking pot on the street, nor was there any chance for any of the other neighbours to have input into whether or not the teens posed a problem at all.

This is a bunker mentality: respond quickly and decisively, ask no questions, and remove yourself from the situation as quickly as possible. This is exactly what we do when we call the police, in the right circumstances, where there is imminent threat to personal safety or property. But does that mean we should see the police as the primary response unit to every problem we face as community members? A get-tough crime policy suggests exactly this, but such a strategy is ultimately ineffective.

Experience in community building and civic engagement reminds us that there are other ways to respond to situations like this one. The neighbours could call a community meeting, phone the school and talk with the principal and parents, approach the kids themselves and explain why smoking pot on our street makes people uncomfortable. None of these initiatives relies on the justice system as a primary response. Some require a little more effort on the part of community members, but all are more effective than simply phoning the police.

Towards a responsible justice strategy

There are alternatives to the “tough for the sake of being tough” stance on crime. Indeed, when we consider new ways to think about and respond to criminal activity, we give ourselves an opportunity to change many of the negative values that have seeped into our society in the past decades. When we start to see justice not for what it is, but for what it can be, we allow for innovative approaches to justice. Below we highlight some of those alternatives taken by communities that have seen positive results.

Decriminalize marijuana

Drug offences comprise close to 15% of the custodial sentences handed down in Canada in any given year. In the majority of cases, marijuana is involved. Decriminalizing marijuana would cut down substantially on the numbers of people involved in the justice system, as well as the overall costs of incarceration.

Jurisdictions in which marijuana has been decriminalized (like the Netherlands and parts of the city of London) have experienced no rise in criminal behaviour associated with its use or in the use of the drug itself.¹⁸

It is important to note that decriminalization is not the same as legalization. Decriminalization simply means that the criminal justice system is no longer used as a mechanism through which to control the substance. There are many alternative forms of regulation, including ticketing (in the same way one might be ticketed for a bylaw infraction) and controlled access, as with alcohol, tobacco and prescription drugs.

Take money out of justice and put it into communities

The best way to respond to crime is to prevent it in the first place. Crime is not prevented through security systems and police dogs. It is prevented by giving people alternatives to criminality through strengthening the educational and social service systems. This is not to say that an ideal education system in a society where poverty and racism are virtually non-existent would eliminate crime completely. But there is every reason to believe that concrete initiatives aimed at improving people's quality of life would have a notable impact on crime rates.

The Jane and Finch community in Toronto provides an excellent backdrop to see this principle in action. The Jane and Finch neighbourhood has been dubbed one of the most dangerous areas in Canada, with considerable gang violence, criminal activity, unemployment and poverty. It also has a large population of sole-parent-supported families, refugees and new immigrants. In the last decade, dozens of organizations have been created and funded to support the diversity and vibrancy of the community and to establish the social infrastructure that promotes a healthy neighbourhood. Among these groups are the San

Romanoway Revitalization Association, the Black Creek Community Capacity Building Project, and Jane-Finch.com.

Provide the framework for communities to solve their own problems

Governmental initiatives to support community development projects that recruit citizens to become directly involved in local issues and local quality of life are a sensible and cost-effective way to solve local problems. Instead of calling the police when neighbours notice graffiti, they may instead opt to put up a graffiti wall or have a neighbourhood clean-up day where everyone is invited to help take care of the community. Skateboard parks, basketball courts, and lots of communal spaces with multiple purposes are also good examples. This is the Jane Jacobs model of community building, and it works.¹⁹ A healthy community built and sustained by the people who make it up: such a simple concept, but one that has struggled to come to the fore.

There are certainly more ideas in the thousands of communities across Canada. The essence of these alternatives is to think about the people around us not as strangers poised to threaten our personal safety and security, but as just that — people. Whether that's participating in a community initiative, thinking critically about political campaign promises, or becoming more informed about the current status of our communities and Canada at large, we can look past being “tough on crime” and work toward real and positive change.