

The Harper Government and the Criminal Law Agenda:

**When being “tough on crime” has nothing to do
with crime, justice nor public safety**

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“One of our greatest responsibilities as a Government is to protect Canadians and ensure that those who commit crimes are held to account. The *Safe Streets and Communities Act* (Bill C-10) will help improve the safety and security of all Canadians.”

(Robert Goguen, M.P. for Moncton-Riverview-Dieppe
and Parliamentary Secretary to the Minister of Justice,
Rob Nicholson, 5 December 2011)

Introduction

The Conservative Party government of Prime Minister Stephen Harper introduced Bill C-10, *The Safe Streets and Communities Act* under the false pretense that Canada is experiencing a particularly serious crime problem coupled with a much too lenient criminal justice system. Bill C-10 is an “omnibus” bill, i.e., it includes nine individual bills which have been introduced into parliament in previous years by the government but which had never been adopted due to the short life span of the minority status of the Conservative governments since 2006. The bill has been presented as the best answer to the so-called crime problem experienced by Canadians.

I wish to make the case here that not only is there no particularly alarming crime problem in Canada and that, at best, Bill C-10 will not “help improve the safety and security of all Canadians”- if we are lucky. At worst, Bill C-10 could have a number of negative impacts, such as, on the one hand, an increase in the cost of the correctional services (mainly because of prison sentences)¹, into the billions of dollars more per year. On the other hand, the measures contained in Bill C-10 could very likely further marginalize a population which is already quite marginalized, i.e., the poor, unemployed/underemployed young males. Marginalizing anyone, let alone those with little to lose, has never made a society safer. On the contrary, it usually makes such individuals angrier and consequently more prone to act out in a deviant, criminal

¹ Precise estimates of these costs are near impossible to obtain from the federal government.

way. Bill C-10 has a better chance, in other words, of making our streets and communities less safe.

Let's make no mistake: the "tough on crime" agenda, as embodied by Bill C-10 and any other such criminal legislation, is directly related to the Occupy Movement and to its claims in regards to the uneven distribution of wealth in society.

I will address three main points in this paper, further broken into various sub-points. The three main points are: first, a discussion of the evidence that "tough on crime" measures never work to make streets and communities safer; second, a discussion of the evidence that "tough on crime" measures work, rather, to legitimize an otherwise waning state; and third, a short discussion of the evidence that what make streets and communities safer can be found in societies where socio-economic inequalities have been narrowed down through sensible socio-economic programs.

"Tough on Crime" Measures Never Work to Make Streets and Communities Safer

The adoption of Bill C-10 begs the following question: "Will it work?", that is, will it work along the lines of what the federal government is saying, i.e., in making Canadian citizens safer from crime? Criminologists are well positioned to speak to this issue. My answer, and the answer of pretty much every other scholar I have heard or read commenting on this issue is a straightforward: "No, it will not work".

This answer brings me to the "working" part of the discussion. What is meant by "working" when it comes to the criminal justice system and prison in particular? "Working" in this context usually means one of two things: *deterrence* or *incapacitation*.

Deterrence and *incapacitation* can be defined in the following manner:

- *Deterrence* means stopping someone from committing crimes through the *fear of punishment*. Deterrence is based on fear. Prison is assumed to be the most feared consequence an offender can expect. The longer the prison sentence, the more deterrence from crime a society gets.
- *Incapacitation* means *physically stopping* someone from committing crimes. Being locked up in prison is the most obvious example of the way someone can be incapacitated. Incapacitation works as long as someone is in prison. Prison is assumed to be the most certain form of incapacitation we have when it comes to offenders. The longer you keep someone in prison, the more incapacitation you get.

The end result of both deterrence and incapacitation is the same: the reduction of criminal activity.

I now return to the discussion of the evidence that “tough on crime” laws never work to make streets and communities safer. One of the most striking examples of the failed attempt at being “tough on crime” is that of the United States. One cannot blame the US for failing to try the “tough on crime” solution. The past four decades have seen a long list of criminal laws and policies designed to deter and/or incapacitate actual or potential offenders implemented and enforced in the US.

Numerous studies have been, and still are, conducted by scholars across the United States

in regards to the effectiveness of criminal justice legislations and policies similar to what Bill C-10 comprises. Here are two examples, amongst many.

First, with regards to deterrence, a study by Cullen, Lero Jonson and Nagin (2011) reviewed the most reliable evaluations of the deterrent effects of prison sentences. The authors concluded the following:

- (a) “across all offenders, prisons do not have a specific deterrent effect”
- (b) “prisons, especially gratuitously painful ones, may be criminogenic (i.e., they cause crime)”
- (c) “it is likely that low-risk offenders are most likely to experience increased recidivism due to incarceration” (p. 60S)

The last line of the article’s abstract is even more to the point for our purposes: “the use of custodial sanctions may have the unanticipated consequence of making society less safe” (p. 48S). Let me point out the irony, if I need to, that Bill C-10, the *Safe Streets and Communities Act* – a misnomer, to say the least – is more likely going to have the exact opposite effect when taking concrete evidence into consideration.

Here is, next, an example of an extensive study conducted in the US on the incapacitation effect of prison on armed robbers and burglars conducted by Geerken and Hayes (1993) in New Orleans. They counted how many of the people arrested for either armed robbery or burglary were on probation or on parole (i.e., released after serving a portion of their prison sentence) at the time of their arrest. The authors concluded the following:

- (a) “only about 8% of adult arrests for burglary or armed robbery involved offenders on probation. Between 1% and 2% of all adult arrests for these crimes involved offenders

on parole”;

(b) This means that “more than 90% of all burglaries and armed robberies were committed by persons not on probation or parole at the time.” (p. 557)

(c) Consequently, “even the complete abolishment of probation and parole would not affect the crime rate by more than 10% for either burglary or armed robbery.” (p. 557)

Those numbers are for *adult* arrestees only.

(d) When all ages (adults and minors) are included in the calculation, the effect on the crime rate would be to lower it by only 6%. The authors then explain that these reduction numbers are exaggerated (having to do with incentives for plea bargaining, leading to high proportions of guilty pleas, etc.).

In short, there is no concrete evidence that prisons provide better incapacitation of offenders than non-custodial alternatives (such as probation and parole).

“Tough on Crime” Measures Work to Bolster a Waning State

Once one realizes that Bill C-10 will not work, the question that one needs to ask is: “Why is the government so adamant that they must adopt this bill anyway?”

This is where some “thinking outside of the box” is required. French sociologist Loïc Wacquant (2009) claims that there is a shift from the “welfare state” to, what he calls, the “penal state”. Before going any further, it must be emphasized that Wacquant based his ideas on the situation prevailing in the United States – which, arguably, is a fascinating laboratory for various social experiments. Wacquant has acknowledged that Canada is an exception to the “penal

state” shift. But one could argue that the actual federal Conservative government’s criminal policy and legislative agenda is now in line with US penal politics.

According to Wacquant (2009), and many others, the period 1945-1975 represents the Golden Age of the welfare state. Without falling prey to nostalgia, it can arguably be said that in those 30 years western hemisphere governments massively invested in social programs, such as health, education, unemployment, arts and culture, to name the most common ones. This led to an exponential growth of the welfare state. Beginning in the early to mid-1970s, the state has gradually reduced its involvement in such programs.

Consequently, since the 1970s, the discourse from governments is often not encouraging. It is a discourse about “budget cuts”, “the necessity to do more with less”, “the end of the good times”, etc., etc. For example, the *Globe and Mail* front page headline of Saturday, 28 Jan. 2012, reads: “Faced with the rising cost of an aging population, Stephen Harper wants us to rethink retirement” – that headline appeared under the numbers “55” and “65” crossed out, leaving the number “67” untouched, meaning that old age security pension in Canada would only become available once one reaches the age of 67 as opposed to the current age of 65. In the weeks that followed, the media was abuzz, trying to guess how tough the federal budget, due in the spring, was going to be. One thing everyone knew for sure, more cuts were coming, totalling into the billions of dollars, and this is exactly what happened. In the spring of 2012, new eligibility rules were being proposed by the federal government in order to restrict access to unemployment benefits. The news is, in one word, bleak.

Along similar lines, the province of Quebec has experienced some unexpected manufacturing plant closures in the past couple of years. In one case, a plant closed two years

after the provincial government had given the company generous subsidies to create jobs. The workers and the local population were outraged, feeling that the company had lied to the workers and the tax payers about its real intents. The news media and radio call-in shows covered the issue for a few days. One of the main topics discussed was what can governments do to avoid such a situation. All kinds of experts were brought in to provide answers. The answers had one common theme: “There isn’t much, if anything, that governments can do.”

The result of the state disengagement from social programs and private sector intervention is that the state appears less and less relevant to the lives of people.

How, then, do governments convince people that they are still relevant to the lives of people and how do they get the attention of the population away from the pressing needs they feel in regards to health services, education, and employment? I will argue that it is done, in part at least, through the claim that we are experiencing a serious crime problem concurrently with the promotion of a “tough on crime” legislative agenda. This is achieved on two related fronts: *victims* and *offenders*.

Victims

The victim is a relatively new comer on the criminal justice scene. Admittedly, victims have been neglected by the criminal justice system, until about a couple of decades ago. Beginning around the 1980s, victims and victims’ advocates began to demand more, they demanded to be compensated, to be listened to and to have their wishes and desires fulfilled, that their pain, both physical and mental, be soothed. Politicians responded to those demands somewhat favourably – at least they responded to some demands more favourably. Politicians were quick to respond to victims who were asking for harsher punishment and for tougher parole conditions. Those

victims became very handy for politicians who were then able to claim that they were doing some good for people in need, bolstering the “tough on crime” agenda in the process. The emotional drama which comes with criminal victimization provides a cover for the “tough on crime” agenda. Any criticism of the agenda, of one or the other of its legislative or policy components can be prevented and/or countered by bringing on one or more crime victims, or their relatives in the case of homicides. Let’s take a look, for example, at the top victim in Canada, Mr. Pierre-Hughes Boisvenu.

Mr. Boisvenu was appointed to the Senate by Prime Minister Stephen Harper in January 2010. Senator Boisvenu’s tragic story is well known by now. He lost one daughter, Julie, who was murdered by a known sex offender in 2002, and another, Isabelle, in a traffic accident in 2005. He was appointed to the Senate specifically because of his involvement and activism for crime victims and he made it clear that he would use his senator seat to speak for crime victims. It was only natural that he became one of the point men for the Conservative government’s “tough on crime” agenda. The immunity that his “father of murder victim” seems to grant him can be seen in this *Le Devoir* newspaper headline (4 February 2012, my translation): “Is senator Boisvenu untouchable?”

That story began when senator Boisvenu made some controversial comments. When asked by a journalist if he was in favour of the death penalty, he answered that he was not. But, he added, every murderer should be given a piece of rope to keep in his cell so as to give him the option of committing suicide if he wanted to. That comment caused an uproar across the country and some people began to question the senator’s suitability as the government’s spokesperson on criminal justice issues. Within a couple of days, members of the Conservative government

showed their true colours:

The Conservative MPs are now saying that no one has the right to attack Mr. Boisvenu on account of his painful family history, referring to the murder of his daughter. (Minister of Veterans Affairs, Steven Blaney, said that) *It shows a lack of compassion toward the father of a victim of an odious act. You know as well as I do what happened to the senator's daughter (Le Devoir, my translation and italics).*

Arguably, there is now tremendous pressure not to criticize victims of crime when they express their wish to see offenders punished more harshly.

Offenders

Offenders have always been front and center in the criminal justice system. It is not difficult to invoke the image of the dangerous “predator” if one wishes to raise the level of alarm and anxiety in the population. Most people are susceptible to respond to calls for drastic action against offenders. There are enough sordid, yet very real crime stories to talk about. There are enough instances of more or less true mishandling of cases by one or the other agency of the criminal justice system to convince a sufficient number of people that too many offenders get away with crime, and/or end up in a position to commit more crimes. It is, then, arguably easy to stand up and cry wolf and to be believed when it comes to crime.

What is interesting here is how it is done at a time when, by all credible accounts, the rates for most crimes have been going down for the past 20 years. When crime statistics consistently show downward trends, how does one successfully promote a “tough on crime”

agenda? Besides the recurrent recalling of anecdotal crime stories, a government wishing to promote a “tough on crime” agenda can direct the people’s attention toward common offender stereotypes.

The Canadian Border Services Agency *Wanted* on-line poster displayed, at the time of writing, the photos of approximately three dozen individuals wanted on warrants (see www.cbsa-asfc.gc.ca/wc-cg/menu-eng.html). The CBSA wants to remove them from Canada because of their alleged failure to comply with the Canadian *Immigration and Refugee Protection Act*. The federal government’s press release of July 2011, said “that they are accused of, or were complicit in, war crimes or crimes against humanity, and are thought to be hiding out in locations across Canada.” One notices that all those individuals are dark skinned, foreign looking, men (a few women did appear early after the poster went up), with foreign sounding names. They arguably correspond to the stereotypes of the worst kinds of predators. Admittedly, that poster has not been used extensively by the government but it is there, ready for use if and when the government wants to emphasize that it is working on our behalf, that it is ensuring our protection, or that at the very least, our hard earned tax money will not be used to shelter “undesirable” individuals.

Despite the constant findings such as those described in the previous section of this paper, the “tough on crime” discourse almost invariably finds an audience well disposed to believe it at face value. It looks like the Conservative Party of Canada has found something with that discourse, from a political point of view. For an example, an Environics opinion survey about Bill C-10 was released at the end of January 2012 (see www.environics.ca). Results relevant to my discussion are as follows (italics are mine):

- “Declining public concerns about crime notwithstanding, Canadians are broadly supportive of the federal government’s new omnibus crime bill (...) *Six in ten say they strongly (28%) or somewhat (34%) support this legislation, compared with one-third who somewhat (15%) or strongly (19%) oppose it.*”
- “The legislation *attracts majority support across the country*, but most widely in Alberta, in communities with fewer than 100,000 inhabitants, allophones, and *Conservative Party supporters (but also attracting small majorities of Liberal, NDP and Bloc supporters).*”
- “Among supporters, *six in ten (62%) say they are just as likely to support the new crime laws* despite the increased provincial spending it may require, compared with only *one-third (35%) who say this would make them less likely to support it.*”

Narrower Socio-Economic Inequalities Make Streets and Communities Safer

Here I turn to the book *The spirit level: Why more equal societies almost always do better*, by Richard Wilkinson and Kate Pickett (2009). The authors provide plenty of evidence that reduced socio-economic inequalities help lower many of the worst problems experienced in a society, such as the lack of trust amongst individuals, mental illness (including drug and alcohol addiction), life expectancy and infant mortality, obesity, children’s educational performance, teenage births, rates of violent crimes, imprisonment rates, and lack of social mobility. To that end, they compare a number of relatively well developed countries, among them, Australia, Austria, Belgium, Canada, Denmark, Finland, France, Greece, Ireland, Italy,

Japan, The Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom, United States.

More to the point of this contribution are the discussions found in chapters 10 (Violence: gaining respect) and 11 (Imprisonment and punishment). With regards to violence, studies show that, among other issues, rates of homicide and conflict between children are lower in Scandinavian countries – Denmark, Finland, Norway and Sweden – and Japan. Those countries also happen to have the narrowest socio-economic inequality gaps. Likewise, imprisonment rates are the lowest in those same countries. The United States, on the contrary, is one of the countries with the widest socio-economic gap and experiences the highest levels of social problems (along the United Kingdom and Portugal, for example). As for Canada, it usually ranks in the middle of the pack in terms of income inequality, violence and the use of imprisonment. There is therefore room for improvement for the country.

Conclusion

The conclusion one draws from all this is that any government who seriously wishes to improve the safety of its streets and communities must first and foremost implement health, educational, social and cultural legislations and policies with the aim of reducing the socio-economic gaps between rich and poor. Tougher criminal laws and criminal justice policies will accomplish nothing in that regard. It is worth reiterating that the Occupy Movement is on the right track in its denunciation of the widening gap between the richest 1% and the other 99% of the world.

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