

In the name of the “fight against crime”

Canada’s Conservative government increases state’s repressive powers

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Just as Canada’s Conservative government invokes the hunt for “Taliban terrorists” to justify a neo-colonial military intervention in Afghanistan, it is seeking to increase the repressive powers of the state under the cover of a “fight against crime.”

And just as elementary democratic rights (protection against arbitrary detention, the right to remain silent) are trampled on in the name of the “war on terrorism,” so longstanding legal principles such as the presumption of innocence and the independence of the judicial system from the executive power are the first victims of the Conservatives’ campaign against “violent criminals.”

Exaggerating the presence of crime in Canadian society, the Conservatives have announced a series of modifications to the criminal code that will increase the severity and length of sentences and whose only predictable effect will be to increase the prison population.

The most recently announced changes are a toughening of the Youth Criminal Justice Act in order to inflict more severe sentences on juveniles. “The young must understand that when they commit violent crime against others, they must be held wholly responsible for their acts,” declared Justice Minister Vic Toews at the end of October.

Without revealing all the details of the government’s plans in this regard, Toews suggested that youngsters found guilty of crimes could serve their sentence in prison rather than in a rehabilitation center. “When youth repeatedly commit criminal acts,” said Toews, “we should not be embarrassed to use our prison resources.” These new measures could involve the incarceration of 12-year-olds.

A few days earlier, Prime Minister Stephen Harper announced another modification to the criminal code before an enthusiastic audience of Toronto cops: people guilty of a third offence will be automatically designated “dangerous and high risk offenders”—meaning they could spend the rest of their days behind bars—if that third offence involved violence or the threat of violence.

The law presently allows the state to petition the courts to declare an individual a “high risk offender” after any offence involving a “serious personal injury offence,” such as sexual aggression, threats to a third party or the infliction of bodily injuries.

But it establishes a clear distinction between “high risk offenders” and “dangerous and high risk offenders.” The former are subject to the control of Canada’s correctional system for a period of 10 years after their sentence has been completed, while the latter are imprisoned for an indefinite period, that is either until death or they are deemed to no longer constitute a danger to society.

On the basis of expert psychiatric reports, judges do declare individuals “high risk offenders” on a relatively regular basis. By contrast, the designation of “dangerous and high risk offender” is seldom made as the consequences are so severe. Hitherto, the requests to declare an individual “a dangerous and high risk offender” have essentially been limited to diagnosed psychopaths implicated in horrific cases of sexual aggression.

The proposed change will have the effect of automatically declaring an individual a “dangerous and high risk offender” who commits a third offence of armed robbery. To escape being so designated and possibly being imprisoned for life, the individual and legal counsel will have to convince the courts that he or she is not a “dangerous and high risk offender.” This represents a significant reversal of the burden of proof: it was previously up to the state or Crown to prove that an accused represented such a threat to society that the individual should be imprisoned indefinitely.

The president of the Canadian Police Officers Association, Tony Cannavino, warmly welcomed Harper’s announcement, commenting, “We can show you dozens of people who this could be applied to in all jurisdictions.”

According to the Conservatives’ draft legislation, only the third offence must fall within the category of violent crimes for the automatic “dangerous and high risk offender” provision to take effect. The first two crimes need not have involved violence or even the threat of violence. All that is required is that they were punishable by a sentence of 10 years and that their author got a sentence of at least two years.

The minority Conservative government also brought forward legislation this fall to eliminate any possibility of persons being placed under “house arrest” (i.e., given suspended prison terms) if they had been found guilty of an offence punishable by a maximum sentence of 10 years.

This law was promoted with great cynicism by the

Conservatives. Justice Minister Toews claimed that he was targeting only violent crime. But in fact, the theft of goods valued at more than \$5,000 and kissing someone without their consent (a form of sexual harassment) are offences punishable by 10 years in prison. When the law fixes a 10-year maximum sentence, it is because there is no stipulated minimum. A person convicted of such an offence can receive a fine or even a mere warning, the severe sentence of 10 years imprisonment being reserved for “the worst of criminals for the worst of crimes.”

Even if the opposition parties have largely embraced the Conservatives’ “law and order” rhetoric and many of their proposals to toughen sentences, they joined forces to defeated the Conservative bill. Had they not, about 5,500 more people would have been jailed annually.

Another Conservative bill now before parliament concerns the mandatory minimum penalties imposed when a firearm is used in committing a crime. The changes will have the effect of a fivefold increase in the minimum sentence for a first offence (from one to five years), a doubling of the minimum prison term for a second offence (from three to seven years) and will raise the minimum sentence for all other subsequent offences to 10 years. These prison terms are added to the sentence for the main offence, for example a theft or a threat committed with a firearm, and are to be applied even if the firearm is not exhibited.

These new arrangements will involve an increase of 300 to 400 prisoners, costing the federal treasury about \$250 million additional per year, while depriving crime prevention programs of the same amount of money. Even the justice minister has raised doubts about the preventive character of such minimum sentences. Last August, *La Presse* quoted Toews as having written that “these sentences do not have special deterrent effects or educative results and they are no more effective than lighter sentences in combating crime.”

The government is also considering stripping judges of the power to grant bail to persons accused of offences involving firearms, meaning that persons accused of such crimes will have to remain in prison until their trials are completed. This constitutes a reversal of the elementary judicial principle: first of all liberty, detention only when necessary.

The Conservatives are also proposing to increase the age of sexual consent, from 14 to 16. Speaking at an event organized in memory of Holly Jones, a 10-year-old girl who was killed by a sexual predator, Minister Toews declared, “In increasing by two years the age of protection, the government is targeting sexual predators who attack the most vulnerable members of society.”

In fact, the government is using the worst of crimes committed by a psychopath to introduce a change to the criminal code which has nothing to do with this type of crime, but everything to do with furthering the moralistic and repressive agenda of right-wing religious groups, which constitute an important base of support for the Conservative Party.

Someone accused of sexual aggression can say in his defence that the alleged victim consented, but not if the victim is an adolescent under 14. Holly Jones was 10 and her aggressor 35. Moreover, consent could not have been invoked in this case since the victim was killed.

In justifying their volley of law-and-order measures, the Conservatives have repeatedly claimed that Canada is being ravaged by a crime wave and especially an increase in youth and violent crime. But government studies indicate the opposite—an overall drop in crime, especially the number of offenses being committed by young people.

According to a report released this July by Statistics Canada, “The level of crime in Canada, which is based on the number of cases reported to the police, fell by 5 percent last year.” The report concludes that since 1999 the overall level of violent crime has not changed, even if there was an increase in 2005. According to the report’s data, among the young, the level of crime fell 6 percent in 2005, the second consecutive year in which the number of crimes committed by young people fell.

The statistics show an increase in certain types of crime, but not an explosion which would require exceptional measures. Actually, the level of crime, even of violent crime, remains below the historic peaks recorded in the early 1990s and continues to fall overall.

The Harper government claims that all of the announced changes have as their aim “maintaining security on the streets and communities.” In reality their purpose is to spread a climate of fear to justify putting into place repressive police and judicial measures. Federal Minister of Public Security Stockwell Day recently announced, for example, the recruitment of a thousand new Royal Canadian Mounted Police (RCMP) agents, as well as the refurbishing of the national police school so as to turn out more police officers.

If the Conservative government distorts the reality of crime, it is because it wants to remove from political discussion any conception of the social causes of crime. In a previous period, the conception that crime has social roots and reflects the failings of society encouraged an approach based on rehabilitation, rather than punishment, and measures to combat poverty and mental illness. But the ruling elite has increasingly repudiated any notion of societal responsibility for poverty and other social ills. Since the end of the 1970s, it has been engaged in an unrelenting offensive on workers’ jobs and rights.

Such a policy—massive decreases in taxes for the rich and savage cuts in social programs, militarism and neo-colonialism abroad—is fuelling growing anger amongst wide layers of the population.

Through its “law and order” campaign the Harper government is strengthening the repressive powers of the state. It is also seeking to divert popular discontent by railing on about the “evil” incarnated by hardened criminals and to develop a popular base for its reactionary agenda by wooing the police and appealing to the prejudices of the most backward social elements.



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