CRIME AND POPULISM

MICHAEL ADAMS

The Harper government has made a tough stance on crime one of its showcase positions. Why?

La répression de la criminalité compte parmi les projets phares du gouvernement Harper. Pourquoi, au juste ?

Over the past eight years, the federal Conservatives have seldom missed an opportunity to show Canadians how seriously they take crime and how eager they are to make convicted offenders sorry for their transgressions. Prime Minister Stephen Harper has made punishing crime a showcase priority of his government. He hammered this home in his annual summer speech to the local faithful in Calgary this past July. "If, God forbid, Canadians are attacked, or robbed, if they lose someone they love to a murderer, or if they see their children driven to suicide by bullying and harassment... the first thing they want their government to do is not to make excuses for criminals, but to stick up for victims," reads the Prime Minister's prepared speech. "And that is our role."

This is not empty rhetoric. Since taking office in 2006, the government has introduced no fewer than 81 crime bills, though only 30 have been passed into law. According to University of Toronto criminologist Anthony Doob, the effect of these new laws has largely been to lengthen sentences (as with mandatory minimums) or to eliminate chances to have sentences shortened (as with the elimination of "accelerated parole review," a mechanism that could temper punishments for first-time, nonviolent offenders).

Just as Harper uses crime to shape his political identity, the government is using new rhetoric to describe crime and criminals. As Doob points out, in the past, legislators of all political stripes and in all regions — including Progressive Conservatives and even those governing Alberta — once tended to emphasize concepts such as restraint and balance. They also generally described the criminal justice system in pragmatic terms: What helps people function successfully after being punished for a crime? What is cost-effective? What works?

Today, the tone is less pragmatic and more punitive. "For too long," Harper complained in Calgary, "our criminal justice system was twisted to make the rights and welfare of the criminal its central concern. So we said: do the crime, do the time." Harper's government posits a sharp dichotomy between good Canadians and bad criminals. It rejects a technocratic, evidence-based, intellectual approach in favour of a more emotionally satisfying "tough" stance.

It's clear that something has shifted in the federal government's approach to crime. What is less clear is why. Canadian crime rates are low and falling (though Harper has tried to take credit for falling crime rates, the downward trend long predates his government). Canadians were not and are not especially agitated about crime; no Willie Horton-style parolee-run-amok case has inflamed public sentiment. Crime is rarely mentioned by more than 5 percent of Canadians as the most important issue facing the country.

What benefit, then, to today's Conservatives in departing from the evidence-based approach of both Liberal and Progressive Conservative governments since the Trudeau era?

The answer can be found in public opinion data on the discrepancy between the views of the country's elite decision-makers and those of the public. Analysis of years of public opinion research suggests that during the Trudeau, Mulroney and Chrétien/Martin eras, as some of Canada's core "progressive" policies emerged, Canadians were not altogether enamoured of them. Instead, they deferred to elites: a loose coalition of the educated, the urban, and Quebec progressives, who were heavily represented in institu-

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tions such as legislatures, government bureaucracies and the courts.

Those elites, in turn, deferred to evidence, including those darn statistics so beloved by criminologists. And over time, Canadians have generally warmed to the progressive policies of the last several decades — even if they were divided about them when they were first introduced.

However, a significant minority remained unimpressed with the drift of the country. This minority represented an opportunity for populist gestures from a party willing to fan the flames of public resentment toward supposedly out-of-touch, ivory-tower experts and their allies in government. It is to the segment of Canadians who favour "common sense" over statistics that Harper is catering — so far, successfully.

On capital punishment, past governments have led rather than followed public opinion. In 1976, Parliament decided in a free vote to abolish the death penalty: 131 in favour to 124 opposed. Liberals and Progressive Conservatives fell on both sides of the issue, while New Democrats were solidly in favour of abolition

Public opinion was elsewhere entirely. In 1979, Environics' Focus Canada survey asked Canadians: "Would you say that you are in favour of capital punishment for certain crimes or are you against capital punishment under any circumstances?" Seventy-seven percent of Canadians were in favour (for certain crimes), while only 19 percent were opposed (see figure 1).

Progressive Conservative MP John Reynolds did not think it healthy to have such a large gap between public sentiment and legislative outcomes. After the 1976 vote, he told a CBC reporter: "When you're looking at less than 50 percent of the House of Commons — we only had 131 for it — and pass a law that 80 percent of the people are against, I think you're asking for trouble from the people of this country. They'll have no respect for the political system."

At the time, however, the public acquiesced, or at least they had no effective way to vote their displeasure. Progressive Conservative leaders from Robert Stanfield and Joe Clark to Brian Mulroney and Kim Campbell participated in the multiparty elite consensus. (Although the desire to retain the death penalty was stronger among Progressive Conservatives than it was the among other parties, at the time of the 1976 vote all three party leaders favoured abolition.) Thirty-eight years later, however, Stephen Harper has said he favours the death penalty in some cases, although he insists that the government will not reopen the issue.

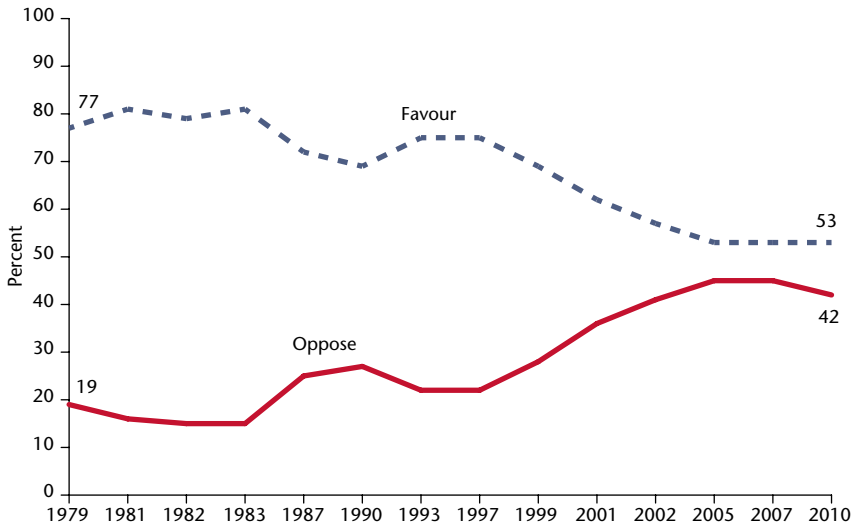
Over time, the public has come to reach the same conclusion their leaders inflicted upon them in 1976. Support for the death penalty has come down by 24 points over the past few decades. In 2010, just over half of Canadians (53 percent) favoured the death penalty for certain crimes. Findings on another item suggest that, despite slim majority support for the death penalty "for certain crimes," Canadians are not clamoring for capital punishment for murderers in general. When asked in 2007, "Which of the following do you think is the most appropriate punishment for someone convicted of murder?" seven in ten Canadians (69 percent) chose "life imprisonment with no possibility of parole," while a quarter (24 percent) saw the death penalty as most appropriate.

The drift in past decades toward progressive public policy went beyond crime and punishment. In 1988 the supreme Court struck down the abortion laws that had been on the books since 1969. The 1969 legislation had permitted abortions, but required that they be performed in an approved or accredited facility — and only if the procedure had been approved by a "therapeutic abortion committee."

Henry Morgentaler and two colleagues opened a clinic in Toronto that performed abortions outside those strictures, and duly sparked a legal case that proceeded to the Supreme Court. In a 5-2 decision, the Court declared that the law violated women's rights under section 7 of the 1982 Charter of Rights and Freedoms, which guarantees life, liberty, and security of the person. Chief Justice Brian Dickson wrote that the existing law "clearly interferes with a woman's bodily integrity in both a physical and emotional sense."

Since then, abortion, now absent from the Criminal Code, has been

FIGURE 1. CAPITAL PUNISHMENT FOR CERTAIN CRIMES, 1979-2010



Question wording: "Would you say that you are in favour of capital pubishment for certain crimes or are you against capital punishment under any circumstances?" ("Capital pubishment" changed to "death penalty" in 2002.)

governed exclusively by the *Canada Health Act*. Brian Mulroney's government made two attempts to pass new legislation that would limit abortion under the Criminal Code. The first attempt was defeated in the House of Commons, the second died in the Senate. The Upper Chamber was evenly divided, which meant defeat for the bill.

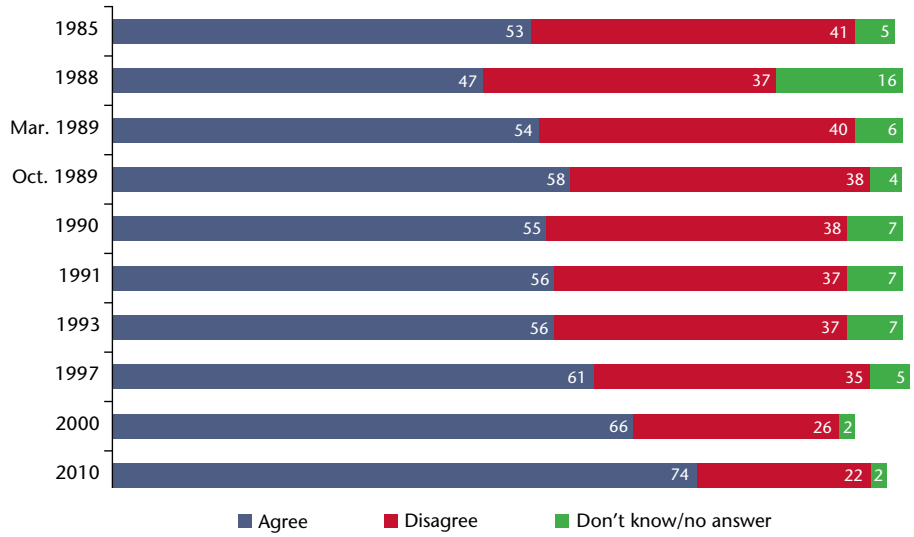
The outcome of the Court and the legislative process was that abortion became totally decriminalized under a Progressive Conservative government. In 1990, a fairly slim majority (55 percent) agreed with the statement "Every-woman who wants to have an abortion should be able to have one." By 2010, three-quarters of Canadians (74 percent) agreed with that statement. Here again, over time Canadian attitudes have become more strongly aligned with the policy landscape that leaders created decades ago (figure 2).

If the Mulroney government wanted to limit abortion but eventually stopped trying, the Harper government refuses to start trying. Although the public was almost evenly divided at the time the current policy (or lack thereof) emerged, Canadian public opinion has shifted so significantly toward support for the status quo that the current Prime Minister, famous for his incrementalism, shies from any hint of a threat to a Canadian woman's right to choose.

A further example of elites leading instead of following public opinion is the issue of same-sex marriage. On the death penalty, Parliament took the lead. On abortion, the courts created a gap and the Senate ensured that no new law filled it. On same-sex marriage, provincial appeals courts called into doubt the constitutionality of marriage laws that excluded same-sex couples. These shifts at the provincial level eventually caused the federal government to pass the *Civil Marriage Act* in 2005 (after seeking advice from the Supreme Court).

Elites were somewhat ahead of the public when the critical decision on same-sex marriage was made — but the public has come to embrace the policies that have already been visited upon them. Environics polled Canadians on the issue around the time of the *Civil Marriage Act* (in 2004 and in 2006) and found levels of support in the mid-to-high 50s (strong support stood at 33 percent in both years). Since then public support for same-sex marriage has become much more decisive: in 2010, 68 percent of Canadians were in favour of the policy, with 43 percent expressing strong support (figure 3).

FIGURE 2. "EVERY WOMAN WHO WANTS TO HAVE AN ABORTION SHOULD BE ABLE TO HAVE ONE," 1985-2010



A pattern is evident here. Public opinion in recent decades seems to have followed elite opinion in these seminal cases at least, with support for the death penalty eroding over time, support for a woman's right to choose to terminate her pregnancy increasing and, most recently and most dramatically, acceptance of same-sex marriage becoming mainstream.

Public opinion on some other issues that have been under consideration in recent years, notably the decriminalization of prostitution and marijuana, suggests that these issues could conceivably follow a similar pattern. Although opinion is not overwhelmingly on one side in either case (and the numbers vary depending on the question wording), over time it is moving toward less punitive approaches.

In 2005, when Environics asked Canadians: "In your opinion, should prostitution be legal or illegal?" 51 percent said it should be legal, up 11 points from a decade earlier. In July 2014 the government introduced new prostitution legislation, which it describes as aiming at protecting women from exploitation and human trafficking, but which its critics say is needlessly punitive and out of step with the evidence on making sex work safer. On the decriminalization of the "personal use" of marijuana, which six out of ten Canadians (61 percent) support, the battle lines are drawn: the Prime Minister is on the record saying "it will not happen under our government," and the Liberals have committed to opening a debate on decriminalization, calling for "smart" instead of "tough" drug policies.

So why, then, do the federal Conservatives swim against the tide?

Although majorities of Canadians support each of these so-called progressive policy measures, majority opinion is not the whole story. A minority has opposed and continues to oppose them. Vexingly for that minority, their members find it difficult to gain a voice in the leadership of the country's political parties, even with Stephen

Harper's party.

The Prime Minister clearly sees the political danger of too lustily indulging his constituents' opposition to mainstream progressive positions in Canada. But he also sees the opportunity in playing to the resentments that John Reynolds anticipated after the 1976 vote on capital punishment: by Harper's lights, liberals have been "asking for trouble from the people of this country" for a very long time.

Conservatives are happy to nurture the resentments that decades of multiparty elite consensus has sown, to judiciously dole out politically incorrect red meat and to reap the political rewards. Performing a delicate balancing act of airing minority frustration without alienating the wider mainstream, the Prime Minister has muzzled his caucus on issues such as abortion, where he sees more danger than opportunity. On same-sex marriage, he quickly delivered a free vote on whether to reopen the issue, and then let the debate die.

On crime, however, while he does not expend any energy on reviving capital punishment, he has found a rich populist vein to mine. As Justice Minister Rob Nicholson said of the government's crime policies, "We're not governing on the basis of the latest statistics. We're governing on the basis of what's right to better protect victims and law-abiding Canadians."

The Conservatives may not be governing on statistics (at least not the kind that speak of a declining crime rate), but they certainly do take account of the numbers on the breadth and depth of the backlash against evidence-based criminal justice practices and other such policies. They know that although in recent decades public opinion has moved slowly but surely in favour of the old elite consensus, significant minorities of the population remain skeptical of this direction.

At the federal level, Conservatives are alone in reaching out to those Canadians who are unimpressed by papers from criminologists and uninterested in a government that is a dispassionate, technocratic machine. In place of statistics, the government offers a leader (even a "strict father," in American cognitive linguist George Lakoff's formulation) who acts on principle and conviction. This sensibility is evident in the realm of foreign affairs, where the Harper government chooses friends and sticks by them against all comers (instead of aiming for what they sneer at as the wishy-washy "honest broker" status of the kind that helped Lester Pearson win the Nobel Peace Prize).

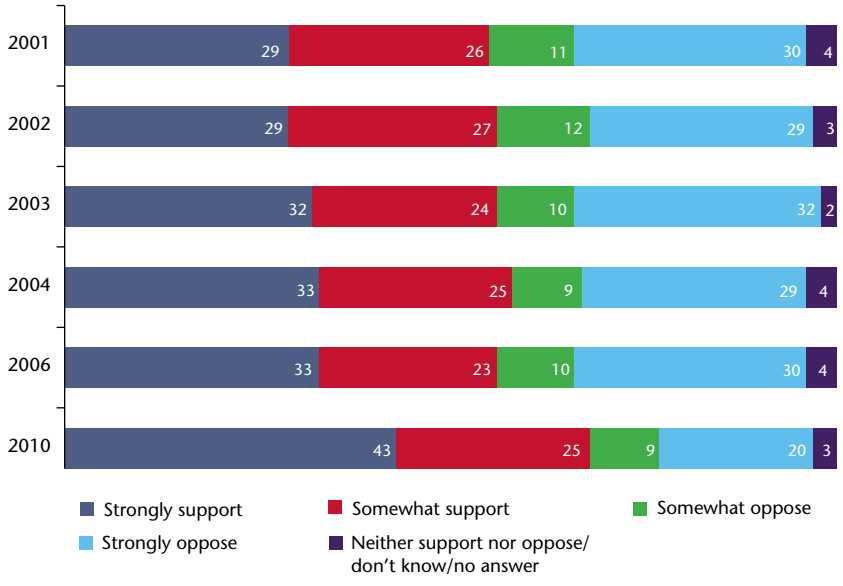
In the domestic realm, it is evident in the government's approach to crime. The Prime Minister does not need a literature review to tell him how to punish a bad guy.

Sociologists, including me in my 1997 book *Sex in the Snow,* have been writing about the decline of deference in Canada for decades now. Little did most of us predict that this decline would go beyond questioning religious patriarchy to questioning the elite consensus supported by post-Quiet Revolution Quebecers, urbanites, the highly educated, and now Millennials. As social psychologist Jonathan Haidt has argued in his influential book *The Righteous Mind,* liberals who focus on their own objectives of fairness and care while ignoring other "moral appetites" (such as appetites for authority and loyalty, which conservatives tend to favour), can develop blind spots that cause them to foolishly dismiss ideas that resonate strongly with plenty of people (see the review article in *Policy Options*, October 2012.

Those Canadians who believe that an ounce of common sense beats a pound of statistics have felt out of step with the drift of public opinion and public policy for a long time. It is not surprising that leaders who scorn the experts, especially academics, hold some appeal for these voters. Whether it's scrapping the long-form census or ignoring criminologists' claims that thicker bars and higher walls don't make a safer society, some right-of-centre Canadians have been relishing their own "just watch me" moment in recent years.

Yet populism and backlash politics have their limits, as the Prime Minister well knows. On a few occasions, the federal government has gone too far. Stephen Harper's 2008 campaign promise to stiffen sentences for violent youth offenders aged 14 and over played badly in Quebec, and may have cost him seats in that province and therefore a majority.

FIGURE 3. SUPPORT FOR SAME-SEX MARRIAGE, 2001-2010



Source:

In the United States, where former Democratic president Bill Clinton said that fear can lead people to prefer leaders who are "wrong and strong" instead of right and weak, even conservatives are growing weary of knee-jerk tough-on-crime policies. Many are coming around to accepting the ineffectiveness and crushing cost of having over 700 of every 100,000 Americans in jail at any one time (Canada still has only around 114). And just as the gap between public opinion and elite-driven policy has provided an opening for conservatives over the past decade, progressives may find their own opening in the gap between the frugality conservatives espouse and their damn-the-torpedoes approach to evidence.

Opponents of the Conservatives are unlikely to gain much traction by trotting out mounds of empirical data. But if the Liberals or the NDP can show Canadians that tough-on-crime policies ring up large bills and deliver little in the way of increased public safety, they might steal the support of fiscal conservatives who find the math too compelling to ignore. And stealing votes in large enough numbers is a crime that can carry a penalty of up to four years in government. ■