

## ENDING THE FAINT-HOPE CLAUSE

# **The people are not hanging judges**

October 9, 2008

Stephen Harper, the Conservative Leader, is promising to set a rigid minimum of 25 years in jail for first-degree murder, and to do away with the flexibility in which 25 years is the norm unless a jury says otherwise. But for what purpose or principle? If it is to reflect popular revulsion at early release for convicted killers, where is that revulsion? When those killers ask a jury for an early chance at parole, the juries tend to say yes. These are juries of ordinary people; the lawyers, judges and politicians are not in control. If the juries wished to say no, they could.

Being tough on crime for Mr. Harper means a more rigid reliance on punishment. For young offenders, he has objected to diversion from the courts for minor crimes of violence. For adults, he has objected to house arrest for car thieves. A tougher system need not be inflexible.

The faint-hope clause grew out of a carefully wrought compromise when Canada abolished capital punishment in 1976. Mr. Harper is too smart to try to bring back the death penalty; he doesn't need such a divisive and politically risky debate (and Canada doesn't need the death chamber). He can only nibble at the edges of that debate.

The compromise of 1976 created a minimum 25-year wait for a parole hearing for those convicted of first-degree murder, but added a faint hope: They could apply to a court after 15 years for an earlier parole hearing. (Those convicted of second-degree murder must wait 10 to 25 years for a parole hearing, but they, too, can apply to a jury after 15 years.) That compromise was in keeping with the spirit of the system in 1976: Parole eligibility for capital murder was then set at 10 years. The homicide rate has dropped from 3.08 per 100,000 people in 1976 to 1.85 in 2006.

Only a minority of convicted killers have gone to a court to ask for early parole. Of the 855 people eligible (as of last April) because they had served at least 15 years, 163 had been before a jury, and 135 of those received a reduction in their waiting period for a hearing. Most went on to obtain either full or day parole. Faint hope may be a misnomer, because the public is not full of hanging judges. Killers have been able to persuade them that they have reformed and are not a threat.

Do those killers who win early parole go out and commit more murders? The National Parole Board was not able to respond to this question from The Globe yesterday afternoon, but neither was the Conservative campaign headquarters. Mr. Harper has presented no evidence that these killers receive early parole and kill again.

The public has a say, and has demonstrated that it prefers flexibility.