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YOUTH CRIME AND THE CONSERVATIVES

## **Tougher justice, patchwork nation**

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There should be one criminal law for Canada. Stephen Harper, the Conservative Leader, is proposing to make it easier for young people convicted of murder after their 14th birthday to receive a life sentence - except in a province that wants a kinder, gentler system.

With Quebec in mind, Mr. Harper told reporters that the provinces may set a higher age when applying his government's tougher rules. "The age is 14 in general, but that depends on the province. If provinces set a different age for the definition of young offenders, we respect it." This could create a patchwork criminal law.

Mr. Harper's proposals to toughen penalties and remove the anonymity shielding many violent youth criminals deserve to be debated. But by breaking with a principle of federalism as old as Canada, Mr. Harper is diverting the debate.

Provinces administer the courts, and have plenty of room for flexibility: Prosecutors may divert wrongdoers to community programs as they see fit, for instance. But there is no logic to having a 15-year-old face a life penalty on one side of the Ottawa River for an action that might draw him a more lenient penalty on the other. And if the youth code can be a patchwork, why not the adult Criminal Code, too? The death penalty, anyone? This would be a Canada of separate fiefdoms. It's a Canada that makes no sense.

To be fair, the Conservatives are not the first to broach the idea of allowing a province to opt out of sentencing rules. When the Liberal government passed the Youth Criminal Justice Act in 2002, the provinces were not obliged to enact its "reverse onus" provision, under which 14- to 17-year-olds convicted of serious violence were presumed to face adult penalties, unless they could argue successfully otherwise.

Quebec and Newfoundland decided not to apply that reverse onus to 14- and 15-year-olds. (The Supreme Court of Canada, overreaching, has since struck down the reverse-onus provision as a violation of the principle of a separate justice regime for youth.) The Tory proposals, however, go further.

Take the proposal of a life penalty for murder. Currently, judges decide whether a youth aged 14 to 17 deserves a youth penalty or a tougher, adult one. The maximum youth penalty for murder is 10 years, of which four are served in the community under supervision. The adult penalty is automatically life, with parole eligibility beginning at 10 years for 16- and 17-year-olds, and seven years for 15-year-olds.

A life penalty means that parole conditions follow the convicted person for life, and a violation of those conditions at any time in his life can return that person to jail. It's hard to see why such a change is needed when the system already provides for life sentences.

Some of Mr. Harper's proposals are good. While the Youth Criminal Justice Act aims laudably to keep all except the most violent young people out of jail, some real defects have shown up. Some have said, justifiably, that YCJA stands for You Can't Jail Anyone. Under Mr. Harper's

plan, judges passing sentence would be permitted to keep the deterrent effect on other youths in mind. Amazingly enough, the law ties judges' hands at the moment.

Judges could also deny bail to out-of-control young people, even if those youths are accused of non-violent crimes. This idea emerged after a young Nova Scotian who repeatedly led police on death-defying car chases killed a woman with a stolen car. It comes from a retired, liberal-minded judge, Merlin Nunn, who held an exhaustive inquiry into how the system failed both the woman and the young man who killed her.

Moreover, the protection of society would receive a clearer mention in the law's statement of principles, another of Mr. Nunn's recommendations.

Mr. Harper may have thought it a stroke of genius to appeal to the tough-on-crime crowd and Quebec at the same time. But instead he is tampering with Canadian unity, while obscuring the debate on youth justice.