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CCJA-News, March 18, 2011

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CONGRESS 2011- CONGRES 2011

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2. Michael Welner: Omar Khadr and the jihadism that lurks in our prisons

National Post- [FULL COMMENT](#)

Forensic psychiatry, to most, is the exercise of deconstructing tragedy and the tragic. Yet the practice itself reveals urgency well beyond the jails, hospitals, and modest rooms where tales of misery pour forth. The lessons of my professional experience in Guantanamo Bay bear an important challenge to our nation and to people of all faiths — if we dare to look at those locked up.

3. Conrad Black: Prisons should be repair shops, not garbage dumps

National Post- FULL COMMENT

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4. Prisons or poverty? The choice is clear

Ken Battle, Sherri Torjman and Michael Mendelson,

Since 2006, the Harper Government has drained its own coffers. After taking office, it cut the GST by two percentage points, creating an annual revenue loss of \$12-billion. It trimmed corporate taxes, from 18 to 16.5%, effective 2011. It made other smaller tax cuts, including allowing pension income splitting for wealthy seniors, which taken together deprive it of a significant amount of revenue.

Yet the government somehow manages to find money for its favourite expenditures: War and crime. Significant amendments to the Criminal Code will cost Canadians an estimated \$1billion annually over five years. This, despite evidence that building massive prisons has already proven ineffective and breathtakingly expensive in the United States, because every dollar spent on prison is a dollar not spent on the factors that contribute to criminal behaviour.

2. Michael Welner: Omar Khadr and the jihadism that lurks in our prisons

National Post- F U L L C O M M E N T

[National Post](#) February 19, 2011

Forensic psychiatry, to most, is the exercise of deconstructing tragedy and the tragic. Yet the practice itself reveals urgency well beyond the jails, hospitals, and modest rooms where tales of misery pour forth. The lessons of my professional experience in Guantanamo Bay bear an important challenge to our nation and to people of all faiths — if we dare to look at those locked up.

Under heavy political pressure, the United States has reconsidered the basis of confinement and has released hundreds of detainees from Guantanamo in recent years. Sensitivity to America’s image among human rights organizations propelled compliant optimism by the American government that many detainees would no longer be a belligerence risk if restored to freedom.

Relying upon the detainee’s own self-advocacy in interviews, America has transferred many to other countries for transitional custody or outright release. But the near-catastrophe of Umar Abdulmutallab’s Christmas 2009 airline underwear bombing attempt and the defiant Guantanamo alumni leadership who directed him have raised warnings to the world to rethink risk assessment and risk prevention

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Against the backdrop of these competing forces, the United States Department of Defense asked me as a veteran of highly sensitive forensic psychiatric assessments to appraise the risk of one such Guantanamo detainee, Omar Khadr. Mr. Khadr, by his own statements in 2002 and most recently in October 2010,

admitted to throwing a grenade that killed Sfc. Christopher Speer as he inspected the scene of a recently completed battle. Khadr was 15 at the time that he killed Speer.

When I interviewed Khadr last June in my capacity as a forensic psychiatrist, he was an English-speaking, socially agile 23-year-old with the kind of easy smile that so similarly warms those who encounter the Dalai Lama and Bin Laden alike. Anticipating his eventual release, the military commission asked me to go beyond the natural tendency of advocates and adversaries to see what they want to see in Omar the man.

Forensic psychiatry is no stranger to risk assessment. Since the United States Supreme Court decision in *Estelle vs. Smith* (1981) established the enduring role of psychiatry expertise in death penalty cases, psychiatry and psychology have significantly refined risk assessment. Forced to endow its approaches with the rigor of scientific method, psychiatry has deconstructed our clinical presumptions. The very question itself has matured to niches of particular context. Future dangerousness of violence in the community involves a different approach from assessing risk of violence in maximum security; those approaches differ from assessing risk of sex offense, of non-violent criminality, of domestic violence, stalking, even future contact offense in a child pornography consumer. Assessing future risk of dangerous Jihadist activity necessarily recognizes that an approach may borrow from clinical understandings about criminal and violent recidivism, but has to stay true to context (actual ideological violence or otherwise facilitating violence) in order to gain relevance.

Validity in risk assessment invariably draws from statistics and actuarial approaches. The statistics on released Guantanamo detainees who return to active battle are a source of consternation to those invested in the notion that only a few detainees could pose future harm. As recently as 2008, the recidivism rate was reported at 6 percent. That figure has climbed steadily and sharply upward, and a recent updated report from the Director of National Intelligence now asserts that 25 percent of released Guantanamo detainees have recidivated — and over half of these combatants (83) are actually at large. What the U.S. government does not disclose is that their figures are a significant underestimation, for many reasons.

- 1) Government figures include those who remain in foreign jails and therefore have no opportunity to recidivate.
- 2) Released detainees often change their names, identity papers and countries and therefore cannot be accounted for.
- 3) The infrastructure to which many detainees are released is not equipped to monitor the nature of their activities as would parole officers and other features of Western societies. It is far easier to operate off the grid and therefore seemingly uninvolved in violent Jihadism.
- 4) Those who are more senior, such as the leaders of al-Qaeda of the Arabian Peninsula (AQAP), can be far more destructive by inspiring others than actually engaging in armed hostilities (as they did when younger).

Forensic psychiatry does not only concern itself with risk assessment, but also the appraisal of how to reduce risk as well. In that regard, some Muslim countries such as Saudi Arabia and Yemen, mindful of the anti-

government agenda of their own jihadists, developed what have come to be known as “deradicalization” programs.

Multidisciplinary initiatives, primarily emphasizing religious intervention, engage the misguided into a re-education about the Koran’s message being one of non-violence rather than the apocalyptic nihilism of Islamist favor. If inmates’ families repudiate jihadism and take responsibility for their evolution, if the inmate has no serious violence history, the combination of reeducation in a peaceful strain of Islam with social and vocational reintegration and pro-social outlets for inflamed passion (such as marriage) has been more successful.

The premise is a sensible one; jihadism is a phenomenon of religious ideology and inspiration, not a mental illness. The pious Imam is more potent than would be any psychotherapist or antipsychotic medication. Even more powerful are those programs whose deradicalization Imams come from a life in terrorism, and can attest to how terror practitioners will know no paradise. Of those programs, the deradicalization that enjoys the greatest success is not surprisingly the most regulated program: that of Singapore.

Unfortunately, closer study reveals that in Saudi Arabia, for example, those in Interior Minister Prince Nayef’s ballyhooed deradicalization programs are redirected only to avoid attacking the kingdom itself. This not-in-my-neighborhood band-aid is partly to blame for Saudi Jihadists moving to the greater flexibility they exploit in neighboring Yemen, while training their sights on airliners and Chicago synagogues alike.

A current appraisal of deradicalization programs therefore appreciates their potential relevance. At the same time, the structure and composition of the program can render the work useless or worse yet, disingenuous. Proposals for Omar Khadr’s future illustrate this latter point well. It was Khadr’s own attorneys who specifically proposed deradicalization for Khadr in February 2009 featuring Toronto-based Imam Zafar Bangash in the role of steward for Khadr’s reintegration into society post-release.

But steward into what? Imam Bangash has a legacy of incendiary anti-West rhetoric, including his 2002 characterization of Canada as a “fully paid-up member of the Anglo-Saxon mafia responsible for most of the recorded genocides in the world,” and his assertion in the *National Post* that the United States establishment wanted 9/11 to happen to pursue oil exploration initiatives in Afghanistan.

Deradicalization like this is no different from keeping Omar Khadr marinated in the extremist climate of the Guantanamo camps. There, American servicemen eager to promote the impression that freedom of religion is respected, stand idly by as Jihadists dominate and feed off each other to achieve a more concentrated degree of radicalism than one would find anywhere outside an Awlaki-run mosque.

The Saudi Prince Nayef, appraising the risk of released Guantanamo detainees from a different vantage point from ours, noted that ex-Gitmo detainees “infected” Saudi deradicalization programs and contributed to elevating the recidivism of those who had never been to Cuba.

Regrettably, tiny Singapore has far outpaced the world in implementing meaningful deradicalization. Attempts in Britain have collapsed under the force of charming and aggressive jihadists who menace

moderate Imams into submission and retreat. Jails and prisons of Europe are now dominated not just by Muslim presence, but extremist thinking.

In American as well as Canadian facilities, tens of thousands of inmates are converting to Islam every year. Yielding to the notion that they are respecting religion, corrections officials have failed to make a committed effort to staff prisons with devout, forceful but peaceful-minded Muslim imams. As a result, the more charismatic, Machiavellian, and aggressive leaders within North American corrections facilities dominate and influence vulnerable and often alienated Muslim prisoners. These influences remain after prisoners are released and have been implicated in American terror attacks by American-born ex-cons.

Many argue that the ripening of destructive fantasy in Guantanamo happens because of Guantanamo, and being detained. My experience in Guantanamo – more humane and easier living than any maximum security facility I visit around the United States on a regular basis – and my study of corrections in Europe and America teaches me that radicalization in Guantanamo is no different from the phenomenon in corrections systems of even the greatest of America’s critics – including the Arab world.

Violent jihadism is the byproduct of psychopaths who seek apocalypse and shroud themselves in the Koran, media naivete that cloaks them in intrigue, academia propagandists who provide terror leaders with intellectualized legitimacy, and jihadism’s ability to exploit freedoms to redirect America and Canada from confronting it ideologically. The forensic psychiatric lesson of Guantanamo, and Omar Khadr’s eventual hero’s return to his highly radicalized family and the Canadian terror fundraising infrastructure his father built as an al-Qaeda financier, is that the hearts and minds we have to win are in our prisons today and our streets tomorrow.

If the government does not actively deradicalize with the message that Islam must seek equality rather than theocracy, tomorrow’s prisoners – be they in Gitmo or in any other prison in America – will continue to amiably soak in hate and find comrades-in-arms who buy into that now-dominant message of Islamist supremacy and entitlement to violence.

National Post

Dr. Michael Welner has testified as an expert forensic psychiatrist witness in numerous high profile civil and criminal proceedings in the United States.



3. Conrad Black: Prisons should be repair shops, not garbage dumps

[Conrad Black](#), National Post, Full Comment, Mar 12, 2011

A friendly acquaintance recently was moved to publish a reply to a National Post column I wrote about crime and punishment several weeks ago. He showed me a draft of his article, which led to a sharpish and entertaining, but not very enlightening, exchange, as he defended the Conservative government's Roadmap to Strengthening Public Safety, a collection of harsh policies that I had attacked in this space as "bad, unjust and expensive."

His draft — which, though argued in good faith, misconstrued my opinions on the subject — persuaded me that I owe readers greater clarity regarding what I object to in current government policy, and what reforms I suggest.

My greatest objections to the so-called roadmap are that it proposes to tighten the regime governing visits to prisons, and would narrow the discretion available to judges in order to make prison sentences automatically longer. I further object to the over-use of imprisonment, having been confined to a prison in the United States for 29 months, as inappropriate for many of the criminals who are sentenced to it (quite apart from the very many in the United States, and significant number in Canada, who are not actually criminals, yet have been convicted nonetheless after being bull-dozed by the unequal correlation of forces in favour of prosecutors).

I believe in the exercise of liberty by apparently responsible people up to the limit that their exercise of liberty does not compromise the right of others to the same liberty. In a statutory framework, such a principle argues that judges must have reasonable discretion to assess guilt and balance punishment with the desire to encourage, where practical, the swiftest possible successful return to normal life of convicted people who are judged to be a threat neither to society nor the physical safety of anyone.

In the case of all but the most dangerous, repulsive and sociopathic criminal acts, places of detention should aspire, if they are not just transitory holding tanks, to be repair shops and not garbage dumps. Accused people must genuinely be presumed to be innocent, and convicted people who have served their sentences must genuinely be presumed to have paid for their misconduct.

I oppose the death penalty, because mistakes inevitably will be made, and because the spectacle of the state ceremoniously taking a life is barbarous and disgusting, and demeans everyone in the society that approves the practice. I am no hemophiliac bleeding heart, but nor am I one of the "hang 'em, jail 'em, flog 'em" set. The roadmap takes no account of the special circumstances of First Nations people, who would be its chief victims, nor of the steady decline in most categories of crime as the population ages and law enforcement techniques become more sophisticated.

It should never be the objective of the state to shatter the family and personal life of prisoners. Even those thought to be probably incorrigible are entitled to the retention of some connection to people not similarly situated who want to see them; and it is indisputable that normal family, romantic and friendly relations with law-abiding people are a stabilizing influence on people. I well know this from my own experience and

observations as a prisoner; and there is absolutely no excuse, apart from primal vindictiveness, to apply the restraints on prison visitors proposed by the roadmap.

The proposal to have glass barriers between visitors and inmates at all times, in particular, is sadistic and dehumanizing. And the excuse given — to eliminate smuggling of contraband — can be accomplished in other ways. Ninety percent of such traffic is conducted by suborned correctional officers anyway.

The roadmap's ambition to take sentencing latitude away from judges (which already has been partly enacted) is a usurpation by the legislators of the judicial function. The judge administers the evidence and monitors the case and knows the facts.

Of course, the intelligence and fair-mindedness of judges vary widely, and some are hopelessly miscast (I know something about that, too, in both the United States and Canada). But they are virtually all better qualified to try a case and bring down a sentence than uninvolved legislators shooting arbitrarily from the hip before the fact.

Legislators may establish a range of sentencing that faithfully reflects an enlightened public level of concern at certain offenses, and these fluctuate over time. But it is not the role of the legislator to impose an iron-clad prejudgment of penalty of every convicted person, regardless of the detailed facts and of considerations of tempering justice with mercy.

The underlying suspicion of Stephen Harper's government — which is that the bench is infested with softies and that it is right to punish crimes more severely than they have been in the past — is a reactionary and brutish reflex that is presumably aimed at a political constituency unlikely to stray into the arms of this government's opponents anyway. Hand-cuffing the judges merely makes justice more unlikely. And simply raising the sentences for everyone, which is essentially what is recommended, is not justified by the recidivism rates in many categories of offence. It also would legitimize the repugnant concept that criminal penalties should exceed that which is necessary to expiate the past and discourage a return to crime.

I recommend many further reforms that diverge radically from the spirit of the government's roadmap, and there is not space here to explore them all adequately. But I will summarize some of them.

Ontario Justice Marc Rosenberg's recent criticism of the plea-bargain system (made in the context of a Toronto man induced to make a dubious confession) is absolutely correct. People are entitled to a day in court, and the plea bargain is based on intimidation.

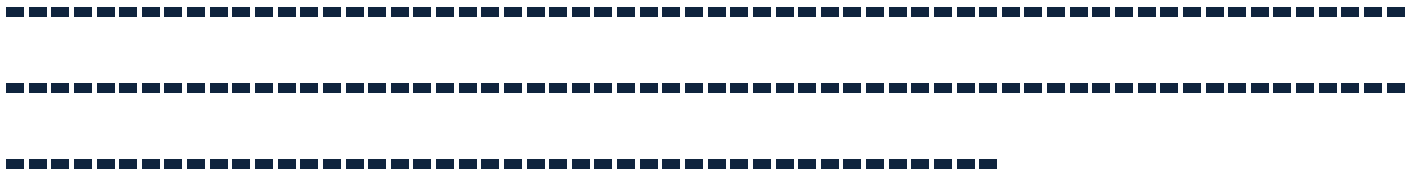
The act of determining whether there is sufficient evidence to charge must, as in Germany, be put in independent hands that are distinct from the police and prosecutors. There should not be more ex-prosecutors than ex-defence counsel on the bench; the legal-aid system should provide legicare for those who need it; poverty should not deprive people of their right to trial, any more than of their right to medical care. And a day in court should be a trial, not a rubber stamp of an extorted plea that shafts the accused and reduces the judge to the status of clerk. These changes would cost much less than the government's proposed orgy of prison-building, and the public would be better served by them.

Prison should not be a place of languishing; its purpose should be punishment, reparable stigmatization other than for extreme offenders, and largely regimented time to be spent in activity sensibly designed to make the returning prisoner less likely to reoffend. This would include therapy, skills training and reorientation. It should be authoritarian enough to incite non-return, but not so heavy-handed that it over-penalizes and breaks the will of inmates to resume life with a promising likelihood of success.

I believe that many sentences would be better finished, or even entirely served, in pro bono outside work, whereby bonded employers would monitor performance, and the length of this form of service would depend on performance.

Obviously, such a program would have to be very carefully introduced, applied and administered, but prisons are more inflexible and nasty environments than is appropriate for many offenders. The idea of making them nastier and less remitting is uncivilized and unsuitable to this principled but generous country.

National Post



4. Prisons or poverty? The choice is clear

Ken Battle, Sherri Torjman and Michael Mendelson, National Post · Mar. 15, 2011

Slash or spend? Cut or conserve? The federal government will bring down its budget on March 22. What should be in it? We ask five prominent Canadian thinktanks to offer their fiscal fix for the coming year.

The Harper Government (formerly known as the Government of Canada) has made clear its intent to tighten spending in the 2011-12 federal budget. Its goal is to vanquish the deficit, pegged at \$55.6 billion in 2010.

But is this objective achievable? The Parliamentary Budget Officer, Kevin Page, has argued that several successive tax cuts have created a structural deficit -one which won't be eliminated by slashing spending.

How has this happened? Since 2006, the Harper Government has drained its own coffers. After taking office, it cut the GST by two percentage points, creating an annual revenue loss of \$12-billion. It trimmed corporate taxes, from 18 to 16.5%, effective 2011. It made other smaller tax cuts, including allowing pension income splitting for wealthy seniors, which taken together deprive it of a significant amount of revenue.

Yet the government somehow manages to find money for its favourite expenditures: War and crime. Significant amendments to the Criminal Code will cost Canadians an estimated \$1billion annually over five years. This, despite evidence that building massive prisons has already proven ineffective and breathtakingly expensive in the United States, because every dollar spent on prison is a dollar not spent on the factors that contribute to criminal behaviour.

Instead of focusing on the consequences of crime, the Harper government should tackle the causes. These include the problems of persistent poverty and growing inequality. At last count in 2008, one in ten Canadian children (610,000) and their families lived in poverty. The picture is worse for First Nations communities, where the number is one in four. Meanwhile, over the past quarter-century, average incomes of wealthy Canadians increased by 16%, while those of the poor dropped by 21%.

Ottawa can play a vital role in reducing poverty and inequality. First, it should raise the Canada Child Tax Benefit from its current maximum \$3,436 to \$5,000 per child. The CCTB is a geared-to-income benefit that delivers the same amount to all families with the same income, regardless of the sources of that income, location or family type. Such an increase would raise the cost of the program from \$13billion to \$17-billion a year. To make up this difference, we recommend abolishing the flawed Universal Child Care Benefit and non-refundable child tax credit.

Second, Ottawa should enhance the Working Income Tax Benefit for low-and modest-income earners. The maximum annual payment in 2011 is \$944 for a single worker and \$1,714 for a family. In recent years, the Caledon Institute called for increased benefits and expanded eligibility, and Ottawa improved the program. But many working poor still do not qualify under the current design, so further improvements are needed.

Third, the government must modernize Canada's social security system to meet the demands of a changing economy and society -starting with support for the unemployed. Currently, half of unemployed workers are not receiving Employment Insurance (EI). Maximum weekly benefits should rise to the pre-recession level of \$570, representing 70% of insurable earnings, up from the current 5 %. Uniform work requirements would help restore the insurance base of the program. Ottawa should also create a new program that pays temporary benefits to jobless workers with low incomes who cannot qualify for EI, including the selfemployed.

Fourth, the government should ensure that being disabled does not equal being poor. Our current disability income system leaves more than a halfmillion Canadians with severe disabilities on welfare -and in deep poverty. A Basic Income Plan should replace welfare for most working-age persons with severe disabilities, while provincial/territorial savings should be reinvested in disability supports.

Caregivers to the disabled need support too: an estimated five million Canadians provide care for family members suffering from physical, cognitive or mental health conditions. To ease the financial burden on caregivers, the government should reform disability income, enhance work-related leave and provide additional compensation for disability supports.

Finally, the government needs to overhaul Canada's retirement income system. A two-fold reform is needed: Increasing the Guaranteed Income Supplement for poor seniors and strengthening the Canada Pension Plan, by raising the CPP earnings replacement rate by 1.5 times, from 25% of maximum pensionable earnings to 37.5%. The earnings base used in that calculation should also increase, by 50%. This CPP reform would mean a real difference of around \$4,500 a year to the average Canadian senior.

Poor literacy proficiency and low educational attainment are other pressing problems. Ottawa should make good on its pledge to work with First Nations leaders to improve education on reserve and bolster high-school completion rates.

The Harper Government should use the 2011-12 budget to tackle Canada's real challenges related to poverty and inequality, literacy and educational attainment. Any new federal spending should invest in people, not prisons.

Ken Battle, Sherri Torjman and Michael Mendelson are president, vice-president and senior scholar, respectively, at the Caledon Institute.



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