

Australia: Labor governments push debate about naming juveniles facing criminal charges

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Labor Party governments or their police chiefs in two Australian states--Queensland and New South Wales--have raised the issue of naming juveniles facing criminal charges or convicted of offences.

The recent charging of a 12-year-old girl in Queensland with the murder of her mother has become the occasion for the resurrection of a six-month-old debate on abolishing the current protection given to young defendants and their families. The issue was first canvassed by the previous National Party-Liberal Party state government of Rob Borbidge, which transferred juvenile justice from the Department of Family Youth and Community Services to the Department of Police and Corrective Services.

Premier Peter Beattie has now revived the issue, within a few months of the election of his Labor government. Beattie says his government is reviewing the law, which bans the naming of children under 17 years of age.

The minority Labor government is propped up by Independent MP Peter Wellington, a former National Party member who is a vocal proponent of naming children charged with serious offences. 'Quite clearly, some of these young hoons and young thugs are simply snubbing their noses at our community, snubbing their noses at the justice system and treating everyone like a joke,' he told the media. 'I certainly do support the judge having the discretion to be able to reveal the names of those young offenders who, at the moment, are simply protected by the system.'

Beattie then raised the possibility of naming young offenders on the eve of the 12 year old's first appearance in court, provoking the accusation from her lawyer, Noel Woodall, that 'politicians have chosen this situation to use this child as a political football'.

When speaking to the *Australian*, Woodall took issue with the treatment his client had received at the hands of the police. He said she was 'held in Maroochydore watch-house for two nights, interviewed by policemen from 1 a.m. to 5.30 a.m. and was kept in a little interview room behind glass,

behind grills and no one's allowed to touch her.... That will be an issue that the defence are very upset about, for a child to be interviewed all night, a 12-year-old girl.'

Police questioned the girl, who has impaired hearing and wears two hearing aids, with no supporting adult present. When an adult observer was organised, he was a Justice of the Peace, unknown to the girl. Her father was finally notified, but the rules of the watch-house were enforced so that he was unable to have any physical contact. He could not comfort his young daughter who had just lost her mother.

Woodall said outside the courtroom: 'I've got a situation where I've got a terrified little girl who is traumatised. This child is loved, this child is supported.'

Despite the law protecting the identity of young people facing criminal charges, the magistrate named the girl's mother, effectively identifying her daughter.

In New South Wales, the Carr Labor government's Police Commissioner Peter Ryan last week advocated the public naming and 'shaming' of juveniles convicted of violent crimes. Ryan, who works closely with Premier Bob Carr, used a Victims of Crime conference to issue his call, in the midst of a media campaign against youth gangs.

This discussion follows the recent charging of a 10-year-old boy with manslaughter in NSW for the drowning death of a six year old with whom he was playing on the banks of the Georges River. The boy is believed to be the youngest person in the history of NSW to be charged with such a serious offence. The prosecution is planning to call four primary school children between the ages of six and nine years of age to testify by closed circuit TV against the 10 year old.

These developments are part of a growing trend to treat alleged young offenders--even children--as adults in the eyes of the criminal law. Juveniles charged with crimes are being increasingly stereotyped as evil individuals, rather than as youth who may need assistance by society, particularly

under conditions where social and family life are being devastated by poverty, unemployment and cuts to social services.

Terry O'Gorman, president of the Australian Council of Civil Liberties, told the *World Socialist Web Site*: 'There is no justification for changing the law; it won't give the victims any more rights than they already have. The real potential is that it will set back the rehabilitation of the child and set back the family as a whole.'

'When a juvenile is charged it tares the whole family as opposed to when an adult is charged, it reflects only on the adult. The publicity associated with naming the juvenile will exacerbate an already fragile situation with the family. It is an extremely worrying development and will lead to the increased risk of young persons entering the adult criminal system.'

O'Gorman commented on the international nature of the shift in social policy. 'The trend of treating children as adults in the justice system is more marked in the United States with the conception that 'if you do adult crimes, you do adult time', he said.

The turn toward criminalising young people marks an historical reversion. The adult and juvenile justice systems began to be separated toward the end of the nineteenth century. Before that, children were treated as adults in both economic and legal senses. The authors of *Juvenile Justice: an Australian Perspective* explain: 'Child labour was universal ... with 80 per cent of workers in English cotton mills being children.' A similar situation existed in the criminal justice system. 'There was no legal category of 'juvenile offender'. At common law, the age of criminal responsibility was seven years. For children between the ages of seven and fourteen there was a presumption that they were incapable of committing an offence (*doli incapax*). However this presumption was rebuttable in court by showing that the child knew the difference between right and wrong.' In the mid-1860s children as young as six could still be found in Melbourne's notorious Pentridge jail.

The understanding that children were not the same as adults--that they required education, health care and the time and conditions for play and rest--developed toward the turn of the century, in response to the demands of the working class and also in line with changing industrial needs. This coincided with the introduction of compulsory education and the curtailment of child labour. 'In the same year that the Public Schools Act was passed in New South Wales (1866), the Reformatory Schools Act (for young people convicted of criminal offences) and the Industrial Schools Act and Workhouse Act (for vagrant children) were passed. In Australia, the first moves to identify and recognise the category of 'young offenders' occurred with the development

of institutions for dealing with neglected and destitute children.'

By the beginning of the twentieth century, separate courts had been established and during this century the age of criminal responsibility was raised from eight years in the 1930s to ten by the 1970s. This remains the age except in the state of Tasmania where it is still eight.

In recent years there has been a constant clamour for the lowering of the age of criminal liability again, echoing similar agitation internationally. For example, T. Markus Funk, an American law lecturer, recently published an article in the *Cato Journal* entitled 'The Problem of Lemons and Why We Must Retain Juvenile Crime Records.' He argues against the present laws, which enable the criminal records of under 18 year olds to be destroyed or sealed. He states that this policy harms a particular 'class of persons' namely 'employers, admissions officers, police, judges, creditors, licensors, and joint venturers'.

Funk compares this to the market for used cars and the 'information asymmetry' which results in the purchase of 'lemons' due to a lack of information. The same process, he states, takes place where an employer could hire a 'lemon' in the form of a young person because he has not had access to the criminal history of his prospective employee.

Congress in the United States is discussing several bills that abandon the notion of rehabilitation of children in favour of more punitive measures. In other words, the very conception of social responsibility toward the young and of improving the state of society to better their life is being repudiated in favour of blaming and scapegoating young offenders for the ills of society.

The move to eliminate the distinction between adults and children in criminal law also coincides with the elimination of that distinction economically and industrially. As recent reports have acknowledged, child labour has re-emerged in many industries in Australia, with the phenomena increasingly unchecked and accompanied by shocking injuries and deaths.

See Also:

Ten-year-old charged with manslaughter in Australia
[3 October 1998]



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