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"Show me a bad kid and I'll show you a lousy parent"[1]: Making Parents Responsible for Youth Crime in Australian and Canadian Contexts

Arguably one of the most worn-out clichés circulating widely in the public culture of Western countries today is the claim that a good part of the problem of youth crime can be solved if parents are simply made to take more responsibility for the behaviour of their children. Oddly, however, this belief is often held by the same people who argue, rather differently, that much of the problem of youth crime can also be solved if children themselves are held more responsible for their behaviour and punished more like adults for their criminal offences. The existence of these often mutually-held, yet arguably quite fundamentally contradictory, beliefs about parental and youth responsibility beg the questions of why have parental responsibility laws of one sort or another been enacted in many Western countries, and what has been the effect, if any, of the enactment and enforcement of these laws.

In this article we attempt to begin to address these questions through a survey of relevant international literature on the issue of parental liability and responsibility for the crimes of young offenders. In addition, as a starting point for needed cross-jurisdictional research, we focus on different approaches that have been taken to making parents responsible for youth crime in Australia and Canada. This comparative analysis of Australian and Canadian legislative and policy approaches is situated within a broader discussion of arguments

about parental responsibility, the 'punitive turn' in youth justice, and cross-jurisdictional criminal justice policy transfer and convergence. One unexpected finding of our literature survey is the relatively sparse attention given to the issue of parental responsibility for youth crime in legal and criminological literature compared to the attention it receives in the media and popular-public culture. Nevertheless, as we show in the following discussion, social scientists have addressed the issue sufficiently enough across a number of Western countries to at least enable us to begin the task of assessing cross-jurisdictional research that can help illuminate the reasons for the growing international trend toward legislating greater parental responsibility for youth crime. Toward this end, in Part I we examine the different views that have been articulated in the social science literature for and against parental responsibility laws, along with arguments that have been made about why such laws have been enacted in an increasing number of Western countries in recent years. In Part II, we situate our comparative study of Australian and Canadian legislative and policy approaches within a broader discussion of arguments about the 'punitive turn' in youth justice, responsibilisation, and cross-jurisdictional criminal justice policy transfer and convergence. In Part III, we identify and examine the scope of different parental responsibility laws that have been enacted in Australia and Canada; noting significant differences in the manner and extent to which parental responsibility laws and policies have been invoked as part of the solution to dealing with youth crime. In our concluding discussion, in Part IV, we try to speculate on some of the reasons for these differences and set an agenda for needed future research on the topic.

For the purposes of this paper 'parents' should be read to include legal parents and guardians of children in two adult care-giver families, as well as care-givers in common law and single-parent families. 'Children' should be read broadly to include those under eighteen years of age. Currently the minimum age of criminal responsibility for young offenders in Canada is twelve years. The *Youth Criminal Justice Act* applies to youth up to eighteen years of age. In the Australian

states the minimum age of criminal responsibility is ten years, and state juvenile justice legislation applies to youth up to eighteen years in all states apart from Queensland where it is seventeen years.

Part I: Admonishing Parents and Children

A common refrain in the media of Western countries is that youth crime is caused by faulty individuals (parents and or youth) and faulty circumstances (so-called 'dysfunctional families'). Often accompanying this public-culture discourse on the causes of youth crime is the popular, yet internally self-contradictory, demand that parents take responsibility for their children while at the same time children themselves need to be made more responsible. Prior to the 2008 Canadian federal election for example, the Conservative Harper government was promising amendments to the *Youth Criminal Justice Act* to allow the more frequent imposition of adult sentences and publication of the names of some young offenders (Clarke, Alphonso and Perreaux). Christie Blatchford, a newspaper columnist, relied on her 'anecdotal experience' and knowledge of the increase of shootings in Toronto to support such moves. Blatchford's view was that longer sentences should be about 'meaningful consequences' and harsher punishments, not simply deterrence. While this public-culture discourse is important and needs to be taken into account in any attempt to more adequately understand the trend toward enacting parental responsibility laws in Western countries, in the following section we restrict our attention to examining views that have been articulated in the social science literature for and against parental responsibility laws, along with arguments that have been made about why such laws have been enacted in an increasing number of Western countries in recent years.

1.2 Statistics on Youth Crime

Some state that in many Western countries there were marked increases in officially recorded crime and in violent crime by young

people since the 1980s (Shaw 1). There is evidence though that youth crime has not been on the increase and has in some cases even stagnated; for example in the United States (Howell) and Canada (Minaker and Hogeveen). In Australia, statistics show a comparable flattening and even steady decline in the rates of offending for juveniles aged between ten and seventeen years from 1995–96 to 2005–06, with offender rates declining from 4,092 per 100,000 juveniles in 1995–96 to 3,081 in 2004–05 (Australian Institute of Criminology 58), although there was an increase again in 2005–06 rising to "3,207 per 100,000" (Australian Institute of Criminology 59). The Australian Institute of Criminology (AIC) also notes in its 2007 report that rates of juvenile offending have dropped in the years covered by the report "by 24% for males and by 11% for females" (Australian Institute of Criminology 59). However the rates differed between the various types of offences. While "juvenile offender rates for assault increased by 14% between 1995–96 and 2005–06", juvenile offender rates "decreased by 54% for other theft, 19% for motor vehicle theft and 22% for unlawful entry with intent" (Australian Institute of Criminology 60). Despite this overall falling off of offending rates, the newspapers still widely promote the view that youth crime is spiralling and harsher sentencing and other measures are warranted.[2]

1.3 An Historical View

Barry Goldson and Janet Jamieson (83–84) have detailed the long history and literature from the United Kingdom reflecting the view that bad parenting is one of the main causes of juvenile delinquency. Their research dates back to the early nineteenth century with the report from the "Committee for Investigating the Causes of the Alarming Increase of Juvenile Delinquency in the Metropolis, 1816", with statements about the "improper conduct of parents" encouraging the "criminal propensities of their children". They detail the writing of Mary Carpenter with her diagnosis of "undisciplined" childhoods, and John Bowlby who pointed to the dangers in

"maternal deprivation" in producing criminals. Goldson and Jamieson (88–95) back this historical view with a theoretical one delineating the parallels between the call for a return to the 'traditional family' emanating from both the New Right and New Labour in the UK. This theory has been translated into UK government policy and legislation in terms of the current use of Parenting Orders (Youth Justice Board for England and Wales). Goldson and Jamieson (95) argue that these measures ignore the structural inequalities in society, and the "material" and "applied" contexts of the parents and children being targeted. 'From the "improper conduct of parents" at the beginning of the nineteenth century, to the "wilful refusal of parental responsibility" at the end of the twentieth century and the outset of the twenty first century, a discourse rooted in individual agency has served to displace any sustained analysis of structural context. This way of 'seeing' is particularly resonant within the contemporary realm of youth justice, and it shows no signs of abating. Parental responsibility laws have developed as a proposed answer to youth crime. As Tyler and Segady explain, "From Australia to England to the United States, localities have started to say that if children continue to behave irresponsibly, parents should be held accountable" (80).

1.4 Outcomes of Surveys on Community Views

However, there is no universal agreement with this thesis of responsibilisation as research by Brank, Hays and Weisz has demonstrated (Brank and Weisz 2004; Brank, Hays and Weisz 2006). According to a study conducted by Brank and Weisz, it appears the public may not be as supportive of these laws as the media tend to portray—"Overall, support for the concepts underlying these laws (responsibility, blame, and punishment) was relatively mixed. In general terms, the public appeared willing to place some responsibility on parents, but less willing to support blaming or punishing the parents" (473). The survey asked respondents, "When a teenager commits a crime, which of the following is most responsible, in

addition to the teenager?" A majority of respondents (68.7 percent) maintained that apart from the juvenile offender, the parent was most responsible for the criminal behaviour (Brank and Weisz 2004: 469). Yet the authors found that "The public did place some responsibility on the parents when a juvenile crime occurred; however, agreement with blaming and punishing the parents was low" (Brank and Weisz 2004: 465). When provided with actual examples the difference was marked— "The current studies confirmed that participants were even less supportive of parental responsibility laws when a specific juvenile and his parents were described than they were when they answered questions about parents in general" (Brank, Hays and Weisz 2670). Therefore the research led by Brank and Weisz has concluded that respondents "found parents more blameworthy and more responsible for their children's behaviors when the issue was considered globally, rather than when considered in light of specific case facts". In addition, the global attitudes of their 2004 sample were very similar to a national Gallup poll in 2006 (Brank and Weisz; Brank, Hays and Weisz 2679).

1.5 Proponents of Parental Responsibility

The issues and research surrounding parental responsibility have been addressed well in a 2006 NSW study.[3] The arguments for such laws are set out there. The advantages are recognised as being that inadequate parenting is a strong predictor of juvenile crime, and measures are needed to force parents to supervise and control their children. This is in line with a renewed push to make parents responsible for compensation payments and to ensure that their children comply and keep out of crime (Hil 1996a, 1996b). A similar useful summary of the current debates over parental responsibility in Britain is provided by Slapper (1997a, 1997b).

According to Roy, parental responsibility laws have brought victim issues to the forefront and have achieved greater justice for victims of crime. The author states however, that parental responsibility laws are only "band-aid" solutions to youth criminality and are only effective

"if they are combined with community based measures that address the root of youth delinquency" (142). In many cases, holding parents accountable occurs at the civil and not criminal level. In other words, victims make applications to small claims courts to receive compensation for their loss or property damage but parents are not criminally charged (Roy).

Much has been made of the role of parents regarding youth crimes. Many ask whether they should be held responsible, either morally or legally. Le Sage and De Ruyter argue that parents can be blamed for the crimes of their children because they have a duty to assist their children to develop in such a way that they become "morally competent" agents. They point out that a careful investigation should be undertaken before any blame and/or punishment is meted out on parents for the criminal behaviour of their children on the grounds of their neglecting their moral education duty. They however maintain that:

> Although we believe that the objection that there are other (additional) causes of juvenile delinquency does not undermine the reasonableness of the control duty as we defined it, we want to stress that governments that uphold criminal law on the basis of the parental control duty are obligated to invest in high quality welfare work as well as safe social environments and neighbourhoods (Le Sage and De Ruyter 795).

Some proponents of parental responsibility, like Zolman, maintain that the law should require a minimum level of parental supervision and that only through such legislatively required parental responsibility will an answer to youth crime be found. Various studies (Smetana; Kochanska and Aksan) have also been conducted which conclude that the quality of the attachment relationship between parents and children and quality of the disciplining method are

related to the development of prosocial or antisocial behaviour. As one writer notes:

> Whether it is damage to children or damage by children, sensibly alarmed politicians turn their sights towards families and those professionally charged with effecting cure upon dysfunctional ones. The message reads clearly: they are your children, therefore your job and your responsibility—and, of course, they are (Sarler).

There has therefore been a widespread belief that parents should be responsible for the crimes of their children and that inadequate child-rearing is one of the major causes of youth crime and delinquency (Hill, Lockyer and Stone).

1.6 Critics of Parental Responsibility

There has been criticism of making parents responsible for the crimes of their children (Roth 39). These critics hold that legal sanctions will not be the solution to inadequate parenting because inadequate parenting is often the result of incapacity to parent properly because of problems such as poverty, long working hours, drug abuse, and mental illness. Punishing parents is likely to increase tensions and financial hardship in families already in crisis. This is likely to be counterproductive in attempting to prevent juveniles from offending. It may also result in a parent harming their child. Better parenting is unlikely to prevent a child from continuing to offend because there is often a range of other factors that cause children to offend, and at this stage, many parents are unlikely to be able to control their children. Instead of blaming parents for being irresponsible it would be more effective to provide them with support, at an early stage, and to reduce socio-economic disadvantage (Roth 39).

According to White, focusing on parents as the key site of juvenile crime prevention misconstrues the nature of the problem and places the burden of care and responsibility on the individual, while simultaneously dismissing the impact of the retreat of the state from

assisting those families and young people who have been placed in precarious economic and social circumstances. Further, the problem is constructed primarily as one of ineffective child rearing. White states:

> …if we are serious about the promotion of 'good parenting' then it is essential to take seriously the diverse social, economic and cultural contexts of the task. Arbitrarily punishing the parents or imposing parenting classes in cases where the parents are left to struggle in basically unchanged social circumstances is a stop-gap measure at best (130).

Arthur has also addressed this issue and considered whether parental responsibility laws are an effective means of tackling youth crime or whether what needs to be addressed are policies that strengthen the family and improve parenting skills. Taking the argument a step further, Bessant and Hil ask whether the state, which is ready to penalise parents for the crimes of their children would also be prepared to face the same sort of liability when youth who have already been placed in care of the state commit crimes. Other writers have interrogated the reasoning behind making parents liable for the crimes of their children. For example, White (1998) undertakes a review of crime prevention measures in the UK, Australia and the United States, in which he critiques the logic of asking parents to 'police' their children and argues for a crime prevention strategy which contains practical rather than coercive measures, while Goldson and Jamieson argue that the new parent responsibility legislation comprises an "extension of punitiveness underpinned by stigmatising and pathologising constructions of working class families" (82) and that there is a significant expansion of state intervention into the family life. White writes:

> Our concern, however, is with those actions that involve coercion as a central element. In this context, coercion refers to elements of compulsion that are generally imposed upon a particular population group (for example, young people and their parents) from the top-down, with

> little consideration given to social consequences or to the participation of these groups in the decision-making process (118).

White further maintains that calls for parental responsibility did not always take into account differences in social and economic resources at the household level which also has an impact on the capacity of some parents to regulate their offspring's behaviour. He gives the example of Indigenous people in Australia and notes that in many instances poor educational background and social and economic circumstances contributed to poor self esteem which undermines parental authority. Therefore he maintains that the enforcement of a universal rule regarding parental responsibility would have unequal application. In fact, intervention on the part of the state in attempting to control and modify Aboriginal family relationships is said to have done more damage than good, and led to the further breakdown and fragmentation of these communities (Johnson 1991). Commenting on the debate over parental responsibility laws in England and Wales, Slapper (1997b) points out that:

> Anyone serious about being tough on the causes of crime must not just take one step back from the offender to look at his [sic] domestic upbringing and to berate apparently feckless parents. Another step must be taken to go behind the family to address the deep structural defects in our political economy, for it is problems like chronic unemployment, the lengthening of the working week, and high stress levels at work which are the cause of so much bad parenting (70).

Nancy White and her co-authors (White, Augoustinos and Taplin) have explored the psychological, political, legal, and parental notions of parental responsibility in Australia. According to this study, political justifications of legislation have involved positioning

parents whose children offend as either 'bad' parents or parents with poor skills. Once such parents were positioned as problematic then the benefits of the legislation to society, children and the parents were touted. However, this study found that as children mature, it is perceived that their responsibility increases. Parents were attributed significantly less responsibility for their children's offending behaviour, with their perceived responsibility decreasing as their children's age increases. The responsibility of children and their parents was also seen to increase significantly as the severity of the offence increased. The study also found that parents were attributed responsibility on the basis of their level of surveillance of their children, including how well they used supervision and communication to monitor their children appropriately. The study also found that parents employed various justifications to mitigate their own and their children's responsibility, with children's age being used to argue immaturity and therefore diminished culpability.

In another recent study Hollingsworth suggests that if the demand for parental responsibility continues, then the rights of both parents and the child will need to be addressed. Hollingsworth analyses the concept of responsibility as it has been used in youth justice, and the various mechanisms used to enforce responsibility on the parent in the UK, such as financial and non-financial liability. She examines how these have impacted on the rights of the child and the rights of the parent, particularly in light of Article 6 of the European Convention on Human Rights (ECHR) which protects an individual's right to a fair trial, and the examples of actions taken to try to enforce these rights under the Convention. Hollingsworth agrees with Garland and others on a practical/social and also on a conceptual level. She reiterates that parents have a responsibility *to their child* but that "parental responsibility should not be used as a mask to control and police the activities of children but to support them" (212).

Part II. Accounting for the Growing Popularity of Parental Responsibility Laws

Why have parental responsibility laws of one sort or another been enacted in many Western countries? In the following section we explore answers to this question, focusing in particular on the themes of the 'punitive turn' in youth justice, and global criminal justice 'policy transfer'.

2.1 The 'Punitive Turn' in Youth Justice

In recent years a number of researchers, led most prominently by John Muncie and Barry Goldson in the UK (Muncie 2005, 2008; Muncie and Goldson), have pointed to signs of an increasingly 'punitive turn' in juvenile justice across a number of Western countries. Summing up much of the cross-jurisdictional evidence that has been collected to date, Muncie notes that there is "compelling evidence" of a "greater governmental resort to neo-conservative punitive and correctional interventions and a neo-liberal responsibilizing mentality in which the protection historically afforded to children is rapidly dissolving" (107). Muncie documents a "tangible repenalization of young people in England and Wales who were (and continue to be) subjected to a 'new correctionalism' of intensive pre-emptive intervention". He also points to "a USA-driven neo conservative punitiveness" which seems to be spreading across Western countries even "in the context of the near universal ratification of the 1989 UN Convention on the Rights of the Child (UNCRC)"; which he calls "the most ratified human rights convention in the world, but lamentably also the most violated".

Muncie (2008: 108) notes that "On the basis of studying numerous published commentaries on juvenile justice emanating from the US and various UK and European jurisdictions over the past decade, arguments in support of the 'punitive turn' thesis are unequivocal" (108). In particular, he documents the 43 per cent increase of youth incarceration in the US during the 1990s and the number of states

in the US which until 2005 continued to execute "those who had committed serious crimes at age 16 and 17". He also notes how "Almost all states have made it easier to transfer young people to the adult system, have created mandatory minimum custody sentences and have undermined the principle of confidentiality by facilitating the sharing of youth defendants' social history among criminal justice, education, health and social service agencies and the media" (Amnesty International; Snyder; Mears). Muncie states that the evidence is "that not only in the USA and England and Wales but throughout much of Western Europe, punitive values associated with retribution, incapacitation, individual responsibility and offender accountability have achieved a political legitimacy to the detriment of traditional principles of juvenile protection and support" (Muncie 2008: 110–111). While Muncie's thesis on the punitive turn in youth justice may well fit the case of the US, England and Wales and other Western European countries, it is not at all clear whether the thesis is supported with evidence from other Western countries like Australia and Canada, where youth incarceration rates have not increased significantly in recent years (but rather in some jurisdictions have declined), and where arguably less-punitive sanctions (like family group conferencing and restorative justice) are being increasingly used in lieu of the formal youth court proceedings and custodial sentences (Bala, Carrington and Roberts; Cunneen and White; Doob and Sprott). However, there may also be other signs of the 'punitive turn' in youth justice, such as the increasing 'responsibilisation' of parents for the behaviour of their children, that may be more applicable to countries like Australia and Canada, which we speculate on in our conclusions.

2.2 Policy Transfer

Policy transfer has been defined as the "process by which knowledge of policies, administrative arrangements, institutions and ideas in one political system (past and present) is used in the development of policies, administrative arrangements, institutions and ideas

in another political system" (Dolowitz and Marsh, cited in Jones and Newburn 2007: 27). From the outset, it is probably wise to acknowledge that Trevor Jones and Tim Newburn in their studies have found that the policy process in the criminal justice area is not easily classified. It is not simplistic. In their recent examination of US influence over British crime control policy, they argue that "none of the extensive writing in this field has suggested a simplistic picture of 'total' convergence or divergence between nations. Indeed, it is clear that the closer one looks at developments in penal policy, the more complicated the picture becomes". They note the possibility of convergence and divergence occurring at the same time. With regard to US influences on UK crime control policy, they state that "One clear finding is that, despite widespread perceptions of strong US influence on criminal justice developments, we found no evidence of the straightforward importation of US policies by British politicians and policy makers" (Jones and Newburn 2007: 159).

Zero tolerance policing (ZTP) provides an excellent case study of the policy transfer process. The zero tolerance concept originated in the US as a result of its 'war on drugs' during the Reagan administration of the 1980's (Jones and Newburn 2004). This approach then became the prototype for "zero tolerance policing" (ZTP), which paved the way for the drastic changes that occurred in New York city under the newly elected mayor, Rudolph Guiliani in the early 1990s. It involved an aggressive approach to 'cleaning up the streets' of New York, and resulted in those acting inappropriately being removed from visibility on the streets. The UK adopted the approach (Dixon; Jones and Newburn 2004; Cunneen and White; Marshall). Vestiges of the approach have also been evident in Australia (WA *Child Welfare Act 1947* s138B—taking children off the streets and home) (Cunneen and White 253). In Canada, the policy has been used in a different context in relation to outlawing violence against women and children in the home (Ursel).

Extrapolating Jones and Newburn's argument to the topic of the current paper, their research would suggest that the parental

responsibility laws and policies that are currently being taken up in Canada and Australia probably also do not involve any simple one-way policy transfer process, but likely something rather more complex. A hint of this complexity is suggested in the work of Jerry Tyler and Thomas Segady on the development of parental liability laws in the US, where they note several different instances of inter-state and cross-national policy transfer. In one instance, the small town of Silverton, Oregon, gained national and international attention in 1995 when it enacted an ordinance that "made parents liable for a $1,000 fine and up to $25,000 in damage restitution as well as assignment to parenting classes if their kids committed delinquent acts". By the end of the year, "the state of Oregon had followed with a similar law, and Silverton authorities had requests from Europe, Japan, and Australia for copies of their ordinance" (Tyler and Segady 86–87). Another instance of the transfer of policy ideas, or at least the influence of cross-national rhetoric about the need for action to make parents responsible for youth crime, is the Canadian opinion poll of 1996 mentioned by Tyler and Segady, which "indicated that up to 40% of Canadians support to one degree or another mandatory 'parenting courses' and 'parenting licenses'", while "more than a third agreed that fines and jail terms were acceptable for parents whose children break the law" (90). Tyler and Segady (91) also cite as evidence of the widespread concern about making parents more responsible for the behaviour of their children an article in the politically conservative western Canadian *Alberta Report* (Byfield), in which the author claims that the main problem with the current generation of parents in Western countries is that they are putting too much "energy into making teens happy and comfortable instead of responsible" (91). One of the goals of more explicit cross-jurisdictional research, which we begin to take up in this paper, is that of attempting to develop a more detailed and nuanced analysis of the way in which policy ideas and practices regarding parental responsibility for youth crime now circulating in countries like Australia and Canada are similar or different, and, in turn, how we might be able to explain these convergences and divergences.

2.3 Garland's "culture of control" and responsibilisation

David Garland is one of the most influential current theorists in criminology whose work has been drawn on to provide a foundation for theorising about the 'punitive turn' in youth justice and the increasing responsibilisation of parents (cf. Goldson and Muncie; Muncie 2008). In particular, Garland's book on the *Culture of Control: Crime and Social Disorder in Contemporary Society* (2001) has gained widespread attention and praise, as well as constructive criticism, for the thesis he develops in it regarding the direction taken by criminal justice developments in the US and the UK since the 1970s (Hogg; Loader and Sparks; Voruz). Garland argues that in the period since the 1970s "The theories that now shape official thinking and action are control theories of various kinds that deem crime and delinquency to be problems not of deprivation but of inadequate controls. Social controls, situational controls, self-controls—these are the now-dominant themes of contemporary criminology and of the crime control policies to which they give rise" (15). This view shifts the focus away from the individual criminal towards prevention of the criminal event. According to Garland,

> …the criminologies of the welfare state era tended to assume the perfectibility of man, to see crime as a sign of an under-achieving socialization process, and to look to the state to assist those who had been deprived of the economic, social, and psychological provision necessary for proper social adjustment and law-abiding conduct. Control theories begin from a much darker vision of the human condition. They assume that individuals will be strongly attracted to self-serving, anti-social, and criminal conduct unless inhibited from doing so by robust and effective controls, and they look to the authority of the family, the community, and the state to uphold restrictions and inculcate restraint. Where the older criminology demanded more in the way of welfare and

> assistance, the new one insists upon tightening controls and enforcing discipline (15).

According to Garland, responsibilisation means that "Instead of addressing crime in a direct fashion by means of the police, the courts and the prisons, this approach promotes a new kind of indirect action, in which state agencies activate action by non-state organisations and actors" (124). This is a strategy by state agencies to spread the responsibility for crime control through activating broad alliances within the community. In this way private agencies are being called upon to share responsibility for crime control. What are the objectives in doing this? Garland sees their focus "To spread responsibility for crime control onto agencies, organisations and individuals that operate outside the criminal justice state and to persuade them to act appropriately" (124–125). The keywords in this process are "partnership", "alliance", "activating communities", "multi-agency approach". Responsibilisation recognises the fact that the state alone cannot simply enforce control through legal sanctions. All facets of the community are being asked to play a role in "helping to reduce criminal opportunities and enhance crime control"—from quasi-governmental organisations and town planners down to parents (Garland 126). Some other examples of responsibilisation include community policing policies and the Neighbourhood Watch programme.

2.4 The responsibilisation of young offenders and parents

According to Goldson and Muncie (91, 93), the influence of the 'punitive turn' in criminal justice and movement toward responsibilisation on the discourse and practice surrounding youth crime and young offenders can be seen to varying degrees in developments that have occurred in a number of Western countries regarding: the diminishment of the 'special status' of 'childhood'; the retreat of welfare protectionism; the increasing responsibilisation of children through the process of 'adulteration'; the cross-national expansion of the penal population of young people; and the

burgeoning wave of authoritarianism and punitivity that is sweeping across many countries of the advanced capitalist world. Responsibility is thus one of "the key themes to emerge from the reforms to the youth justice system that have taken place since 1998" (Hollingsworth 190). The introduction of parental responsibility laws mean that parents and legal guardians are increasingly required to account for their actions in respect of the offending behaviours of their children (Bessant and Hil). Brank, Hays and Weisz point out four main reasons leading to calls for parental responsibility:

- The youth or juvenile justice system has been adjusted to resemble adult criminal court more closely;
- There is the perception that the juvenile court system has failed to meet its intended objective of rehabilitating juvenile offenders;
- The public is of the opinion that serious youth crime is on the increase;
- Social science research has suggested that older juveniles (16 and 17–year-olds) have similar competency levels to those of young adults (18 to 24–year-olds) on a number of different dimensions.

All of these social forces and ideas have been translated into situations where parents and/or guardians are being blamed for failing to discharge their responsibilities of care and control. In the next section of this paper, we look more closely at how parental responsibility for youth crime has been legislated in Australia and Canada.

PART III: The Scope of Parental Responsibility Laws in Australia and Canada

3. 1 What are Parental Responsibility laws?

Under common law parents could be liable for 'negligent supervision' (Stecker) but in more recent years this has been extended by three common forms of statutorily defined parental responsibility. These are:

1. Civil liability for property damage or personal injury, for example, monetary damages;
2. Criminal liability because of contribution to a child's actions, for example, criminal responsibility; and
3. Legal responsibility by requiring parental involvement with the child's criminal sanction, for example, parents asked to pay for court costs or participate in the court case (Brank and Weisz 465–466).

The most common form of legal sanction against parents has been compulsory counselling or education programmes. However changes to these laws mean parents can now be ordered to pay for the court costs, restitution, treatment costs, and penalty fines. Even imprisonment is a possibility. Brank and Weisz (466) note that while a person has no legal duty to act and be held responsible for the actions of others, "statutorily defined parental responsibility laws expand the common law by creating a duty to act and making parents responsible, in addition to the juvenile's own responsibility, for their child's actions".

In the United States of America, it is noted that since 1992, state legislatures have taken a harsher stance towards juveniles and their parents through the enactment of parental responsibility laws which range from requiring parenting courses, to fines and even imprisonment (Tyler and Segady; Edmonds). In 2002, the Education Secretary in the UK thought parents were responsible for the "cycle

of disrespect" in children and that parents of regularly truanting or disruptive children should be forced to attend parenting classes or be fined up to £1,000 (BBC News 2002). In 2008 proposals were made in the UK for parents to be made legally responsible for children completing a community sentence by paying penalties, compulsory parenting orders and in the extreme cases, even prison (Travis).

In Australia, youth justice falls within state jurisdiction and many states have passed some form of parental responsibility legislation in the last few years. The Australian Capital Territory has no legislative provisions regarding parental responsibility for youth crime,[4] but examples of parental responsibility laws in the other Australian jurisdictions include payment of compensation for loss to property or personal injury (Queensland), undertakings by parents/guardians (South Australia, Victoria), contribution to the costs of child's detention and Family Responsibility Orders (Northern Territory), Care Plans and Responsibility Contracts (NSW) and Responsible Parenting Agreements (WA).

This comparative table sets out briefly the provisions on parental responsibility in the various states of Australia.

Jurisdiction	**Types of Orders**	**Legislation**
NSW	Parental Responsibility Contracts	s38A *Children and Young Persons (Care and Protection) Act 1998*
NT	Contribution to costs of detention Family Parenting Orders	s133 and Part 6A *Youth Justice Act 2005*

Qld	Payment of Compensation can be ordered where 'compensation should be paid to anyone, and a parent may have contributed by not adequately supervising, and where it is reasonable for parent to pay compensation'	ss258 and 259 *Juvenile Justices Act 1992*
SA	Undertakings	s27 *Young Offenders Act 1993*
Vic	Undertakings	s363 *Children, Youth and Families Act 2005*
WA	Responsible parenting agreements and orders for children under 15	*Parental Support and Responsibility Act 2008*

The most recent examples of the scope of these policies are in changes introduced to legislation in the Northern Territory. The *Youth Justice Act 2005* (NT) has replaced the *Juvenile Justice Act* (NT). Under section 133(1) of the *Youth Justice Act 2005* (NT), if a court orders a youth to be detained at a detention centre under section 83, the court may order a parent/s of the youth to pay an amount towards the cost of detaining the youth in the detention centre.[5] The government there has announced policies claiming youth crime as being unacceptable, that some families do not seem to care about their children's behaviour and that therefore they were to be held responsible for their children's actions. New legislation now means that parents could be placed on Parental Responsibility Orders to ensure they better monitor their children, and that breaches of the

Parental Responsibility Orders would result in "fines imposed and non-payment of fines may result in non-essential household assets like flat screen TVs being seized".[6]

NSW introduced its Care Plans and Responsibility Contracts into the *Children and Young Persons (Care and Protection) Act 1998* in 2006. Part 3 covers Care Plans and Parental Responsibility Contracts. Section 38A(1) defines a "parent responsibility contract" as "an agreement between the Director-General and one or more primary care-givers for a child or young person that contains provisions aimed at improving the parenting skills of the primary care-givers and encouraging them to accept greater responsibility for the child or young person". The contract needs to be registered with the Children's Court and provisions can include attendance for treatment for alcohol, drug or other substance abuse, counselling, drug testing, or participation in courses aimed at improving the parenting skills of the primary care-givers, during the term of the contract.

In recent amendments by the Queensland government to the *Juvenile Justice Act 1992* there is no attempt to widen the parental responsibility provisions which had been canvassed in the Queensland Department of Communities review of the be *Juvenile Justice Act 1992* in 2007.[7] The balance at least in Queensland seems to be swinging towards responsibilising youth rather than responsibilising the parents. In Queensland, the provisions on parental responsibility in Part 7 Division 16 of the *Juvenile Justices Act 1992* are limited to a payment of compensation under Section 258.

According to s9, such compensation covers—

> (a) loss caused to a person's property whether the loss was an element of the offence charged or happened in the course of the commission of the offence; or
>
> (b) injury suffered by a person, whether as the victim of the offence or otherwise, because of the commission of the offence.

These provisions do not apply to children who are wards of the state (s259 [12]).

Youth justice is administered in South Australia by the Department of Families and regulated by the *Young Offenders Act 1993* (SA) and the *Youth Court Act 1993* (SA).[8] On 10 November 2004, the Hon Graham Gunn MP introduced the *Parental Responsibility Bill 2004* (SA) which sought to impose criminal liability on parents for offences committed by their children and to make related amendments to the *Young Offenders Act 1993* (SA). Under the proposed section 4 of the bill, a parent who wilfully or negligently failed to exercise an appropriate level of supervision or control over his or her child's activities, contributes to the commission of an offence of which the child is convicted or found guilty, is also guilty of an offence. The maximum penalty under this offence is $125 for a first offence and $1,250 for a subsequent offence. The bill also sought to amend the *Young Offenders Act 1993* by giving the Court power to order a parent or guardian of a youth who has been convicted of an offence to undergo counselling for youth development and preventing further offending by the youth.[9] The bill was commended to the House on Wednesday, 10 November 2004.[10] The bill however, lapsed in the House of Assembly due to prorogation. Currently in South Australia, under Section 27 of the *Youth Offenders Act 1993* (SA), the court may require a supplementary undertaking from the guardian to ensure compliance with the conditions of the youth's undertaking, to take specified action with the youth's development and to guard against further re-offending by the youth.

Tasmania currently does not have any laws where a court may order a parent to pay compensation or to enter into an undertaking in relation to youth offending. However, under section 102 of the *Youth Justice Act 1997* (Tas) the court has the power to issue a summons requiring a guardian to appear at proceedings if the Court considers attendance is appropriate. A warrant may be issued for the guardian's arrest if the summons is not complied with.[11]

In Victoria, youth justice is administered by the Department of Human Services—Children, Youth and Families in Victoria. Chapter 5 of the *Children, Youth and Families Act 2005* (Vic) replaced the *Children and Young Persons Act 1989* (Vic). Under section 363 of the *Children, Youth and Families Act 2005* (Vic) the court may order the child and the child's parent to give an undertaking to do or to refrain from doing the acts specified in the undertaking for a period not exceeding six months or twelve months in exceptional circumstances. Currently, Victorian legislation does not provide power for a court to order a parent to attend hearings or to pay compensation for youth offending.

Western Australia recently enacted the *Parental Support and Responsibility Act 2008* (WA). The object is to acknowledge and support the primary role of parents in safeguarding and promoting the wellbeing of children; and to support and reinforce the role and responsibility of parents to exercise appropriate control over the behaviour of their children.[12] Part 5 deals with Responsible Parenting Orders.[13] The court may make an order against the parent to undertake parenting guidance counselling, to take all reasonable steps to ensure that the child attends school, to take all reasonable steps to ensure that the child avoids contact with a specified person or specified persons, or to take all reasonable steps to ensure that the child avoids a specified place or specified places.[14] This section has been given a five year time trial.[15] Section 18 sets the grounds for making a responsible parenting order which are as follows:[16]

> (a) the child has been found guilty of an offence;
>
> (b) a matter, in respect of an offence allegedly committed by the child, has been referred to a juvenile justice team under the *Young Offenders Act 1994*;
>
> (c) the child is engaging in, or has engaged in, behaviour likely—

(i) to cause harm to the child or any other person;

(ii) to harass or intimidate other persons (other than those of the child's household); or

(iii) to cause damage to property, and that behaviour is part of a pattern of behaviour or is, of itself, of a kind that is sufficiently serious to justify the Court making an order;

(d) a School Attendance Panel has recommended, under section 40 of the *School Education Act 1999*, that an application for a responsible parenting order be made in respect of a child; or

(e) a School Discipline Advisory Panel or a Disability Advisory Panel has recommended, under section 92(3)of the *School Education Act 1999*, that an application for a responsible parenting order be made in respect of the child.

A parent who fails to make reasonable efforts to comply with a responsible parenting order commits an offence and is liable to a $200 fine.[17]

Therefore, there has been a rash of new legislation introduced throughout the various jurisdictions in the last few years seemingly placing more onus on parents to control their children and making them liable if they do not.

3.2 Case Examples from Queensland and Western Australia

It would seem these provisions are not used widely. The case of *R v CB & KE*[18] is an example of a situation that arose under the Queensland legislative provision. The parents of two juvenile offenders were ordered to pay $1,000 each as compensation to the victim of their children's crime. The offenders were in their early teens and were Indigenous. In situations such as this, what happens

if the parents cannot meet the payments? It would seem that a parenting order, if filed in the Magistrate's Court, can be enforced like any other order of the Magistrate's Court under Chapter 19 of the *Uniform Civil Procedure Rules*. That gives the court a range of options for issuing enforcement warrants, including redirecting earnings, seizing and selling property. What might be the effect of such an order? At the very least, more monetary pressure may heighten tension in a household. Surely there are other options that would be more effective and indeed more 'supportive' to the parents, and therefore more likely to result in a more optimistic prognosis for the young offender, than extending the state powers to punish parents for 'bad parenting'. Another example of the use of parent responsibility legislature is given by White, Augoustinos and Taplin when in 2004, a Western Australian Children's Court Judge ordered the parents of two juveniles to pay restitution amounting to $60,000 to the victims of their crimes; Judge Denis Reynolds invoking the *Young Offender's Act 1994* had ordered one family to pay $45,538 and the other $15,000 for their son's actions. Perhaps the very few instances in the case law reflect the role of the laws—that is, as a government threat against lax parenting standards.

3.3 Parental Responsibility Laws in Canada

Juvenile justice comes within federal jurisdiction in Canada. The provisions within the *Youth Criminal Justice Act* (*YJCA*) largely relate to ensuring that the parents act to support their children who are facing criminal charges. For example under Section 27(1), the youth justice court may order the attendance of parents. Any parent who fails to attend without reasonable excuse is guilty of contempt.[19] Part 4 deals with sentencing for young persons and does not prescribe any penalties that apply to parents.

Parental responsibility made an appearance within the previous *Young Offenders Act* (*YOA*), under its 'Declaration of Principle', section 3(1)(h). It stated that

> parents have responsibility for the care and supervision of their children, and for that reason, young persons should be removed from parental supervision either partly or entirely only when measures that provide for continuing parental supervision are inappropriate.[20]

Unlike the *Juvenile Delinquents Act* that supported state intervention in cases where parents had proven to be inadequate sources of discipline for children, the *YOA* stressed that individual accountability made the young person look like a "rational 'cold, calculating' criminal" (Havemann 33). Parental responsibility and accountability is mentioned, under section 9 and 10 of the *YOA*. The former states that court proceedings may become invalid if parents or guardians were not notified as soon as the young person is taken into custody. The latter, stipulated that it was a criminal offence if parents failed to attend youth court proceedings without reason (Havemann). From a political perspective, during the era of the *YOA*, members of the Conservative party called for an offence that targeted "poor parenting" styles (Havemann) and the Solicitor General at that time pointed out that "I would like to see parents punished more for their responsibility for crimes committed by young people… [and] see [this] develop in the context of the Criminal Code and in the jurisdiction of the adult court".[21]

This issue of notice still remains an important component to the *YCJA*. There is a mandatory clause for notifying parents of the information pertaining to their child's arrest and court proceedings (section 26). However, according to Doug Hillian and Marge Reitsma-Street, "the justice system has no responsibility to ensure that parents understand their rights or to support them in carrying out their responsibilities when they need to take days off work and to travel to attend various court proceedings" (23). This statement speaks volumes if we were to apply it in the context of parental participation in youth conferences or mediation measures as part of restorative justice initiatives. Perhaps then the participation of

parents in the lives of their children is limited if parents are not supported by the courts as the authors suggest.

According to some authors, the courts make attempts at monitoring or evaluating how parents fulfill their parental responsibilities, however, as they point out, "helping parents control and care for their children is reserved for the rhetorical statements of principle and discretionary provisions" (Havemann; Reitsma-Street 1989/1990 cited in Hillian and Reitsma-Street 22). In other words, such mention of parental responsibility in the care and/or control of children is found in reports compiled by youth justice workers (that is, probation officers), who are to describe—to the presiding judge— the "relationship between the young person and their parents, and the degree of parental control and influence" (*YCJA* section 40(2) (d) (vi)). There are also provisions under the *YCJA* that stipulate that a child can only be released to a responsible person. Under section 31 (1) it states that: "A young person who has been arrested may be placed in the care of a responsible person instead of being detained in custody". There are conditions that must be met in order for placement to occur. For one, under section 31 (1) (b) that "the person is willing and able to take care of and exercise control over the young person"; and section 31 (1) (c) adds that "the young person is willing to be placed in the care of that person".[22]

In Canada the provincial and territorial governments can also enact laws relating to parental responsibility outside of criminal legislation. However, there are only three provinces in Canada that have taken the step to enact separate legislation that can make parents civilly liable for the criminality of their children. These are: British Columbia, Manitoba and Ontario. In British Columbia, the *Parental Responsibility Act* (2001) points out that individuals or insurance companies can "use small claims court to commence a civil action against a parent of a child who caused property loss…unless able to satisfy the court that reasonable supervision was exercised…the burden of proof is not on the state to prove parental negligence, but on the parent to prove he/s should not be held liable" (Hillian

and Reitsma-Street 21). Under the same title, both Manitoba (in 1997) and Ontario (in 2000) created laws for which parents can be financially held accountable for the intentional damages caused by their children (under Ontario's laws) or as is in Manitoba, parents can also be held legally responsible for the wrong doing of their children (Roy).

Therefore, despite the mention of parents within the *YCJA*, there are no clauses that stipulate parental responsibility per se. It is therefore, only provincially, and on a limited scale, that parental responsibility laws have been enacted in Canada. This makes the Canadian experience quite different from that in Australia, and also from the experience of other Western countries like the UK and the US, where it is known that a more aggressive approach has been taken to attempting to make parents responsible for youth crime.

Part IV: Setting an Agenda for Further Research

There are several avenues for further research which can lead from the initial comparative examination of the Australian and Canadian experiences undertaken in this paper. One possibility is a much broader multi-country study aimed at testing the notion of 'Canadian exceptionalism'; that is, whether Canada, perhaps because of its unique history, cultural and political system, has not gone down the same 'parental responsibilisation' road as other Western countries.[23] Another fruitful line of research would be to undertake a more detailed study of the cross-jurisdictional transfer of policy ideas and approaches to parental responsibility across a smaller number of different Western countries as well as across individual states and provinces within these national jurisdictions. For example, just as we have found that there is variation across Canada in the enactment of provincial parental responsibility laws, there may also be considerable variation across the US states, and in other jurisdictions with federal political systems. An appropriate methodology for this type of study could involve a three-pronged approach, including: a comparative

analysis of the history of youth justice in each jurisdiction; a detailed discussion of the development of parental responsibility laws in each jurisdiction; and a detailed 'discourse analysis' of government debates, speeches and reports that address parental responsibility, with the aim of a more thorough examination of evidence concerning the degree of policy transfer across jurisdictions, and the extent of the claimed 'punitive turn' in youth justice across Western countries. The authors of this paper are currently undertaking research of this nature, the results of which we hope will shed considerably more light on the issue and challenge the all too often refrain that bad kids are simply the product of lousy parents.

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Notes

[1]City Council Meeting, Southfield, Michigan, 1996 (cited in Tyler and Segady 79–80).

[2]For recent Australian and Canadian examples of this see: Roberts; Marshall; Smandych.

[3]Roth; Tyler and Segady; Goldson and Jamieson.

[4]The relevant Act is the *Children and Young People Act 2008*, with Chapters 5–9 dealing with criminal matters.

[5]*Youth Justice Act 2005* (NT) sec133(5).

[6]Northern Territory Government. "Cracking Down on Youth Crime"; Northern Territory Government, "Parental Responsibility Orders start tomorrow."

[7]Queensland Department of Communities http://www.communities.qld.gov.au/youth/youth-justice/juvenile-justice-ac/ on 18 August 2008.

[8]See also the Juvenile Justice Final Report by the Select Committee on the Juvenile Justice System dated 31 May 2005. To date none of the recommendations have been implemented or tabled.

[9]Schedule 1, section 2 *Parental Responsibility Bill 2004* (SA)

[10]Hansard at 830

[11]*Youth Justice Act 1997* (Tas) s102(2).

[12]*Parental Support and Responsibility Act 2008* (WA) s5(1).

[13]Section 13(1).

[14]Section 14(2).

[15]Section 14(5) states that the Court cannot make an order after the fifth anniversary of the day on which this section came into operation and an order in force on or after that anniversary ceases to have effect at the end of six months immediately following that anniversary, if it does not otherwise cease before that time.

[16]Section 18.

[17]Section 21(1). *Parental Support and Responsibility Act 2008* (WA). Date of assent—14 April 2008 (Act no 14 of 2008). Entry into operation date to be fixed by proclamation (ss 3 and 4 and Parts 2–7). Bill was introduced into the Legislative Assembly on 1 June 2008 with the second reading speech given on 1 June 2005. Bill was introduced into the legislative council 13 September 2005 with the second reading speech given on 13 September 2005.

[18]Children's Court of Queensland 4 of 2005, 5 April 2005.

[19]Section 27(4)

[20]Cited in Havemann, emphasis in original.

[21]Justice and Legal Affairs 1982, cited in Havemann 33.

[22]Government of Canada, Department of Justice, http://laws.justice.gc.ca/en. Accessed 18 May 2008.

[23]For an example of this type of argument applied to the adult criminal justice system, see J. Meyer and P. O'Malley.