

Parental Responsibility for Youth Crime:
A Comparative Study of Legislation in Four Countries.

by

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ABSTRACT

This is a comparative study of how four countries –Canada, United States of America, England and Wales, and Australia –have developed youth crime related parental responsibility laws. In particular, I explore how governments have responded to calls for making parents more responsible for the criminal behavior of their children by relying on methods of governing that seek to incorporate the concept of “responsibilization” into legislation and practice. In doing so, I show how governments in a number of countries have ostensibly moved toward less state intervention in the prevention of youth criminality and have come to rely more on parents by enacting laws that acknowledge parental accountability for the criminality of children. In addition, this study uses the concept of policy transfer to examine how those responsible for developing youth criminal justice policy look to policies or laws in other jurisdictions for ways to prevent youth criminality. Despite the fact that there are similarities in legislation across the four countries examined in this study, only minimally do governments in these countries make reference to policies found in other countries. The thesis also looks at specific national and state–level government debates surrounding parental responsibility laws, and the perceptions governments elected officials have of youth criminality and parental responsibility. In order to determine the views held by politicians at the time parental responsibility legislation was considered, I undertake a qualitative data analysis of government debates through the use of the various databases that record sessions and activities of national and state/provincial legislatures. In doing so, I found that across the four countries there are nonetheless similar perceptions about parental responsibility laws and about the roles parents must play in the prevention of youth criminality.

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CHAPTER ONE INTRODUCTION

“The justice system cannot prevent dysfunctional families...the justice system cannot prevent the negative aspects of society that lead to crime.”¹

As the above quote may suggest, too often does society rely on the criminal justice system to fix the problem of youth criminality. However, when the media prints stories of youth criminality rising, often times it is also society that asks, “Where are (or were) the parents of this kid?”

The relationship between parent and child has been studied and debated from both the social and psychological perspectives where emphasis is placed on the importance of the familial domain, where children grow up and learn life skills. According to Paul W. Schmidt (1997, cited in Thurman 2003: 106), the family is “so valuable that it has garnered constitutional protection” and as one judge in *Prince v. Massachusetts*² pointed out

It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.

It is the goal of this thesis to explore parental responsibility laws across four countries: Canada, United States of America, England and Wales, and Australia. Many of those, who have written about such laws argue that they exist not only for their narrow legal purpose of holding parents accountable for youth criminality, but also to define

¹ Jack Ramsay, Canadian Parliament Private Members’ Business, Hansard, February 20, 1995.

² Cited in Casgrain 1990-1991: 180. Case law 321 U.S. 158 (1944).

what proper parenting should be. In many respects, parental responsibility laws have become a template for what proper and acceptable parenting should be and thus when children commit crimes, the conclusion made is that it was the result of bad parenting and such parents must be accountable.

The interest in and development of such laws is also an indication of state action in shifting some of the responsibility of behaviour management from the state to external stakeholders such as parents. In several of his influential writings, David Garland has proposed a theory of “responsibilization” to describe the means by which personal responsibility – for crime prevention and/or behaviour – is transferred from the state into the hands of citizens. While Garland does not deal specifically with parental responsibility laws, his work suggests that parental responsibility laws may be a mechanism for the state to shift responsibility for preventing youth crime to parents. In the following study, I draw on Garland’s theory to examine how parental/guardian³ responsibility is situated within youth justice and linked closely to the development of parental responsibility laws.

In addition, the thesis examines how the development of parental responsibility laws may be linked to cross –national criminal justice policy transfer. As John Muncie (2004, 2005) and others (Doob and Tonry 2004: 1) have pointed out, in recent years countries have paid closer attention to what other governments are doing to combat youth criminality, and have “discovered that there was more than one way of responding to youths who offend.” Policy transfer occurs when countries learn from each other and possibly adopt similar legislation for addressing youth criminality. This study therefore

³ In this thesis, the terms “parent” and “guardian” are used interchangeably and I refer to parental responsibility to include all adults with legal guardianship over a child. This includes biological, adoptive couples and individuals with the legal custody over a minor.

also examines the extent to which the adoption of parental responsibility laws in the four countries under study is indicative of a trend toward increasing cross-national youth criminal justice policy transfer.

The thesis is organized into eleven chapters with chapter one providing an introduction to the topic of parental responsibility laws within the youth criminal justice system. In Chapter Two, I provide a discussion of the two theories that guide my discussion about this topic and provide an example of how policy transfer was utilized in the policing changes that occurred in the United Kingdom. Chapter Three includes a discussion about parental responsibility laws and the literature that developed around the topic of the parent-child relationship and how it has –in part –influenced the development of these laws. Chapter Four is about the research design and methodology I chose to use when gathering and analyzing political debates. I used the method of qualitative analysis to uncover the political opinions about these laws and the parent –child relationship as it relates to youth criminality. In Chapter Five, I detail the development of youth justice in the four countries and have also broken up the discussion by looking at individual states (in the case of the US and Australia). For Chapter Six, I detail parental responsibility laws in each country and look at individual state and provincial legislation as well. In Chapters Seven to Ten, I apply the technique of a qualitative analysis to examine perceptions underlying political speeches made in each country’s and state’s legislative assemblies about parental responsibility laws, youth criminality, and the role of parents. Lastly, Chapter Eleven provides a summary of my findings from the political debates and discussion of the relevance and implications of my research findings.

Therefore, it is through this analytical avenue that we may learn why parental responsibility laws came to be – in part – by examining what was said in government at the time these laws were considered. In other words, I show that politicians have a great deal of influence in the creation of such laws and the dialogue spoken can provide an insight into the reasons why parental responsibility laws exist. Furthermore, in applying the theory of responsabilization, I argue that since its emphasis is on shifting responsibility onto others for behaviour management, parental responsibility laws do in fact continue to allow the criminal justice system to be present in the lives of parents and hold them accountable for their children’s criminality. These laws subject parents to penalties – including parenting orders or financial obligations to pay for damages. The political tone was that of a conservative approach that explicitly voiced support for encouraging the familial domain as ultimately responsible for raising law –abiding children. No matter what country or political affiliation an elected official belonged to, their viewpoints closely resembled that of others. Families with children involved with the law were viewed as dysfunctional, irresponsible and at times, questions were raised as to whether some should be parents at all. The laws themselves appeared to be symbolic in nature and were intended to show that politicians were doing something about youth crime.

Likewise, despite the fact that there existed some similarities in legislation for the four countries, I would argue that my thesis only provides evidence of generalized policy transfer. This observation offers an opportunity for future research to continue a study of individual countries in a more in-depth fashion and perhaps speak with policy makers about how they formulate or amend laws, and whether research is conducted into other

jurisdictions. Also, as this was a thesis based on secondary data analysis, one of its limitations was that I was not able to ask whether these laws were in fact successful or how they operated within their respected jurisdiction.

CHAPTER TWO **THEORETICAL FRAMEWORK**

In order to examine parental responsibility within youth justice from a comparative perspective, it is useful to start with a discussion of the concepts of policy transfer and responsabilization and how they can be used to develop a theoretical framework to guide research. The concept of policy transfer has been previously used within criminology to address how countries look to other jurisdictions for methods of addressing and preventing criminality, while the concept of responsabilization has been used by several criminologists who have written about how some governments have shifted some of the responsibility for crime control to non-governmental agencies (i.e. like private police or private corporations) or to the public. In this thesis, I focus on parents of young people who engage in criminality as another population where the concept of responsabilization can be applied. I will first define policy transfer and provide a case study of how it has been used, followed by a definition of responsabilization and linking it specifically to parental responsibility. I then focus more directly on parental responsibility laws and highlight the literature that has emerged regarding these laws.

Policy Transfer

Providing a broad working definition of policy transfer will help to better situate it within the specific realm of criminology. Policy transfer can occur within any area including health, education or law and according to Dolowitz and Marsh (2000: 5), policy

transfer is the “process by which knowledge about 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.” Policy transfers can occur at local, national or international levels and governments can engage in adapting their own legislation or practices by referring to what has worked at these levels in various other social settings (ibid). Hence, some countries (or municipalities) look to each other for ways to improve their economic or social standings; or more specifically, within the context of the current study, to find ways of handling criminality “better”.

There are also particular motives that lead toward policy transfer. Many governments across the globe continuously look at what other governments are doing and pay close attention to the successes and failures that are occurring elsewhere. Richard Rose (1991 in Dolowitz and Marsh 2000: 14) has referred to this process as “lesson drawing”, and he explains how governments seek out new ideas for affordable means of solving problems within their own territory by using the example set out by other countries. As Rose points out, operating by means of lesson drawing enables states to search for “programmes in effect elsewhere, and [end] with the prospective evaluation of what would happen if a program already in effect elsewhere were transferred” to their own country.

Secondly, policy transfers may occur as a result of social or political changes that occur within a nation (Dolowitz and Marsh 2000). A change of government leadership or a rise in a particular social problem may be reasons why some governments reconsider the current state of legislation that is in place to handle the situation in question (i.e. high

crime rates or poverty). For example, when the New Labour Party took office in the United Kingdom (UK), its “showpiece legislation” (Vaughan 2000: 347), was the *Crime and Disorder Act* (1998). This Act paid particular attention to holding young offenders accountable for their criminality and embedded clauses that reminded parents “that they have a responsibility to the child” (Vaughan 2000: 356) and any deviation from proper parenting could result in legal action taken by the courts. Likewise, when the newly elected mayor of New York, Rudolph Giuliani took office, his approach to the “zero tolerance” philosophy was taken to new heights and he made drastic changes to how the city of New York would be policed – I discuss this example later in the thesis.

Furthermore, David Levi-Faur and Eran Vigoda-Gadot (2006) point out that policy transfer occurs as a result of a ‘shrinking world’ where lesson drawing and transfers are less constrained by cultural and geopolitical boundaries; and in a globalized world, the process of policy transfer is influenced by transnational forces that have shaped how domestic policies are reflected upon and changed (Newburn 2002). More specifically, literature that speaks to policy transfer within criminology describes how many policies are primarily imported from the US (Newburn 2002). Case in point, what has sparked interest in US youth justice – especially in the UK, is its focus on not only the “get tough” mentality, but also the innovative ways various states have approached youth crime effectively. Several authors (Dolowitz and Marsh 2000; Garland 2001; Muncie 2005; Zimring 2005; Zimring 1998 cited in Hogeveen 2005) have observed that the exchanges between the US and its western counterparts have resulted in an “Anglo-American convergence” that tends to dominate the literature on policy transfer processes. More specifically, Franklin E. Zimring (2005: 33) adds that there is a universal

acceptance of US youth justice models and institutions in Europe and Commonwealth countries. Zimring points out that these countries “have been explicitly modeled in their language, procedures and objectives on the American Juvenile court...no legal institution in Anglo-American legal history has achieved such universal acceptance among the diverse legal systems of the industrial democracies.”

Furthermore, authors such as David Garland (2000 cited in Jones and Newburn 2004; Garland 2001; Gray 2005) have followed this trend and observe that the UK and US for example, exhibit a common “culture of control”. As a result of political consciousness regarding high crime rates in both countries, penal problems and policies have moved in similar directions (Jones and Newburn 2004). Tim Newburn (2002) has observed that politicians within the UK have found ‘made in the US’ policies (Wacquant 1999b cited in Newburn 2002; cited in Muncie 2006) very appealing. It has been argued that more often than not, industrialized countries are looking toward the penal policies that have shaped US criminal justice systems (i.e. ‘zero-tolerance’ policing as I discuss later). Authors such as Swanson (2000) have referenced journalist and filmmaker, John Pilger, who has said that the UK Labour Party under Tony Blair was “being Americanised” (pg. 30).

Other authors have observed that pursuing policy transfer has something to do with “state interests” that are shared norms and “defined in the context of internationally held norms and understandings about what is good and appropriate” (Finnemore 1996 cited in Levi-Faur and Vigoda-Gadot 2006: 252). Likewise Finnemore adds that states do not define their interest based on domestic demands but “are shaped by internally shared norms and values that structure and give meaning to international political life.” In many

respects, policy transfer is also the result of countries moving toward closer relations with others and thus giving way for ideas to be shared and perhaps adopted. According to Levi-Faur and Vigoda-Gadot (2006: 255) “to facilitate policy transfer is to facilitate globalization” and if we were to apply this idea to criminal justice reforms, it is argued that there exists an interconnection between globalization and governance that seeks to result in “a rapid convergence and homogenization of criminal justice policies” (Muncie 2004: 154; 2005). Authors such as Hogeveen (2005) have also argued that what makes the UK *Crime and Disorder Act* similar to Canada’s *Youth Criminal Justice Act* is that both have attempted to place emphasis on the role of community-based initiatives such as restorative justice principles.

First, however, I draw attention to an example of policy transfer, which shows that policies can develop along the lines of similar philosophies but have varying applications in practice in different jurisdictions. What is important to gather from the example of zero-tolerance policing is the idea that one country can look to the example of another for a reference point from which to begin shaping its own policies.

Policy Transfer at Work: The Case of Zero-Tolerance Policing in New York City and the City of London.

The idea of “zero tolerance” policing was an innovative way to respond to disorderliness and it represented a “top-down” approach to crime control (Cunneen and White 2002). This approach meant that there was less direct community involvement and it relied on heavy police presence and intervention (ibid). Before making its debut as zero tolerance policing, the zero-tolerance concept originated in the US as a result of its

“war on drugs” (Jones and Newburn 2004) during the Reagan administration of the 1980’s. This zero tolerance approach then became the prototype for “zero tolerance policing” (ZTP), which gave way to the drastic changes that occurred in the state of New York (more specifically in the city of New York) under the newly elected mayor, Rudolph Giuliani in the early 1990’s and as a result, an aggressive approach to ‘cleaning up the streets’ of New York was underway (ibid). The concept behind ZTP was guided by James Q. Wilson and George Kelling’s “broken windows” thesis (1982)⁴, which emphasized that crime control should be approached with “vigorous enforcement-oriented approach towards incivilities and disorder in local areas” (Jones and Newburn 2004: 131). Chris Cunneen and Rob White (2002) add that police presences in “hot spots” in specific parts of urban centers would also target certain groups that frequent these areas (i.e. youth gangs in downtown areas) and were seen as a nuisance to residents and deemed inappropriate. This gave police greater authority to remove persons displaying such behaviours (Dixon 1998; Graboski 1999; Marshall 1999; Cunneen 1999 cited in Cunneen and White 2002).

The news of this new type of policing initiative eventually made its way to the UK as well. British policy makers traveled to the US to learn about this new way of policing (Jones and Newburn 2004). Eventually, the UK adopted a ZTP approach, as state officials were under the impression that large urban centers (i.e. London) were experiencing high criminality and would be ideal cities to apply ZTP. However, what was the over-zealous excitement toward ZTP quickly turned to a limited and short-lived experience (Newburn 2002; Jones and Newburn 2004). What remained of the ZTP

⁴ For further discussion: see David Dixon, 1998-1999. “Broken Windows, Zero Tolerance, and the New York Miracle.” *Current Issues in Criminal Justice* (10): 96-106; White, R (1998).

approach however was to focus on crime control in certain high crime areas and to control “minor situations in the interest of the ‘decent’ and ‘responsible’ citizen” (Dennis et al. 1997 cited in Newburn 2002: 167). As a result, certain parts of London (i.e. the Metropolitan Police in Kings Cross) began ‘cleaning up’ the area by focusing both on the minor infractions and major criminality in that the area (Newburn 2002). Despite this observation, what attracted UK politicians to zero tolerance had more to do with a political agenda – a tactic used to “convince an electorate to cast their vote for those who could be trusted to be toughest on crime” (Jones and Newburn 2004: 141). Trevor Jones and Tim Newburn in earlier studies done on ZTP in the UK have stated that even though ZTP exemplifies a policy transfer initiative, it had “not been visible in other than very minor experiments in mainstream British policing” (2002b cited in Jones and Newburn 2004: 142). What remained of the zero tolerance ideology was its influence in creating the *Crime and Disorder Act* (CDA 1998) from its blueprint.

According to Newburn (2002), far reaching changes were made to youth justice within the UK and what came to be the cornerstone to the *Criminal and Disorder Act* (CDA) was not only focus on addressing youth criminality but implementing orders that would heavily address disorderly conduct. A monumental component to the CDA was the power given judges to issue “parental orders” seeking to make parents more accountable for the criminality of their children. As one example highlights, the UK’s New Labour government published several ‘consultation documents’ that gave the courts “extended powers to punish parents who ‘willfully neglect their parental responsibilities’” (Home Office, 1997a cited in Goldson 2002: 88). Later in this thesis I detail parenting orders with specific mention of clauses that address parental responsibility.

Indeed zero tolerance as a policy and practice is an excellent example of a policy transfer process at work. We see how the US set an example to a new form of policing and dealing with criminality. What is obvious in this example is that other countries took the idea of zero tolerance and adapted it into their own policing methods. Even though these methods were short lived in the UK, they still made an impact by being a catalyst for creating the *Crime and Disorder Act*. According to Newburn (2002), policy transfer is one example of the ways in which governments define their problems in similar ways and hence create a shared terminology to define these problems. Others such as Jock Young (1999 cited in Newburn 2002: 175) point out that looking to what works in other countries is seen as a process of the current “general predisposition to believe in the easy miracle and the instant cure” of finding ways of handle criminality.

Furthermore with examples of policy transfer, when I speak to the various parental responsibility laws that exist across the four countries, I highlight how across Canada, the three provinces that enacted these laws have done so, with very similar clauses attached. Or in Australian states such as Western Australia, where similar parenting orders (parenting agreements) exist like those found in England and Wales.

The Theory of Responsibilization

David Garland (2001: 124) defines responsibilization⁵ as “the attempt to extend the reach of state agencies by linking them up with the practices of actors in the ‘private sector’ and the ‘community’ ...it involves a way of thinking and a variety of techniques designed to change the manner in which governments act upon crime.” What Garland

⁵ Garland (1999, 2001) has also referred to this concept as the “responsibilization strategy.”

suggests is that the primary objective of responsabilization is to “spread responsibility for crime control onto agencies, organizations and individuals that operate outside the criminal justice system and to persuade them to act appropriately” (2001: 125, emphasis added). In earlier works, Garland (1996 cited in Garland 1999: 21) has maintained that other individuals (or partnerships) are enlisted to form “a chain of coordinated action that reaches into criminogenic situations, prompting crime-control conduct on the part of ‘responsibilized’ actors.”

According to Nikolas Rose (1996), these actors are indeed individuals who are encouraged to take personal responsibility for their well-being or it is their “obligation to take active steps to secure this.” Garland (1999) also maintains that to support the notion of responsabilization within crime prevention tactics, individuals must support and possess a crime-conscious attitude. Some examples of being crime-conscious are when citizens form crime-prevention programs such as “neighbourhood watch” and hence, “govern crime problems by means of inter-agency cooperation and the activation of private initiatives” (Garland 2001: 126).

This explanation of responsabilization has also led Garland (1999) and others (Rose 1996; Garrett 2003) to apply Michel Foucault’s concept of governmentality to explain how crime has been problematized and controlled by state officials. Governmentality refers to ways governments can control populations by means of upholding power relations between state rulers and the ruled (Garland 1999). As Garland points out, governments rely on outside or “extended and enhanced [governors] and ‘guardians’ in the space between the state and the offender” (1999: 21). This brings up a familiar Foucauldian concept of “govern at a distance”, where within some literature, it is

suggested that the state exerts a broad range of control over the population but leaves room for “the exercise of localized judgment” to be possible (Garland 1997: 189, Garland 1999). In other words, localized judgment is in the form of individuals that embody the notion of “subjectification” (Garland 1997, 1999) and implies that individuals are responsible, security-conscious and crime preventing citizens. Jane Pickford (2006) has referred to Garland’s work on the concept of responsabilization and has contributed by addressing the perception that people are now solely responsible for managing the risk of becoming targeted for crimes; she argues that “becoming a victim of crime is not something that official agencies can alter...all citizens must practise practical avoidance methods in order to reduce the opportunity for crimes to be perpetuated against them” (pg. 34).

According to Burney and Gelsthorpe (2008: 470), individuals and agencies are “expected to respond to the government’s aims by acquiring Foucauldian self-management which delivers the required result without direct government action”. Similarly, Avery (1981 cited in O’Malley 1996: 200) adds that a significant aspect of responsabilization is the notion that “the prevention of crime and the detection and punishment of offenders, the protection of life and property and the preservation of public tranquility are the direct responsibilities of ordinary citizens.” This governing at a distance also emerges, as Rose (1993b, 1994 cited in Rose 1996: 328) points out, when techniques are created that govern without actually governing. He explains that this governing is “through regulated choices made by discrete and autonomous actors in the context of their particular commitments to families and communities.” I use this discussion of responsabilization as offered by Garland and others and apply it to the new

developing governance that aims to manage risk; where parents (and families) are “urged to take greater responsibility for social and economic ills” (Walters and Woodward 2007: 6) within the familial domain and hence, parental responsibility laws are seen as managing such risky behaviour rather than addressing the problems that may lead to youth criminality (Schmidt 1998). Others such as Jacinda Swanson (2000: 34) have argued that personal responsibility represents the “conjunction of a depoliticized notion of independence and of economic relations” and as Swanson argues, from a political viewpoint, personal responsibility entails that not only are individuals responsible to financially support themselves and their families but that they too, should solve their own social and economic problems. Swanson (2000: 30) adds that within a political atmosphere, leaders and citizens appear “justified in shifting the burden of solving political problems from government to individuals.”

For the purpose of this thesis, I argue that responsabilization grew out of the changing perspective that was taking place within youth justice across the globe. What characterized the changes in youth justice was the move from a welfare-based model of governance and into a justice model approach. As we see, various scholars have observed the shifts within justice policy to rely less on the welfare based framework (i.e. complete state intervention in the lives of the public) and more on a justice based framework or neo-liberal approach that seeks to engage individuals and extended state agents (i.e. the police) to take responsibility for the prevention of crime.

How each country approaches the change from welfare to justice-based operations can be exemplified in the varying policies that follow such change but according to Muncie (1999, 2004), there are definitive and universal claims about the welfare and

justice model perspectives. When we discuss the shift from a welfare to justice model, we also acknowledge the role that the discipline of social work has contributed. Scholars in the field of social and child welfare have recognized that in the prevention of youth criminality, the link between parental responsibility and youth criminality should be considered. In the following discussion, I speak to the role of social work and address its key contributions to examining youth criminality and the role of parents.

Briefly, with welfarism,⁶ we find distinctive characteristics of how youth crime would be approached and thus handled. First, delinquent children were viewed as the product of environments that deprive them of social, economic and physical advantages; since young people do not have full control over their criminality, this would imply that they could not be held responsible for their actions. Furthermore, all delinquent children were viewed as the same and therefore, could be cared for under the umbrella of one unified system that could identify and met their needs. According to Ian O'Connor and Margaret Cameron (2002), welfare policy was seen as the work of "child savers" who believed that youth criminality was the result of a combination of social factors, including most notably intrafamilial problems – poor parenting. These advocates were also concerned with educating and "[redeeming] the non-respectable working-class home... [and] it was the child who transformed the household into 'a family'" (Hendrick 2003: 26). Authors such as Paul Garnett (2003) have relied on Foucault's work in an attempt at locating social work as one facet of the 'disciplinary powers' that exist within the 'psy-professions' (i.e. psychology or criminology). In other words, social work was among the group of disciplines that introduced "new discourses, and technologies of treatment

⁶ See Muncie 2004: table 7.2 as adapted from Black Committee Report, 1979 (Belfast, HMSO) cited by Stewart and Tutt (1987).

and surveillance” (pg. 5)⁷ by intruding the presence of social workers into the lives of these families in need. Authors such as Dimitris (1997, cited in Thurman 2003: 107) show how the practice of social work becomes relevant when parental responsibility laws are used in court cases and social workers are called upon to work alongside judicial stakeholders in order to “use creative techniques to formulate solutions to the juvenile crime problem.” What Thurman (2003: 107) argued was that social workers are given the task of looking at the “total” picture when dealing with families and young offenders and “develop programs that emphasize the original juvenile justice philosophy of prevention, and reflect a balance between rehabilitation and accountability.”

This being said, it was the state’s obligation to intervene in families that were exhibiting such problems (O’Connor and Cameron 2002). Muncie (2006) states that the purpose of welfare driven support for individuals and families was based on a process of targeting and intervening in the lives of people who were perceived to have failed or were about to fail and/or were posing a risk for criminality. Garrett (2003: 83) has critically assessed the field of social work and argues that within the discourse, it continued to maintain “exclusionary new classifications and typologies for ‘problem families’.” Put another way, the field of social work has been viewed as a field, which identifies problematic cases and would deploy expert knowledge into such settings as youth court proceedings to “devise remedies that would be largely exercised through the family” (Vaughan 2000: 352). In other words, as Rose (1990 cited in Vaughan 2000:352-353) pointed out

⁷ See Donzelot 1979; Cohen 1979, 1985; Rose 1985, 1989 cited in Garrett 2003.

The family was reminded of both its social responsibilities and the common sociality it shared with other members of society and was used to inculcate those responsibilities within its individual members so that this was accomplished through persuasion.

Under the welfare model, the purpose was to locate the origins of youth criminality and look in depth at how delinquent children were products of failing families (Hil 1998). Should the state intervene, however, its role for dealing with youth criminality was under the umbrella of *parens patriae*, which viewed the youth court as taking the place of the parents of young people (Chapin 1997; Graham 2000; Snyder 2002; Cunneen et al. 2002; Green and Healy 2003; Shelden 2008). According to Randall Shelden (2008), the application of *parens patriae* was also evident in laws that dictated the state's involvement in the family and by trying to rehabilitate the young person (Graham 2000). The example the author points to was a law passed in Massachusetts (1646) –*the stubborn child law* –that “made it a capital offense for a child to disobey his or her parents” (pg. 4). Within the court setting, judges represented the wiser and caring “parent” who provided guidance to children who lacked such direction from biological parents (Chapin 1997). Garrett (2003: 82) explained that from the welfare perspective, there existed the notion that a ‘contract’ was formed between the government and those that were governed. Hendrick (2003:85) adds further that as long as social workers were involved in the lives of children, the role of parents was rarely ignored. What would occur was that parents were placed in an “associate role” in the treatment of their children.

For example, in reference to the UK Juvenile Offenders Committee of 1927, it was felt that as long as courts continued to address youth criminality and responsibility

on part of the young person, his or her delinquency would be addressed along the lines of social welfare and that criminality would continue to be seen as the product of “distinct psychological and social conditions” (Hendrick 2003:114). The role of this committee was to first to determine guilt or innocence and then to suggest proper treatment bearing in mind that the welfare of the child was of utmost importance (ibid). In a statement by the Department Committee on the Treatment of Young Offenders (1927, cited in Hendrick 2003: 9), children who were perceived to be beggars, or accompanied by “known thieves”, were not only a harm to society and to themselves but whose “neglect [led] to delinquency and delinquency [was] often the direct outcome of neglect.” On the other hand, the justice model approach is quite different from the welfare model as the justice model approach does situate responsabilization on the map.

One of the major changes that occurred in western countries (notably in the UK, US and Australia) was to place attention back to the importance of the family (Hil 1998). The traditional and nuclear family “became the benchmark by which other household formations [were] judged” (Hil 1998: 2). Therefore, lone parent families or those perceived as the “new underclass” were seen as lacking in care or control of their children (Hil 1998). Hence, a move toward a justice model approach to youth criminality was in part, the realization that families played an important role in raising law-abiding children – and thus future adults. As Hil (1998) observes, governments began to promote accountability and family cohesiveness and to stress the importance of family centered measures that would help to combat youth criminality. Furthermore, under a justice model perspective, families were encouraged to “take greater responsibility for their own

affairs [and the state] was eager to transfer its own fiscal and welfare responsibilities 'back' to the 'community'" (ibid: 9).

Hence, it is no surprise that the justice model approach became more popular over time and it brought with it the following assumptions:⁸ delinquency is a matter of choice and opportunity; sanctions and control are the responses to deviant behaviour; people should be made responsible and held accountable for their criminality. As Pat O'Malley (1996: 197) has argued, a move toward a justice model approach was also a move toward a neo-liberalist approach to criminality that sought to reject "correctional and therapeutic programmes of criminal justice, and of the 'Keynesian', welfare-oriented concerns with links between crime, social deprivation and social justice." In this respect, the individual was viewed as accountable and thus responsible for their actions.

Indeed, the justice model has become essential in examining how and why parents have become a focus in youth legislation and criminality across the four countries. As Hil (1999: 3) points out, the justice model in part, focused on "parent blaming" where a "highly individualistic...justification for the introduction of punitive, offender and family-centered measures" was introduced. An interesting perspective offered by Schmidt (1998) points to the development of parental responsibility laws as the postmodern introduction of laws within the US youth justice. Schmidt argues that such laws "focus on juvenile activity, conceptualize the child in a different way: rather viewing the child as a dependent who requires protection, they view the child as a dangerous instrumentality that needs to be controlled" (pg. 696).

⁸ See Muncie 2004: table 7.2 as adapted from Black Committee Report, 1979 (Belfast, HMSO) cited by Stewart and Tutt (1987).

Furthermore, others (Gelsthorpe 1999; Arthur 2005; Eekelaar 2006 cited in Hollingsworth 2007: 211) have commented that parental responsibility laws that include parenting orders with conditions (as the case in the UK) are using “criminal law mechanisms to coerce ‘good parenting’” and from the perspective of US scholars, state laws and the judiciary operate under “loco parentis” mechanisms and must ‘parent’ the irresponsible parent (Tyler and Segady 2000: 90).

What is suggested, however, is that not all of the four countries have resorted to an entirely justice model perspective. For example, Chris Cunneen and Rob White (2002) have observed that Australia maintains a balanced juvenile justice system that incorporates both perspectives; it offers punishment but incorporates welfare –based interventions as well. From the perspective of Henry Hendrick (2003), the debate over welfare or justice approaches in youth justice would remain. Comparatively speaking, in the US a move toward the justice model perspective was the result of the realization that rehabilitation of young offenders was not successful (Freiberg et al. 1988, cited in Cunneen and White 2002). Furthermore, Brank et al. (2005) have commented that justice oriented sanctions for youth criminality has also added to the focus on parental responsibility by supporting the notion that parents of young offenders should also be punished; for not only are young people committing “adult-like” crimes but parents are also important figures in the lives of these children and it therefore it is appropriate to punish them as well.

Furthermore, attention was sought for more retribution and deterrence in youth justice policies (Cunneen and White 2002). In the UK the ‘back to justice’ perspective was supported by police and justice officials who were part of an anti-welfare movement

that criticized social workers (Cunneen and White 2002) for their inability to help families in need. In Canada, the growing dissatisfaction with welfare based youth legislation was beginning to be evident during the time that the *Juvenile Delinquents Act* (1908) was in place. According to Russell Smandych (2006: 21), under the newly implemented *Youth Offenders Act* (1984), “‘young offenders’ themselves would be adjudicated and managed.” The author also points to section 3 of the *Young Offenders Act*, which viewed the young person as a deviant adolescent who should be “responsible for their actions and should be held accountable” (pg. 21). As Chapin (1997: 2) points out, there is a notion that adequate parenting is universal and that parents are “presumed to know what adequate parenting is, and to have both the ability and the resources to adequately parent.”

There is now extensive research done on the subject of parental responsibility laws since they have been enacted in these and numerous other countries. The next chapter speaks to parental responsibility laws and touches on the various literatures that exist about these laws from the perspective of many scholars.

CHAPTER THREE **PARENTAL RESPONSIBILITY LAWS**

As the following chapters will show, parental responsibility laws are either interwoven into existing youth justice legislation (as the case of the US) or have been created apart from it. Some have stated that they are a new phenomenon (Thurman 2003) with well-defined clauses that make them unique to the discussion of youth justice and criminality.

Dimitris (1997-1998: 655) has written that parental responsibility laws can also refer to “parental liability laws” that seek to “hold parents criminally liable for negligence in not controlling their child’s delinquent acts.” Others such as Harris (2006) have defined these laws to include not just criminal liability on the part of the parent but also legal liability in the form of civil suits. According to Brank et al. (2006) there are three forms of parental responsibility laws: (a) laws governing civil parental liability; (b) laws dealing with contributing to the delinquency of a minor; and (c) laws requiring or encouraging parental involvement in juvenile cases (Brank, Kucera et al. 2005 cited in Brank et al. 2006). With these three types of laws, civil cases can be brought against parents for damages to person or property; contributing to the delinquent act would entail that the parent was somehow involved in the criminal act as well; and lastly, the involvement of parents in criminal proceedings pertains to their notification of and participation in proceedings and the possible recovery of court or treatment costs from them as well.⁹ Authors have also provided a discussion into the distinction between both civil and criminal statutes pertaining to parental responsibility laws. Graham (2000) adds

⁹ See Hanson, 1989; Geis & Binder 1991 and Brank et al. 2005.

that the goal of civil statutes was to compensate the victim(s) and as Chapin (1997; cited in Graham 2000: 1727) points out, civil liability statutes “[were] to punish, or at least threaten to punish, parents for the acts of their children, rationalizing that parents would then exercise control over their children.” Furthermore, criminal liability statutes are more complicated because as was stated earlier, parents cannot normally be charged for the crimes of their children. But as Graham (2000: 1730), in citing Chapin (1997) points out, statutory criminal liability is possible “where the parent is proved to have had the requisite criminal intent and to have ‘caused’ the child’s delinquent act... [T]he connection between the parent’s poor parenting and the child’s delinquent act must be established.”

Authors such as Ralph Mawdsley (1986) have added that the introduction of parental responsibility laws breaks with common law¹⁰ and that “liability for torts of a child could be imposed on a parent only where there was an agency relationship or where the parent himself was guilty on the commission of the tort.”¹¹ What the author suggests further is that the introduction of such laws and going after the parent(s) of the young offender was seen as “society’s first line of defense against destructive-minded delinquents.”¹² By adding criminal sanctions to the already existing civil process, authors such as Geis and Binder (1990-1991: 317) argue since there are shortcomings to civil liability laws, holding parents accountable under further criminal sanctions was believed to straighten them up with “the fear of fines and jail terms.” However, as we will see, many laws speak to both civil and criminal actions that may be used against parents. These actions can include monetary clauses that require parents to pay for damages to

¹⁰ Under common law, it is not possible to be charged for another’s criminal act.

¹¹ See Brank et al. 2005 and Geis and Binder 1990-1991: 308.

¹² In reference to *Rudnay vs. Corbett*. Ohio (1977). Link can be accessed from the Library of Congress.

property caused by their children, or where victims can file civil suits in court (most commonly in small claims court).

When reading about these laws, I also came across literature that emphasized the relationship that existed between parent and child. That is, there seems to be an underlining connection between these laws and how they are perhaps intended to define appropriate parent-child relationships. Consequently, I argue that one cannot fully understand these laws without critically examining what they say about what the relationship between parent and child should be.

The “Parent -Child Relationship” and Parental Responsibility Laws

What I highlight here is the literature that speaks to the relationship, between parent and child and where the public and political discourse regarding such relationships has influenced the development of parental responsibility laws. In other words, authors who have written about these laws have also included specific discussions about this parent-child relationship in order to point out its significance and its potential influence in the enactment of these laws.

Marja Leena Bööck and Satu Perälä-Littunen (2008: 75) have suggested that the role of parents is to raise their children who “eventually become adults and it is the parents’ responsibility in bringing up their children so that they become independent and responsible adults.” They refer to this perspective to suggest that parents act as moral teachers by instilling proper behaviour in their children and parents are consistently considering the future of their children (2008) by raising them with the intentions that in

the future, they become well-behaved adults. Böök and Perälä-Littunen (2008) also write about parental responsibility, using the concept of *individualization* to suggest that there is a link between the role of parents and youth criminality. The authors argue that within this concept it is suggested that parents are becoming more selfish and abandoning their parental responsibilities towards raising their children.

As we see later in this thesis, politicians have embraced the connection that bad parents equal bad children and how lack of proper parenting skills have lead to youth criminality. Kathryn Hollingsworth (2007) explains how the UK government conducted several studies to highlight parenting as a contributor to youth criminality and adds that there is the “acceptance of determinism on the part of the Government –that the child could not help his actions because he was the product of his upbringing” (pg. 199).

According to Barry Goldson (2002: 86), there is a move toward placing “social responsibility back to the individual and morality back to the parent” and toward assuming that “parents who evaded their responsibilities, produced and (literally) reproduced immorality.” Some authors have observed that punishing parents for the criminality of their children reinforces the idea of a “parenting deficit” that sees the root cause of youth criminality as developing within the domestic sphere (Muncie 1999; Burney et al. 2008). For example, Hollingsworth (2007) addresses parental liability in two ways. One is the interpretation of “causal responsibility” which sees parents held liable for indirectly causing the child’s criminality. In other words, she points out that parents create circumstances that may lead their children to commit crimes. Secondly, she points out that liability is found in the parent’s lack of fulfilling the role of a parent. Some have suggested that parenting orders as found in England and Wales and various states in

Australia, instill a sense of guilt on the part of the parent and have argued that, parental responsibility laws create a strict “liability standard of parental guilt” (Schmidt 1998: 696). Others such as White (1998) criticize crime prevention methods such as those involving parenting orders as a coercive crime prevention technique.

Parental responsibility laws developed – in part – because of these perspectives that existed about the proper role of parents towards their children and hence had a lot to do with the ways that governments began to see the specific connection between parents and youth criminality. Perhaps there is a sense of guilt instilled in parents who do not raise law-abiding children? And the law points fingers at parents who are not “upholding their end of an implicit social contract, to produce moral upstanding young citizens” (Wyness 1997: 312).¹³

Thus parental responsibility ties in well to the concept of responsabilization as more often than not, governments are leaning more toward distributing duties to other stakeholders for controlling criminality. The purpose of these laws is to hold parents – if by court order – subject to legal sanctions such as fines or jail time if their children commit crimes or do not comply with existing court orders (McNaught 1998; Hollingsworth 2007).

Indeed the relationship between parent and child is –in part –influential in the development of parental responsibility laws. Whether these laws are criminal or civil sanctions against parents, the above discussions suggest that there is no concise agreement about their effectiveness. However, what most scholars are arguing is that parental responsibility laws reflect the notion that ultimately, they exist to place some of the responsibility back to parents for the criminality of their children and in addition,

¹³ Wyness made this reference to sanctions used against parents under the UK 1991 Criminal Justice Act.

create specific rules that parents must uphold to in order to avoid further criminality of their children.

The Effects of Parental Responsibility Laws

As with any law, the effectiveness of parental responsibility laws is also open for discussion. Once laws are enacted, not only are their overall purposes questioned, but their effectiveness is also placed under some scrutiny. Nicholas (2000-2001: 217) and others (Parsley 1973 cited in Gilleran-Johnson et al. 1997; Mawdsley 1986) have argued that despite government (and at times, public) interest in these laws as a means to combat youth criminality, “parental liability is not a reasonable means by which to control youth violence.” Furthermore, the problem remains that law makers cannot fully agree on what actually causes youth criminality in the first place. Casgrain (1999-1991) has added that often times, the effects of a dysfunctional family (i.e. poverty, family violence etc.) are possible catalysts for criminality but factors such as lack of parental discipline are seldom cited. Other authors such as Arthur (2005¹⁴; Gray 2000) have cited that young offenders have endured familial circumstances that include abuse, neglect or deficiencies in their upbringings and have stated that if parents were subject to such orders as those found under certain legislation (i.e. parenting orders under the UK *CDA*), such situational risks could be prevented (Gray 2000). Authors such as Geis and Binder (1990-1991) have stated that parental responsibility laws do not decrease youth criminality nor do they agree with the theory that parents can prevent youth criminality simply by being made accountable under such laws.

¹⁴ See also Arthur 2002, 2003, 2004.

Authors such as Thurman (2003) and Casgrain (1990-1991; cited in Harris 2006) make similar points in respect to low prosecution rates against parents when applying these laws. Thurman (2003: 103) adds further that despite the availability of these laws in most US states for example, “few cases actually make it to a courtroom, which prompts questions about the feasibility of enforcing such laws.” There exist arguments against parental responsibility laws that also question whether they are ethical and if they potentially create unacceptable consequences for parents. Commentators addressing US parental responsibility laws have argued that they breach several US Constitutional Amendments (Gilleran-Johnson and Rosman 1997) and have been challenged in court.

Within the Australian context, Hil (1998) has argued that family centered measures such as family group conferences are extra-judicial initiatives that “complement a range of contemporary discourses and practices that support the idea of greater ‘autonomy’ in family affairs” (Hil 1998: 1). But others such as Schmidt (1998: 695) have argued that when young offenders are labeled as a risk population, in need of management, parental responsibility laws “not only recharacterize family autonomy, they also recharacterize the state’s conception of the child.” Such statements have been made to question some of the ethical issues that surround parental responsibility laws. What these questions suggest is that observers ask how far can the law intervene in the lives of families or in other words, how far the law can dictate how a parent raises their children. Such questions have been proposed by Le Sage et al. (2007: 1) who ask, “whether or not children’s rights override parental rights?” but more importantly, they question “under which circumstances the state has the right to take the rights and duties from the parents.”

From an Australian perspective, White (1998) has pointed to the difference between the Anglo-American and Indigenous community's concepts of what parenting or childhood should consist of. White points out that "conventional middle-class notions of child-rearing" are at odds with an "encouragement of self-direction and independent action" style that is reflected in some Indigenous communities (pg. 128), and thus consequently, his analysis raises the question of the fairness of imposing Anglo-centric parental responsibility laws on Indigenous peoples.

As for the political discourse, it rationalizes that these laws should exist because of the declining relationships between parent and child. In the next chapter, I explain how I came to develop my methodology in order to investigate how government officials have spoken about this parent-child relationship and parental responsibility laws.

CHAPTER FOUR **RESEARCH DESIGN AND METHODOLOGY**

The current study offers a comparative look at four countries and analyzes how the practices of these countries reflect different ways in which parental responsibility laws have been enacted and enforced. I have structured my thesis by following the example of a book written by Nicholas Bala (et al. 2002)¹⁵ where the authors examine seven different countries on their particular youth justice legislation and policies, by using the same criteria for each country. I have used their book – in part – as a template and structured my research methodology in a similar fashion by discussing each of the four countries based on the following criteria:

1. The history of youth justice and legislation in each country.
2. A detailed discussion of the development of parental responsibility laws in each country.
3. A detailed qualitative data analysis of government debates addressing legislation, parental responsibility and youth criminality.

In Chapter 5, I examine key periods in history that have led to youth justice and legislation developments and highlight sections of legislation that perhaps already mention parents. Chapter 6 provides a detailed discussion of parental responsibility legislation in each country (province or state wide) and addresses each country's legislation in greater detail. I also look at clauses addressing parental responsibility, involvement (as in court proceeding etc.) or consideration for parents, and what

¹⁵ With Joseph P. Hornick, Howard N. Snyder and Joanne Paetsch.

consequences they face if they fail to comply with court orders. In applying a qualitative data analysis for examining government documents, I have discovered that a conservative political tone existed when governments were proposing these laws or making change to existing legislation. While in this study the legislation of each country is studied separately, in the discussion section of the concluding chapter I highlight cross-national commonalities and themes that arose from the documents I reviewed.

The Process of Qualitative Data Analysis

According to Sue McGregor (2003: 1), words convey a particular message and by using a qualitative data analysis technique, it challenges the reader from “seeing language as abstract to seeing our words as having meaning in a particular historical, social and political condition.” According to Marshall and Rossman (2006), qualitative research is fundamentally interpretive and thus studying legislation is not enough to understand its reasoning or purpose for enactment. What is also important to observe is the political atmosphere at the time when laws pertaining to parental responsibility were endorsed. In applying a qualitative data analysis to political speeches, what I hope to achieve is to uncover the objectives and reasons for incorporating these laws into youth justice legislation in the jurisdictions, which I am examining.

According to Bernard and Ryan (2010: 4), qualitative data analysis enables one to draw out themes that are imbedded in qualitative data, which includes written transcripts of speeches, where the “characteristics of the speaker or speakers account for the

existence of certain themes and the absence of others.” Hence, what is important about political speeches and other textual materials pertaining to these issues is the specific themes they reflect. In other words, what messages are legislative debates trying to convey to the public? For example, in the discussion pertaining to several changes in UK youth legislation, Goldson (2002) provides examples of dialogue offered by governments and prime ministers as such Margaret Thatcher in the early 1980’s and Tony Blair in the late 1990’s to identify the position of the government toward parental responsibility laws. Furthermore, those such as Laskin (2000: 1200) have made similar observations when looking at the US political atmosphere, where politicians “further perpetuated America’s fears of crime by using the ‘crime issue’ in their campaigns.”

Another important purpose of undertaking a qualitative data analysis of legislative debates is to observe whether these four countries are speaking a common language when discussing reasons for adopting parental responsibility legislation or what their opinions were about youth crime and parental responsibility. Furthermore, what are the common themes that emerge in the speeches that may pin point the shift toward implementing these laws within youth justice and beyond? Likewise, are the reasons for enacting parental responsibility laws found in these political speeches and why would politicians want to implement such laws? Applying a qualitative data analysis technique when reviewing political speeches is important because as Bryman and Teevan (2005) point out such texts are “much more than language: [they are] constitutive of the social world that [are] a focus of interest or concern” (pg. 344). In other words, by reviewing speeches made about parental responsibility I can observe how these concerns had an influence on the enactment of these laws. Such an analysis of speech is what Stephen Linstead (1999:

3) calls “textual analysis” and points out that “texts constitute a major source of evidence for grounding claims about the sort of social structures produced by constraining...individual action.” What I also hope to address with this kind of analysis is to uncover whether a common language exists between the countries when speaking of laws, parents or responsibility. According to Linstead (1999: 2), language “is not neutral and apolitical, but productive, synthetic, transformative, ideological –saturated with power.” Other authors such as Jamie Bennett (2008: 452) discuss political debates around criminal justice policies and issues as “critical criminological discourses” that offer vital dialogue about policies around criminal justice. Bennett adds that “opposition parties present themselves as an alternative government, and therefore their policies deserve consideration as potential future legislation.”

This fits with my interest in the process of policy transfer, and my belief in the need to observe whether governments are making reference to other countries that have taken steps to enact parental responsibility laws. For example, in examining Canadian parliamentary debates we can ask, did Parliament make reference to what England and Wales, or the US were doing with regard to incorporating such laws? Or, alternatively, we can ask how legislators in one jurisdiction may have critiqued and rejected the idea of adopting laws from elsewhere? These are important observations to make, as it may help to show that countries and their governments do have a vested interest in what other countries are doing in approaching a common problem. Furthermore, the technique of a qualitative data analysis will assist me to pin point similar meanings that are attached to specific persons or claims about issues. For example, how are parents referred to? Or what constitutes a responsible parent from the perspective of politicians?

Description of Sample

This thesis utilized secondary data sources and did not incorporate primary data collection or the use of human subjects. As a result of this, an application to an ethics review board was not necessary. All documents were available for public viewing (via government websites or published reports) and thus, names of government speakers were included with the text used as part of the qualitative data analysis. The year a piece of legislation began to be discussed was the year I began with and collected documents. For example, in the case of Manitoba, its parental responsibility bill was introduced around 1995, whereas, in Ontario, it occurred around the year 2000. Overall, I collected relevant speeches and ordered them by country (i.e. government or state) and in chronological order by year.¹⁶

I searched the following Hansard collections: Canadian parliament; British Columbia, Manitoba and Ontario Legislative Assemblies; England and Wales House of Commons and House of Lords; and the following states in Australia: Western Australia, New South Wales and Queensland Legislative Assemblies. For the United States, I searched the House of Representatives (and Senate) and individual state assemblies for California, Illinois, New York and Texas.

¹⁶ Average starting year was 1994 and cut off was 2008.

Data Sources

The “Hansard” is the collection of speeches recorded verbatim in parliamentary or legislative assemblies or councils depending on the country or state searched. Governments do not sit all year round and in some cases, there are only a few sittings in a given year or month.

The Hansard is only used in three of the four countries: Canada, England and Wales, and Australia. As for searching the United States, I had to utilize the Congressional Records (via the Library of Congress –THOMAS¹⁷) database, which tracks House of Representatives and Senate sessions, and for the individual states, I searched each legislative assembly site as well.

As I stated earlier, depending on the country, the Hansard database was structured differently. In Canada, the parliamentary Hansard database was organized by year, session and month. For example, if a parliamentary debate occurred on Monday June 15th, 2000, it fell under the 36th session of the 2nd parliament (which represents the timeline from October 12, 1999 to October 22, 2000). At the time of writing this chapter, the Canadian parliament was in its 40th session for the year (which is January 29, 2009 – present). On the other hand, the Hansard database for Queensland (and other Australian states) is organized by year, month and day. For example, in 2002, the Queensland legislative assembly sat a total of eleven months out of the year with only fifty-three days of active sessions (i.e. in 2002, February held three days of sessions, whereas November held seven days).

¹⁷ The Library of Congress (THOMAS) is similar to that of the Hansard as it organizes speeches made in the White House.

The England and Wales parliamentary structure is similar to the structure of the Canadian parliament as there are “Members of Parliament (MPs)” that represent different constituencies across the UK and who make up the primary parliamentary governing body. The House of Lords are representatives that work along side the House of Commons. According to the UK parliament, Lords have expertise and are called upon to “scrutinizes an issue in depth”.¹⁸ Lords also make laws, make sure that government is held accountable, and provide independent expertise.¹⁹ Unlike MPs in the House of Commons, Lords are not elected by the public, but instead are selected by the Queen as recommended by the Prime Minister.

US Congressional Records are organized by “congress session”. The current session for the year 2009-2010 US Congress is the 111th session. Unfortunately not all Congressional records are available for viewing via the Internet and the oldest that was available for viewing on line was the 101st (which was years 1989-1990). When Bills are introduced in Congress, they are either coded, as “H.R” for a House of Representatives Bill or as “S”, for the Senate. A similar technique is used in individual states as “HB” represents House Bills and “S” represents Senate Bills. Each Bill contains a number, which is used as reference when searching for specific Bills for a particular Congressional session. For example, Bill “S. 2355” represents the “Truancy Prevention and Juvenile Crime Prevention Act of 1998”, which was introduced in the Federal US Senate on July 24, 1998. What is important to mention about the numbering system on Congress or state Bills is that the same number may be used in later years, to refer to a different Bill. In other words, in order to find specific Bills, I needed to know which

¹⁸ www.parliament.uk. Accessed May 8, 2009.

¹⁹ Ibid, access May 8, 2009.

Congressional session (year) the Bill appeared in and whether it was a House or Senate Bill as well. Likewise, there is a specific process that Bills go through before they became US laws.

Information on each country can be easily found on the Internet simply by using a reliable search engine (i.e. Google). Once on a particular government site, there was a link to either parliament or legislative assembly pages. From there, a link to the Hansard page can be found. The US Library of Congress –THOMAS website was easily accessible as well. Since the US Congress tends to introduce and pass many Bills, I also utilized a website called “govtrack.us”²⁰, which allows individuals to track the status of Congress Bills and relevant information pertained to current and past Bills.

Data Analysis Technique

I began with a general search of the Hansard and THOMAS websites in order to familiarize myself with how information was gathered and recorded. I experienced a ‘learning curve’ at the beginning of my research, as I never had the opportunity to search through these sites before. Once I became comfortable with the government sites, I began conducting searches to have a broad idea of what was available to me. In some cases, search hits came back with actual wording of the specific legislation or debates appeared that contained the key words that I used as part of my general search. I searched with the following terms: “parental responsibility”, “civil liability of parent(s)”, “parent(s) and youth crime”, “parent”, “youth crime”, “juvenile delinquency”, or the exact wording of

²⁰ <http://www.govtrack.us>

each law as it appears in each country (i.e. *Parental Responsibility Act/Law* or *Crime and Disorder Act* etc...). Overall, I tried to maintain a cohesive and inclusive word search that was similar with each database I searched. Searches were conducted either by selecting all years of sessions (depending on which years are available on line) or selected individually by either session or year.

Given the complexity and volumes of the Hansard and THOMAS, debates sessions (or sittings) incorporated *indexes* to list key terms and topics for particular sessions. This way, individuals can first refer to the index – for a particular session – as opposed to reading through volumes of debates to find particular information. Since reviewing debates was a timely process, an index was quite helpful as it automatically links to the part of the debate where the key terms were mentioned or discussed at length. Often times, the page length of these documents was quite extensive and I relied on sessional indexes by searching key words (i.e. the name of the acts themselves) or phrases (i.e. parental responsibility or youth crime). I would select the specific sections that pertained to my topic and pasted them into separate documents as to avoid having volumes of unnecessary content being saved. In some cases, debates were pages in length, and only a couple of paragraphs (or sentences) spoke to the topic(s) I was looking for. Furthermore, speeches made in Hansard and in US Congress also referenced other materials, such as previous debates or documents. I made note of those, and looked for such references to review in more detail. This was a technique of a ‘snowball’ research application as one source led me to find others. Also, all four countries have similar governmental procedures when it comes to amendments to existing laws or the introduction of Bills. What I observed was that a great deal of procedural etiquette was

involved in the process of a Bill or amendment moving through the legislative process. No matter which country I was focusing on, there were precise procedures that were followed and recorded. For example, all changes or introductions to new legislation were referred to as “Bills” and these Bills went through the process of “introductions” and several readings before they were fully passed. The passing of a Bill was either by “Royal Assent” (in the case of Canada, England and Wales, and Australia) or in the case of the US, signed by the current President; in the case of individual states, signed by the current Governor before the Bill became law.

There was also attention paid to the difference between the responsibilities of “legislative assembly” and “legislative council” that governments maintain; while in the US there are “senate” or “house” hearings that occur also. In each case, I had to search all of these for any debates that may have occurred. Furthermore, in the UK, its parliament is separated into two houses – one for the House of Lords and the other for the House of Commons. Overall, each of these has distinctive responsibilities to the government and was searched individually as well. Finally, when documenting specific legislative speeches and debates I made sure to include the speaker’s full name, their constituency and which assembly they were speaking from.

Sample Selection

The decision to select Canada, the United States of America, England and Wales, and Australia for this thesis was based on the understanding that they were all similar in social, economic and legal contexts, as well as all are westernized and well developed countries – both socially and economically. Furthermore, there are links between the four that are the result of common historical events and experiences. For example, the development of Canada and Australia were the result of similar pattern of British settlement. This has over time helped to create a close relationship between the three countries, and also helps to explain similarities in the three countries style of government structures. The US on the other hand, was also the result of British early settlement but is not a Commonwealth country – thus leaving its legal system development and structure quite different from that of Canada, Australia and, England and Wales.

Summary

The methodology chosen for this thesis is based on the technique of qualitative data analysis with the use of government debates in an effort to observe what politicians have said about legislation, parental responsibility and its role in youth criminality. Likewise, I use these debates to examine political opinions about the enactment of parental responsibility laws. The use of the Hansard debates and US Library of Congress provide valuable information as the recording of debates verbatim offers crucial insight

into opposing opinions about not only the role parents should have toward their children, but also, how laws can dictate this parent-child relationship and increase greater parental responsibility in youth criminality. In the following chapter, I discuss the historical development of youth justice systems in the four countries as an important part of the background to the development of contemporary parental responsibility laws.

CHAPTER FIVE HISTORICAL DEVELOPMENTS IN YOUTH JUSTICE

All four countries experienced the development of youth justice and courts around the same time – early nineteenth century but only three of the four countries (Canada, US and Australia) had youth justice and courts function under a welfare model perspective where the needs of children were given precedence over their criminality. In England and Wales, the creation of youth court in 1908 was as Faust and Brantingham (1979 cited in Bottoms and Dignan 2004: 23) have observed, a kind of “modified criminal court” which sought to handle youth matters as though from an adult court perspective and the only difference was that youth court sittings were held in separate buildings and restricted public viewing (Bottoms and Dignan 2004). The philosophy of care and providing for the well being of the young offender was “numerically and ideologically subordinate” (ibid: 23) and only in the late 1960’s did the youth court perspective change and leaned more toward what the rest of the world was doing in administering youth justice.

In contrast, juvenile justice systems based on the welfare model were established in the US in 1899 with the creation of the Chicago Juvenile Court, Canada in 1908 with the introduction of the *Juvenile Delinquents Act*, and in Australia starting with South Australia enacting its *State Children Act* in 1895 (Cunneen et al. 2002).²¹ Separate youth courts handled some criminal matters but were more focused on assessing negligent parents and welfare matters (Cunneen and White 2002). All four countries had similar

²¹ Other Australian states include: New South Wales, in 1905 with its *Neglected Children and Juvenile Offender Act*; Victoria in 1906 with its *Children’s Court Act*; Queensland’s *Children’s Court Act* and Western Australia’s *State Children Act* in 1907; Tasmania’s *Children’s Charter* in 1918.

youth reformatories (today, these are youth detention centres) that served particular functions. In the US they were houses of refuge (Snyder 2002; Shelden & Macallair 2008); in England and Wales, reformatory schools handled vagrant children (Cunneen and White 2002) and in Australia, housed children who were considered neglected and destitute (ibid). In the 1800's Canada also created facilities that housed orphaned or runaway children and the aim of such facilities was to 'treat' children and young offenders (Winterdyk 2005). Interestingly enough, in Australia, separate youth courts were also the result of the high number of young people arriving to Australia as convicts already (Cunneen and White 2002). The overall reason for establishing separate youth courts and legislation and the move from a welfare to justice model were based on the realization that more and more young people were being brought in for criminal matters (Cunneen and White 2002) and legislators were becoming more inclined to toughen up youth legislation to handle high youth criminality (Doob and Cesaroni. 2004).

Government Responsibility over Youth Justice

In terms of which level of government takes responsibility over laws and legislation, there are similarities and differences between the four countries. For example, in the US there is no national juvenile justice system common to all fifty states. The role of the federal government is limited and it provides states with a broad legal framework that is based on the US constitution (Bala et al. 2002). Some Supreme Court rulings are relevant to the legislation in the fifty states for practice standards (ibid). Therefore, according to Howard Snyder (2002), juvenile justice varies from state to state and

legislation differs in its mission, scope and procedure. Snyder (2002: 43) adds that as a result of such variation between states, it makes “it difficult to describe succinctly the delivery of juvenile justice in the United States.” Likewise, in Australia a similar arrangement is also found. The country is made up of six states and two territories, thus giving each state the responsibility over policing and juvenile justice (O’Connor et al. 2002a). Despite its relationship to the United Kingdom as a Commonwealth nation, Australia’s government and legal structures are quite different than those of England and Wales and Canada.

In Canada, the federal government oversees the enactment of youth justice and legislation, while giving each of the ten provinces and three territories jurisdiction over administration (Winterdyk 1997). Provinces and territories implement these laws with financial support from the federal government (Bertrand et al. 2002; Doob and Sprott 2004; 2006). As we see later in the thesis, Canada has gone through substantive changes in its youth justice legislative history and these changes were only possible with the approval of the federal government. Some have observed that since there is this relationship between the federal government and provinces, the division of powers has impacted the administration of youth policies (Winterdyk 1997) and furthermore, the differing political climates that exist in each province and territory has also added to the varying ways that youth justice is implemented and how the system handles youth criminality (Doob 1992; Carrington and Moyer 1994; Doob and Sprott 1996 cited in Doob and Sprott 2004). This is not the case in England and Wales, and throughout the United Kingdom (including Scotland and Northern Ireland) more generally, since the UK does not have a federal system of government

Youth Justice in the United States of America

While the original Chicago juvenile court and subsequent juvenile courts established across the US in the early 1900s were founded on the welfare model, authors such as Tyler et al. (2000) have shown that current youth justice systems across the US continue to be conflicted between which goals of youth justice should take precedence – that of rehabilitation or retribution. As was mentioned at the beginning of this discussion, the US does not have a youth justice policy that applies to all states as each state governs itself and creates youth justice laws and regulations that are unique to that particular state.

There are two prominent court cases that ultimately changed the face of youth justice in the US. In *Kent v. United States* (1966) the question of a youth being tried as an adult came into focus and as a result, the court ruled that

When a case is transferred from juvenile court to adult court, the court must provide a written statement giving the reasons for the waiver, the juvenile must be given a hearing, is entitled to counsel, and the defense counsel must be given access to all records and reports used in reaching the decision to waive (Shelden 2008: 9).

The second case pertained to the extremely punitive sentence that was given to a youth for placing a prank call to a neighbour. Several authors have cited *In re Gault* (1967), as a catalyst for eliminating the injustices and punitive responses in US youth justice, and in particular those stemming from the unchecked discretionary power of

juvenile court judges and the use of indeterminate sentences (Chapin 1997; Johnson-Gillera and Rosman 1997 cited in Brank et al. 2005).

Beyond the decision that was reached in the *In re Gault* case, there was one other important subsequent development to reshape the juvenile justice systems in the US starting in the 1970s. This was the enactment of the 1974 *Juvenile Justice and Delinquency Prevention Act* (Public Law 93-415), which would assist states with funds for juvenile delinquency programs and establishing separate facilities to house offenders (Tyler et al. 2000). According to Jeffrey Ferro (2003: 47), the 1974 Act reaffirmed the federal government's "legislative role in the area of juvenile justice" and "set standards for the states governing the treatment of juvenile offenders." Its basic goal was to try making communities safer "by reducing juvenile crime, promoting programs and policies that keep children out of the criminal justice system, and encouraging states to implement policies designed to steer those children who do enter the juvenile justice system back onto a track to become contributing members of society."²²

Today the Act continues to be administered under the umbrella of the country's Office of Juvenile Justice and Delinquency Prevention Office (OJJDP), as part of the US Department of Justice.²³ This department in turn provides funding to states in their attempts at implementing juvenile justice and delinquency prevention programs at the state and local government levels (Stevenson 2005). Hence each US state has the responsibility of requesting such federal funding and the obligation to distribute funds accordingly within the state.²⁴ Stevenson (2005) adds that states must provide to the OJJDP, a three-year plan that highlights how they will incorporate juvenile justice and

²² Senator Patrick Leahy. Senate Hearing, June 18, 2008.

²³ www.criminaljustice.state.ny.us: accessed on June 18, 2009.

²⁴ State of New York: www.criminaljustice.state.ny.us: accessed on June 18, 2009.

delinquency prevention plans.

Although the state of Illinois was the first to develop a separate youth justice court system, by 1917 juvenile courts were established in all but three states (Tyler et al. 2000) and years later – by the early 1960’s, all states had adopted a juvenile justice model that resembled that of Illinois (Chapin 1997). However, as authors such as Snyder and Sickmund (1999) have shown many states in the US are split between deciding whether youth justice should be child welfare or justice oriented. Specifically, they have observed that

Thirty-two states [have] both a ‘Preventive/diversion/treatment’ orientation and a ‘punishment’ orientation...the other eighteen jurisdictions are evenly split in their legislative goals between ‘punishment’ and child welfare orientations (Snyder and Sickmund 1999: cited in Doob and Tonry 2004: 2).

Despite the fact that most US youth justice principles were geared towards preserving the “best interests of the child” (Snyder 2002), according to James Difonzo (2001), developments in the ways in which law has reconceptualized child offenders are taking place. The author suggests that young offenders are now increasingly viewed as “violent predators warranting retribution rather than as our wayward sons and daughters in need of a guiding hand” (pg. 9). The author continues to add that US juvenile courts have moved from their concerns over the best interests of the child to an “overarching concern with public safety, child punishment, and individualized accountability” (pg. 11). Those such as Barry Krisberg (2009),²⁵ on the other hand, have argued that since the

²⁵ President of the National Council on Crime and Delinquency. Appearing in front of the Subcommittee on Crime, Terrorism and Homeland Security. House of Representatives, February 11, 2009.

1990's, public opinion polls in the US have supported the idea that many Americans still believe that in order to reduce youth criminality, resources should be directed at "the root economic and social causes of crime rather than toward law enforcement, the judicial system, and corrections" (pg. 4).

Given the diversity of approaches to youth justice across different US states, an explanation is needed for why I have chosen to focus primarily on developments in four selected states. I chose to focus in particular on the four states of Illinois, New York, California and Texas. My reasons for choosing the four are as follows. I chose Illinois for the fact that it was the first to establish a youth justice court in the US and I was under the impression that since it was the first to create juvenile courts that it may have implemented some unique laws that address parental responsibility as well. I chose New York, as I am familiar with this state on a more personal level and have traveled there extensively and wanted to learn more about its legal system. The decision to focus on California was based on the extensive research that was cited about the state's parental responsibility laws. Several authors, who have written about these laws, have cited California's legislation and I believed that it would be an excellent example to use for this comparative study. Lastly, Texas was chosen, as it has the highest dollar amount that parents can be liable for which is \$25,000 dollars and hence I wanted to observe whether it was a state with more aggressive policies in place to hold parents responsible for youth criminality.

Youth Justice Legislation in Illinois

The youth justice system in the state operates through one hundred and two counties with some overlap in services between the counties. According to the Illinois Criminal Justice Information Authority (ICJIA) (2008), the state's juvenile justice system is the responsibility of each individual county as are services such as probation, detention and corrections. It was only in 2005, that the state passed legislation that would separate the administration of juvenile from adult correctional facilities and hence creating the Illinois Department of Juvenile Justice (ICJIA 2008). Criminal actions by individuals in the state of Illinois fall under what is referred to as "Illinois Compiled Statutes" Chapter 720 ILCS 5, which is the *Criminal Offences* section and includes the *Criminal Code of 1961*. Youth legislation for the state falls under chapter 705 ILCS. The Subsection entitled "rights and remedies" contains the Act 705 ILCS /405 "*Juvenile Court Act 1987*" and it addresses youth criminality and a mandate adopting "balanced and restorative justice as the guiding philosophy for the Illinois juvenile justice system" (ICJIA 2008: 110). Under section (5-710: kinds of sentencing orders) of the *Juvenile Court Act of 1987*, subsection (4) states that a young person may be ordered to pay restitution in the form of monetary or non-monetary forms. Likewise, the parent or legal guardian/custodian can be ordered to pay some or all the restitution ordered or the state can make an application on behalf of the victim for recovery of monies as the result of damages caused up to the amount allowable under the state parental responsibility law.

Hence, under the Compiled Statutes, Chapter 705 (Courts), section 705 ILCS /405 – *Juvenile Court Act of 1987*, Article V (Delinquent Minors) subsection 5-100 speaks to parental responsibility in criminal proceedings against youth offenders. The article states that this section “recognizes the critical role families play in the rehabilitation of delinquent juveniles. Parents...shall participate by assisting the juvenile to recognize and accept responsibility for his or her delinquent behaviour.” Later in the discussion pertaining to specific parental responsibility laws in Illinois, we will observe that chapter 740 ILCS (Civil Liabilities) section 115/ pertains to the state’s official “parental responsibility law”.

Youth Justice Legislation in New York

There are sixty-two counties in the state of New York. The youth justice system is organized in such a way that the state recognizes the differences between “juvenile delinquents” and “juvenile offenders”²⁶ and such a distinction will determine how cases are processed.²⁷ The former are young people at least seven years old but less than sixteen and who have committed a crime, which is considered criminal should an adult commit it as well. According to the Department of Juvenile Justice, juvenile delinquents are considered to be young people who are in greater need of “supervision, treatment or confinement.”²⁸ The latter, are those young people who are between the ages of thirteen and fifteen, who are charged and tried as adults for committing one or more of the eighteen specific crimes listed by the state. Formal charges are processed under the

²⁶ <http://www.nyc.gov/html/djj/html/cases.html>. Accessed July 24, 2009.

²⁷ Ibid at footnote 27.

²⁸ <http://www.nyc.gov/html/djj/html/cases.html>. Accessed July 24, 2009.

Family Court Act and in 1978, the state created new legislation – *the Juvenile Offender Law* – that sought to address more serious and violent offences.²⁹ The New York State Family Court division handles juvenile delinquent cases and judicial options of sentencing can include probation periods or placement with the New York State Office of Children and Family Services. Whereas, the state’s Supreme Court division will hear juvenile offender cases and sentencing options can include probation as well or secure detention with the state’s Children and Family Services secure facility.³⁰ The overall functions of the Children and Family Services branch are to administer and operate “a network of residential and non-residential detention and placement programs for court-related youth.”³¹

According to the Comprehensive Juvenile Justice Plan (2000-2002), the state’s juvenile system has both “informal and formal legal processes that may determine the outcome of a delinquency case” (pg. 10). Furthermore, the report adds that traditionally the state focused on treatment and needs of the offender but amendments made to the *Family Court Act* allowed for a change in language that emphasized “need for the protection of the community” to be reflected as well (ibid).

A young offender’s first contact with the law is through police contact. At the discretion of the police, young people who have contact with law enforcement agents may not be formally charged and only cautioned by an officer. Such police action (not to process further) is referred to as “police diversion.” The objectives of such diversion are to keep young people out of the formal court system but enable some “adult intervention aimed at preventing future criminal behavior.” Police diversion “takes many forms,

²⁹ Page 27 in the Report of the New York State Comprehensive Juvenile Justice Plan 2000-2002.

³⁰ <http://www.nyc.gov/html/djj/html/cases.html>

³¹ Page 50 of the Report of the New York State Comprehensive Juvenile Justice Plan 2000-2002.

ranging from a lecture by a police officer to referral to a social service program” (pg. 12).³²

Youth Justice in California

Youth justice in the state is under the direction of the “Division of Juvenile Justice” (DJJ), which is a part of the state’s overall criminal justice system. The DJJ operates under the umbrella of the California Department of Corrections and Rehabilitation.³³ The DJJ has a close working relationship with agencies such as law enforcement, the courts and district attorney’s office. Its mission and operating directives must comply with §1700 of the *Welfare and Institutions Code* (Division 2.5, Chapter 1 – Youth Authority, Article 1), which seeks to address and protect “public safety from criminal activity.”³⁴ The state’s *Welfare and Institutions Code*, Division 2.5: Chapter 1 – Youth Authority: Article 1 “General Provisions and Definitions”, §1700 states that “The purpose of this chapter is to protect society from the consequences of criminal activity and to that purpose community restoration, victim restoration, and offender training and treatment shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses.”³⁵

According to a recent report compiled by the Center on Juvenile and Criminal Justice (Macallair et al. 2009), the California Department of Corrections – Division of Juvenile Facilities –has an operating budget of \$383,105,473; and according to the Center

³² Report of the New York State Comprehensive Juvenile Justice Plan 2000-2002.

³³ www.cdcr.ca.gov. Accessed July 8, 2009.

³⁴ http://www.cdcr.ca.gov/Juvenile_Justice/About_DJJ/index.html. Accessed July 8, 2009.

³⁵ <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=wic&group=01001-02000&file=1700-1705>. Accessed July 16, 2009

on Juvenile and Criminal Justice, among all the states within the US, California leads in the number of arrests made and incarceration of young people.³⁶ Males et al. (2008 cited in Sheldon 2008), point out for close to three decades, policies pertaining to juvenile justice in California have emphasized incapacitation. The authors also point out that juvenile offenders are more likely to be subjected to “the punitive goals as expressed in the adult context, rather than afforded the benefits of rehabilitative programs” (pg. 63).

According to a report compiled by California’s Legislative Analyst’s Office (2007), the primary goal of juvenile justice in the state is to promote rehabilitation, rather than punishment; whereas, state facilities are to provide focus on education, treatment and counseling to young offenders. A report compiled by the department in 1997 however, points out that there exists “contradictory goals of protecting the welfare of the juvenile and protecting the public.”³⁷ There are fifty-eight counties in the state and juvenile justice is the responsibility of individual counties (ibid 1997; 2007).

Young people can be charged under the state’s *Penal Code* under Chapter 2 of the *Welfare and Institution Code*, section “Juvenile Court Law.” Under this section, youth court and proceedings are outlined for each county to follow. We will also see in more detail later that parental responsibility laws also fall under the *Penal Code*, Chapter 11 “California Street, Terrorism and Prevention Act”, Chapter 2 –“Abandonment and Neglect of Children” and the Section § 490.5 “Theft of Property of Others.”³⁸

³⁶http://www.cjcj.org/public_education/juvenile_justice_history. Accessed July 8, 2009. The Center on Juvenile and Criminal Justice is a division of the Office of Juvenile Justice and Delinquency Prevention for the US Department of Justice.

³⁷ California: from: www.lao.ca.gov. Accessed July 8, 2009.

³⁸ California: www.leginfo.ca.gov. Accessed July 9, 2009.

Youth Justice Legislation in Texas

There are two hundred and fifty-four counties in Texas, making it the state with the most for the US. Each county in Texas is responsible for the administration of juvenile justice. In 1973, the legislature enacted Title 3 of the *Family Code* that would address juvenile laws for the state.³⁹ This enactment was to fulfill some of the following objectives. To provide for the care and development of children; to separate a child from his or her parents only when necessary; and to give the child needed care (pg. 1).

Under the direction of the current Attorney General, Greg Abbott and through the division of Juvenile Crime Intervention, the state released the 2007 “Juvenile Justice Handbook as a “practical reference guide” for the public, which covered such areas as the state’s juvenile justice process (from time of arrest to case disposition) and parental rights and responsibilities. According to the Report (2007), despite the *Family Code’s* attempt at maintaining a balance between rights of children and community safety, it was incapable of handling the present high number of youth offenders or deal with the increased violence among young people in the state. In 1995, Title 3 was revised and replaced with the *Juvenile Justice Code* (§51.01). This new Code (under Chapter 51 – General Provisions) sought to strengthen public safety, “promote the concept of punishment for criminal acts and to provide treatments, training and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child’s conduct” (pg. 1) and subsection (B) of §51.01 includes the clause to “remove, where appropriate, the taint of criminality from children committing certain unlawful acts.”

³⁹ Report from the Attorney General’s Office (2007) hereafter known as the Report (2007).

Charges can also fall under the state's Penal Code as well.

There are two agencies responsible for the administration of juvenile justice for the state. The Texas Youth Commission (TYC) is responsible for operating all state correctional facilities; while the Texas Juvenile Probation Commission (TJPC), is responsible for probationary services and programs (Report 2007). Similar to the New York state legislation, Texas also has implemented procedures that enable police officers to informally handle matters without the further process through courts. According to §52.03 (a) of the *Family Code*, cases can be informally disposed of by an officer if they meet a certain criteria. In the 2007 Report, § 52.03 (c) states that an officer has the choice to “refer a child to an agency other than the juvenile court, have a conference with the child’s parent or guardian, or provide a referral to a family services agency” (pg. 12).

Youth Justice Legislation in Canada

The federal government governs Canada's youth justice system, legislation, and each of the country's ten provinces and three territories adopt laws as decided upon by the federal government but the federal government does consult with provinces and territories when considering changes to legislation (Bala et al. 2006). Canada also presents an interesting case study because its youth justice system has gone through several changes in legislation since the 1900s and in this section on Canada, I will briefly highlight the changes that took place. Young people can be formally charged under the *Criminal Code of Canada* and any other federal or specific provincial legislation (i.e. federal *Controlled Drugs and Substances Act* or *Manitoba Highway Traffic Act*).

The country's first juvenile law was the *Juvenile Delinquency Act (JDA)* (1908), which lasted until 1984 when it was replaced with the *Young Offenders Act (YOA)* and the most current legislation is the *Youth Criminal Justice Act (YCJA)*, implemented in 2003 (Bala and Roberts 2006). An observation made by Doob and Spratt (2004: 185) can best sum up the history of youth justice policy in Canada. The authors point out that the move from the *JDA* to the *YCJA* was started in 1908, "with a law based on welfare principles and finishing in 2003 with a law based on criminal law principles and proportionality." Canada's youth legislation has changed in recent years from a welfare-oriented system to one that seeks accountability and where responses are proportional to the committed offence (Doob and Cesaroni 2004; Doob and Spratt 2004).

According to Bala (1994 cited in Hartnagel: 360), what slowed down the process of enacting the *YOA* was “disagreement over the conflicting philosophies of welfare, crime control, and due process.” While the *JDA* emphasized a philosophy of treatment (Winterdyk 1997), the *YOA* ended the court’s ability “to turn a criminal matter into a child welfare matter” (Doob and Sprott 2004: 196). Similarly, the *YCJA* was to be more punitive (Bala et al. 2006; Hogeveen 2005) by acknowledging that young people would be held more accountable for their criminalities, but as Doob and Sprott (2006: 230) point out, the *YCJA* was also “designed explicitly to reduce the use of custody.”

According to Doob and Sprott (2004), the federal government’s concern over the country’s high rates of incarceration of youth for minor offences was seen as an important reason to change youth legislation. Over the years, each of the three youth justice statutes have emphasized varying approaches to handling youth criminality and each, as it came to replace its predecessor, was met with a critical eye from provincial governments and the public (Doob and Cesaroni 2004). As Bertrand et al. (2002), point out, there was controversy over Canada’s youth justice and added lack of public confidence in the system overall.

Youth Justice Legislation in England and Wales

Prior to the 19th century in England and Wales young offenders were basically treated and tried as adults and only in 1908 were the first juvenile courts established (Graham 2002). As Graham (2002: 82) points out, until the end of the 1980's there were contrasting views about what caused youth criminality, while policy and practice “swung towards and then away from a welfare approach to juvenile offenders, at times emphasizing the needs of the child, at others, the importance of punishment.” Likewise, Bottoms and Dignan (2004) have said that in the early 1990's, youth justice in the country was influenced by three distinct events: the “youth justice movement”; emphasis placed on procedures; and the separation between criminal and care jurisdictions. I will briefly highlight these below.⁴⁰

The “youth justice movement” was an attempt at maintaining a “dominant ideological approach taken by most English youth justice workers in the period 1985-97” (ibid: pg. 32).⁴¹ The movement was however, quite significant as the authors point out, in terms of its “on-the-ground” effects on youth justice in the country. What characterized this movement was the philosophy of ‘minimum intervention’ by youth justice over young offenders. Bottoms et al. (1990 cited in ibid: 2004) have cited the work of Pitts (1988) to show what this minimum intervention principle entailed.⁴² It included less involvement of and intervention of professionals in the lives of young

⁴⁰ See Bottoms and Dignan 2004 for a more in-depth discussion.

⁴¹ The authors point out that this ideology consisted of a “new orthodoxy” in youth justice.

⁴² The original work of Pitts (1988) appears in Bottoms et al. 2004 as a modified version of his work by Bottoms et al. in 1990. I have included a brief outline of this for the discussion here.

offenders, less custodial and institutional placements and lastly, focusing attention to community-based programs as to prevent the adverse effects toward continued criminality. As Bottoms and Dignan (2004: 33) point out, the movement “was to ‘hold’ a juvenile offender in a not too intensive (and, therefore, in its view, not too damaging) environment until he or she had grown out of crime.” Interestingly enough, the youth justice movement was able to flourish even when during that time there was a Conservative government in office and reflected a seemingly different philosophy than what would be considered a conservative approach to youth justice (Bottoms and Dignan 2004).

Hence, what became a commonly used tactic by police was “formal cautioning” as opposed to formally charging the youth and an increase in such practices was seen in youth justice across the country (ibid). Indeed there were issues with this movement that arose and the authors point out that for one, police caution efforts did nothing to instill possible preventive measures to take place once a youth was cautioned and secondly, the movement did nothing to cease the moral panic toward youth crime that arose shortly after the murder of James Bulger in 1993 by two ten year old boys (ibid; Graham 2002).

The second event that influenced changes in youth justice pertained to court procedures that were long and drawn out. Bottoms et al. (2004: 37) have commented that there was great concern over the length of prosecution from the time of offence to sentencing. Whereas, opposing political commentators (New Labour at that time), argued, “‘the scope of getting young offenders and their parents to face up to the offending was being compromised’.” Straw and Michael (1996 cited in Bottoms et al. 2004: 40) called youth justice proceedings a “theatre of court proceedings” that included

long delays. Lastly youth justice in England and Wales is influenced by the separation of criminal and care jurisdiction courts. This saw a separate youth justice system that handled criminal cases only and a care jurisdiction in family court to handle other matters (ibid).

Closer to 1997, the New Labour government had made its mark on the UK political front. Its *Crime and Disorder Act* (1998) that was described as a “comprehensive and wide-range reform programme” (Home Office 1997b cited in Muncie 1999; Graham 2002). Newspapers at that time called the government’s policies “the biggest shake-up for 50 years in tackling crime” (*Guardian*, September 1997 cited in ibid) and it received the Royal Assent on July 31, 1998. The Labour Party took a sharp turn in the ways that youth crime and justice would take shape within the country. Its reforms include crime prevention and governance around community safety as well (Hope 2005). These initiatives were part of the new government and introduced a continual emphasis on crime control while trying to live up to the hype that was created during the election campaigns of the party. For example, Hope (2005: 370) writes that

Politicians found themselves in a dilemma: on the one hand, a need to talk tough in public to assuage growing demands for safety and protection; on the other hand, a need to address, covertly and within the ‘system’, the evident failures of the criminal justice system to deliver that security.

Youth matters can fall under the *Crime and Disorder Act* (CDA, 1998) and what is most notable about the *CDA* is its focus on parenting orders, which I speak to in later chapters. Depending on the severity of the act, a young person can either appear in Youth Court or in Crown Court (see Graham 2002). The former is a part of a modified

magistrate's court, which is run by lay magistrates and members of the community.⁴³ Many youth cases are handled in this court and very few are heard in Crown Courts, which are presided over by professional legally-trained judges (ibid).

In part three of the *CDA* under the heading of “Criminal Justice System”, youth justice directives are stipulated. The general aim of these directives is to legislate practices and programs to “prevent offending by children and young people” [section 37 (1)]. Most importantly, as we will see later in this thesis, is section 39, which defines and outlines the role of “youth offending team” (YOT) persons. According to a 2007 Home Office report⁴⁴, the role of such personnel is to assess, and to intervene in the lives of young offenders and to also supervise those in the community. YOTs are made up of individuals from an array of agencies including police or probation services. As the report suggests (pg. 33), YOTs are to intervene in the lives of young offenders as the means of addressing “the causes of a young persons offending – whether it may be difficulties at home, school or peer pressure...[to] reduce the risk of re-offending.” Another important role that YOTs fulfill is to implement community initiatives with the goal of helping young people face the consequences of their anti-social or delinquent behaviour and learn to change behaviours and attitudes that lead to criminality (Home Office, 1997).

Local authorities also have the duties to set out how youth justice services will be implemented and operate [*CDA* section 40 (1) (a)-(b)]. Likewise, such functions as organized by youth justice services must be accountable to the “Youth Justice Board” that are responsible for overseeing the operations of services. The Youth Justice Board

⁴³ Non-legal individuals refer to the public who have been chosen by a special panel selection and are unpaid for their services (depending on the size of city center they work from) (Graham 2002; Bottoms and Dignan 2004).

⁴⁴ Report entitled “No More Excuses: A New Approach to Tackling Youth Crime in England and Wales”.

has particular functions [section 41 (5) (a)-(h)] and some of these include: monitoring the youth justice system; and advising the Secretary of the State about the operations of each youth justice system or steps that have been taken (by the system) in its prevention of offending by young people. Furthermore, the Board must also promote “good practices” that address crime prevention and working with children and young people who are at risk of offending (subsection f).

Under the *CDA*, there is also a section that specifically addresses anti-social behaviour. Section one of the Act, allows applications to be made for “anti-social behaviour orders” (ABSOs) where individuals over the age of ten, whose behaviour has been determined to cause “or was likely to cause harassment, alarm or distress to one or more persons” [section 1 (1) (a)]. The order can be in place for a period of not more than two years [section 1 (7)] and if conditions are breached, an individual can be either convicted by way of summary or indictment. The former would mean a term of imprisonment not exceeding one year or a fine (or both); whereas the latter, stipulates a term of imprisonment not more than five years, a fine or both [section 1 (10) (a)-(b)]. The goal of anti-social behaviour conditions is that they are “necessary for the purpose of protecting [society] from further anti-social acts by the defendant” [section 1 (6)].

Alongside the anti-social behaviour clause of the *CDA*, England and Wales also incorporated a separate piece of legislation that handles anti-social behaviour. One of the purposes of the “Anti-Social Behaviour Bill” is to outline more specific legislative provisions that allow for youth offending teams “to work with parents in preventing and tackling anti-social behaviour by their children.”⁴⁵ The Act received Royal Assent on November 20, 2003 and along with the *CDA*, specifically speaks to parenting orders.

⁴⁵ Page 3: UK House of Commons Research Paper 03/34. April 4, 2003.

Part 3, which is entitled “Parental Responsibilities” reads that under section 18, parenting orders can be imposed. Under section 21 of the *Anti-Social Behaviour Act*, the court must take into consideration when deciding to grant a parenting order, whether the person has refused to enter into a parenting contract – which is a voluntary agreement between the parent and a Youth Offending Team worker.⁴⁶ As we will see later in this study, England and Wales appear to have the most aggressive legislative provisions pertaining to parental responsibility for youth crime.

Youth Justice Legislation in Australia

Like the youth justice system in the US, Australian states that are also responsible for administering youth courts and laws and each state has its own youth justice policies. The youth justice system throughout the country continues to maintain a balanced approach between “welfare” and “justice” initiatives (Atkinson 1997). Despite this observation, others have commented that states continue to differ in how they apply the welfare versus justice approach. According to O’Connor et al. (2002), South Australia’s *Young Offenders Act (1993)* promotes deterrence while Queensland’s *Juvenile Justice Act (1996)* tries to maintain a balance by addressing criminality, protecting the community and recognizing the needs of young offenders. Authors such as Hil (1998) have stated however that Queensland’s *Juvenile Justice Act* constitutes a ‘hard’ response to youth criminality within the state. What has made Australian juvenile justice unique in some regard is its focus on restorative justice (O’Connor 1993, 2002; Cunneen et al. 2002;

⁴⁶ www.statutelaw.gov.uk. Accessed September 17, 2009.

Muncie 2004). The aim of such initiatives is to keep young people out of formal court proceedings and instill community based proceedings such as family conferences (ibid).

An interesting point offered by Atkinson (1997: 34) is that despite the influence of the British in relation to juvenile justice, Australian states “took the idea for special children’s courts from the United States.” Furthermore, an interesting point to highlight is that given the outcomes of the *In Re Gault* (1967) case in the US, it had also “reverberating effects that influenced the Australian law reforms in the 1970s” (ibid: 35).

It would be impossible for me to fully discuss each state’s individual legislation and therefore, I have paid brief attention to the three states that I write about when addressing parental responsibility laws. These are Western Australia, Queensland and New South Wales.

Youth Justice Legislation in Western Australia

Youth legislation and directives are found under the state’s *Young Offenders Act* (1994). The objectives of the Act are to provide for the administration of juvenile justice and among other principles “to enhance and reinforce the roles of responsible adults, families, and communities” [section 6 (d)].⁴⁷ The involvement of families (or responsible adult as stated in this Act) is certainly an important consideration within the legislation.

For example, section 7 (f) states that responsible adults are encouraged to fulfill their responsibility for not only the care of, but for the supervision of young offenders as well. Furthermore, under section 8 subsection (a) through (c) (“Role of Responsible Adult”), the role of a responsible adult is explained as being one where adults have a

⁴⁷ www.slp.wa.gov.au

responsibility for the behaviour of young people under ones care, have involvement in court dispositions and lastly, that adults be notified of arrests and custody of young persons.⁴⁸ Section 58 pertains to court ordered fines – on the part of the youth – that may become the responsibility of an adult to pay, and section 70 states that “The court may refrain from imposing any punishment upon being satisfied that a responsible adult has given security that the offender keep the peace and be of good behaviour for a term not exceeding one year.”⁴⁹

Youth Justice Legislation in Queensland

Legislation that administers youth justice falls under the *Juvenile Justice Act* (1992). Juvenile justice in the state was once a responsibility of the child welfare department (O’Connor et al. 2002). It has been said however, that Queensland’s youth legislation is “explicitly based on a ‘justice model’ ...the child is primarily responsible for his or her behaviour” (Naffine et al. 1990 cited in O’Connor 1993). The legislation also allows for police cautions to be possible as a means of diverting young people away from the courts (O’Connor et al. 2002). The police have operated a cautioning scheme by which young people are cautioned for first and minor offences (ibid). O’Connor (1993) points out that police cautioning is seen as a method of deterrence.

The state has a two-tier youth court system (“Children’s Court) where one is presided over by a magistrate and the other by a judge, depending on the seriousness of the offence (ibid). As in Canada, youth courts are also experiencing an over-

⁴⁸www.slp.wa.gov.au

⁴⁹www.slp.wa.gov.au

representation of Indigenous youth (O'Connor 1993, 2002; Cunneen et al. 2002). Like Canada's high population of Aboriginal youth in the justice system, similar historical events have led to the same situation in not only Queensland but in Australia overall.

There are several sections in the *Juvenile Justice Act* that pay attention to the role of parents. Here is just a brief overview of some key sections. Section 2 (e) of the "Objectives of the Act" recognizes "the importance of families of children and communities... in the provision of services designed to rehabilitate and reintegrate children back into the community."⁵⁰ An important part of this rehabilitation and reintegrating of children is the emphasis placed on youth conferences that the state supports. Under section 30 (4) (b), it is stated that parental involvement in such conferences will enable parents to benefit by "(i) being involved in decision making about the child's behaviour; and (ii) being encouraged to fulfill their responsibility for the support and supervision of the child; and (iii) being involved in a process that encourages their participation and provides support in family relationships."⁵¹

Court proceedings may also be adjourned if a parent is not present (section 69) and section 70, allows the courts to issue warrants for parents who fail to appear at court sittings. Subsection (5), enables the court to assist the parent in attending court by providing financial assistance to the parent. Section 72 stipulates that both parent and child have the right to have the opportunity to be heard and to fully participate in court proceedings.⁵²

⁵⁰ www.legislation.qld.gov.au

⁵¹ www.legislation.qld.gov.au

⁵² www.legislation.qld.gov.au

Youth Justice Legislation in New South Wales

For the state of New South Wales, youth justice is under the directive of the Department of Juvenile Justice. The primary responsibilities of the department are to care for and supervise young offenders in the community who are serving community-based sentences, or those in the community while court cases are pending.⁵³ The department is also governed by the directives of the *Young Offenders Act* (1997) and the *Children (Detention Centres) Act* (1987). When a young person is charged, it is under the *Young Offenders Act* and court proceedings fall under the directives of the *Children (Criminal Proceedings) Act* (1987 no. 55).

According to the 2007-2008 annual report⁵⁴ for the Department of Juvenile Justice, there continues to be an overwhelming over-representation of Aboriginal youth within the juvenile system (pg. 22). The department continues to focus on the needs of this population and develop initiatives with their needs in mind. Some of these initiatives include Aboriginal Community Justice or anti-violence working groups for Aboriginal males (pg. 26). An important component of the Department is to conduct youth justice conferences. In the annual report (2007-2008: 28), the primary objectives of such conferences [under section 34 (1)-(3)] are to be less of an intrusive option for dealing with young offenders, emphasizing restorative justice approaches and assisting in the acceptance of responsibility of behaviour by the offender.

⁵³ www.djj.nsw.gov.au. Accessed July 3, 2009.

⁵⁴ www.djj.nsw.gov.au. Accessed July 3, 2009.

The state's *Young Offenders Act* also focuses on alternative means by which young offenders should be dealt with. For example, section 3 (a) of the Act states that the objective of the Act is to provide "an alternative process to court proceedings for dealing with children who commit certain offences." It also states that the goal of the legislation is to enable a "community based negotiated response to offences involving all affected parties" [section 3 (f)]. The Act also mentions parents in two key sections. The first, section 7 ("Objectives of Scheme"), subsection (f) adds "The principle that parents are to be recognised and included in justice processes involving children and that parents are to be recognised as being primarily responsible for the development of children." As in other legislation already mentioned, the *Young Offenders Act* also stipulates that parents are to receive notification of the child's criminal proceedings. Since New South Wales – like other states – implements police cautions, section 16 (a) of the Act points out that parents of the young person must be notified, "whether in writing, verbally or in person, that a warning has been given to the child in respect to an offence committed by the child."⁵⁵

Parents are also mentioned in the *Children (Criminal Proceedings) Act* (1987 no. 55). Section 3 (1) (b), states that parental responsibility "in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to their children." Furthermore, the Act also adds two important objectives. Under section 6 (b), young persons should bear responsibility for actions but "because of their state of dependency and immaturity, require guidance and assistance." Whereas, subsection (g), states "children who commit offences accept responsibility for their

⁵⁵ "Warning" is to imply that authorities with respect to an offence have stopped a young person but did not lay charges.

actions and, wherever possible, make reparation for their actions.” In the following chapter, I provide a more detailed overview of parental responsibility laws in each country and look at individual state and provincial legislation as well.

CHAPTER SIX **PARENTAL RESPONSIBILITY LAWS IN EACH COUNTRY**

As we have seen, all four countries under study in this thesis have had historically and continue today to have legislative provisions in place in youth justice statutes that address the issue of parental responsibility. However, it is also important to acknowledge and describe how parental responsibility has also been legislated in parental liability laws that are separate from youth justice legislation. In the following chapter, attention is given to examples of such laws in each of the four countries.

Parental Responsibility Laws in the United States of America

All US states have some form of legislation that can make parents civilly or criminally liable for wrongful acts of their children (Gillian-Johnson et al. 1997; McNaught 1998; Roy 2001). There are some states that have enacted criminal sanctions against parents as well and they include such states as Kentucky, New York and Oregon (Dizon 1996 cited in Gilleran- Johnson and Rosman 1997). Despite controversies that have followed parental responsibility laws in the US, McNaught (1998) points out that US courts continue to uphold these laws as valid. Geis and Binder (1991 cited in McNaught 1998: 3, emphasis added) indicate that there is no proof that these laws do in fact deter youth criminality. However, they point out that parental responsibility laws in the US

Do not meet the constitutional requirement that a law have a 'rational connection' to the stated purpose of the law. The courts however, have said that the *mere possibility* that these laws might reduce juvenile delinquency *is enough* to meet the 'rational connection' requirement.

Furthermore, challenges made against parental responsibility laws have centered on the notion that such laws were subjective and "an intrusion into the privacy of families" (Hil 1999: 4). It is beyond the scope of this thesis to discuss all fifty states and their parental responsibility laws; therefore, I will mention only a few to give readers a sense of these laws and later in this discussion, I focus attention to the four chosen states: California, Illinois, New York and Texas.

Prior to the 1950's the states of Hawaii and Louisiana had such laws in place. Hawaii had one of the broadest parental responsibility laws in the US. It dated back to 1846 and allowed victims to recover funds from parents of a child who harmed them (Dimitris 1997-1998; Graham 2000; Thurman 2003). Furthermore, as Andrew McNaught (1998: 3) points out, Hawaii's parental responsibility laws "make[d] parents civilly liable for both the intentional and negligent acts of their children and place[d] no limit on the amount of compensation that c[ould] be awarded for property damage." Dimitris (ibid) has referred to Hawaii's laws as one example of vicarious liability laws in the US as it was the first to enact such civil suits against parents for the mere actions of their children (Brank et al. 2005). What this implies is that victims do not have to prove to the court that a parent was negligent (ibid) and there is not a defense for a parent to use if trying to argue to the court that they attempted to supervise their children (Hanson 1989 cited in Brank et al. 2005). The enactment of later parental responsibility laws in the

late 1960's were at least in part a result of President Lyndon Johnson's government administration campaign against the 'war on poverty'. According to Chaplin (1997), during this time a link was made between poverty and juvenile delinquency; in which it was believed that familial environment, the role of parents in raising children and access to certain resources (i.e. school and employment opportunities) could result in criminality of young people.

California's *Parental Responsibility Act* (1988) under the *Street Terrorism and Prevention Act* outlines parent liability when the level of supervision of children "amounts to a 'gross' or 'culpable' departure from the normal standard of parental care" (McNaught 1998: 3; Hil 1999). In Illinois, under section 740 §115/3 of Illinois' *Civil Liability Act*, parents or legal guardians of a minor who reside with them are liable "for actual damages and legal fees for willful or malicious acts which cause injury to person or property" (Davis and Davidson 2001). According to Brank et al. (2005) states like California and Texas have the highest recovery limit, where parents can be ordered to pay up to \$25,000 for property damage caused by their children.

Some authors have stated that the enactment of parental responsibility laws in the US has been the result of a commonly held notion that "juveniles [are] not mature enough to be held solely responsible for their actions; therefore, their parents must also be involved" (Difonzo 2001 cited in Brank and Weisz 2004: 467; Brank et al. 2005). Some US states that have implemented provisions, which require parents to pay court fees that are the result of their children's court appearances or time in a custody facility. These states include Illinois, Arizona, New Hampshire, Idaho and Dakota⁵⁶ to name a few (Hil 1998, 1999; Tyler et al. 2000; Tyler et al. 2000 cited in Thurman 2003). There are also

⁵⁶ In the article, the author does not specify whether this was North or South Dakota.

twenty-four States that require parents to pay institutional or procedural costs associated with their child's criminal involvement (Yee 1999).

Most interesting is Utah's *Parental Responsibility Law* (1995) that allows an affirmative defense when parents report the criminality of their children to the authorities (Schmidt 1998; Act cited in Thurman 2003). According to the Utah Code §11.60.030 (B), parents are given this defense when they report, "the act or event to appropriate governmental authorities at or near the time the child committed the wrongful or delinquent act" (Act cited in Schmidt 1998 pg. 695).

Parental Responsibility Legislation in Illinois

Illinois was chosen as one of the US states to be studied as it was the first to develop a separate youth justice system and I also wanted to see what kind of parental responsibility laws followed.

We can observe parental responsibility laws both at the criminal and civil level in Illinois. The former offers Code §720 ILCS⁵⁷ 640/ under the heading of *The Improper Supervision of Children Act*.⁵⁸ Section (1) states that parents are committing improper supervision of a child when they allow them to "associate with known criminals or persons of ill repute." Furthermore, children who do not keep the peace or break curfew conditions are seen as being improperly supervised by parents. Interestingly enough, the fine for a first time misdemeanor by a parent is only twenty-five dollars and for a second offence, the fine is only fifty dollars (§720 640/2, section 2).

⁵⁷ "ILCS" means the "Illinois Compiled Statues."

⁵⁸ Full citation is under ILCS heading of "Rights and Remedies" –Chapter 720 "Criminal Offences" – Offences Against Public" –"720 ILCS 640/ Improper Supervision of Children Act."

As for civil liability, under Chapter 740 ILCS, §115/ is the state's *Parental Responsibility Law*.⁵⁹ There are seven sections, which outline this legislation. I will only highlight the sections three and five as they relate directly to parental responsibility for children's criminal acts. Section three, addresses what defines parental liability and this is defined as "a parent or legal guardian [who] is liable for actual damages for the willful or malicious acts of such minor which cause injury to a person or property." Secondly, section five explains the limitation that is placed on the monetary amount that can be claimed. Claims cannot exceed \$20,000 dollars and if claims are made as a result of personal injuries sustained, only medical, dental or hospital expenses are claimable.

Parental Responsibility Legislation in New York

The state of New York also recognizes both civil and criminal sanctions against parents. Civil liability is found under Section §3-112⁶⁰ of the *General Obligations Statutes* regarding "liability of parents and legal guardians having custody of an infant for certain damages caused by such infant."⁶¹ Subsection (1) reads "for damages caused by such infant, where such infant has willfully, maliciously, or unlawfully damaged, defaced or destroyed such public or private property." If the damages exceed \$500 dollars, the parent may request a hearing in court as to why they should not be made liable (see Davies and Davidson 2001).

⁵⁹ Full citation is under ILCS heading of "Rights and Remedies –Chapter 740 "Civil Liabilities" -740 ILCS 115/ "Parental Responsibility Law."

⁶⁰ General Obligations full citation is Article 3 "Capacity; effect of Status or of Certain Relationships or Occupations Upon the Creation, Definition or Enforcement of Obligations" –Title 1 "Infancy" –section 3-112.

⁶¹ To clarify, the term "infant" is used as under Article 3 of the General Obligation Statues, Title 1 is entitled "Infancy."

Subsection (2) allows a parent the opportunity to address the court as to why he or she should not be made liable to pay and according to subsection (2)

The court shall, in summary fashion, hear and consider all evidence of financial hardship presented tending to establish the inability of such parent or legal guardian to pay any or all of the amount of the sum total in excess of five hundred dollars, and the court shall render its decision as to such party's inability to make such payment based upon a preponderance of the evidence presented.⁶²

Criminal sanctions against parents are found under the state's *Penal Code* (PC) – specifically that of §260.00-260.34,⁶³ which relates to children, disabled persons and vulnerable elderly persons. Under §260 (10) (2), entitled “*Endangering the welfare of a child*”, we find that a person “Being a parent, guardian or other person legally charged with the care or custody of a child less than eighteen years old, he fails or refuses to exercise reasonable diligence in the control of such child to prevent him from becoming an “abused child,” a “neglected child,” a “juvenile delinquent” or a “person in need of supervision.” In other words, as Davies and Davidson explain, this legislation applies when a “parent fails or refuses to act diligently to control the child from becoming delinquent” (2001: 181).

The New York Department of Juvenile Justice (DJJ) established a “Release to Parent Initiative” in October 2007 with the hope of reducing the number of young people in custody pending court proceedings or after disposition. According to the Department’s 2007 annual report, young offenders are evaluated by juvenile counselors to assess whether they may be returned to their parents when initially arrested by authorities or at

⁶² See <http://public.leginfo.state.ny.us>. Accessed July 14, 2009.

⁶³ Penal Code full citation is Part 3 “Specific Offenses” –Title O “Offenses Against Marriage, The Family, and the Welfare of Children and Incompetents” –Article 260 “Offenses related to Children, Disabled Persons and Vulnerable Elderly Persons.”

the end of their court proceedings (pg. 4). The release to parent initiative program is closely affiliated with probation services, the Administration of Children's Services⁶⁴, as well as the New York City Legal Department, and services are sensitive to the needs of both parents and young people while embracing "the city's policy of providing full access to services despite a person's legal status."⁶⁵ The primary objective of the program is to avoid "detention and [return] young people to their families and communities" (pg. 4). If returned to their parents, prior to the conclusion of court proceedings, the young person along with their parent(s) are required to attend court together. According to the program's objectives, the release program acts as an "assessment program for youth admitted to DJJ facilities by the police...An immediate evaluation allows juvenile counselors to determine whether a youth is qualified to avoid detention and return home" (pg. 5).

According to a State report (2000-2002) on methods for combating youth criminality, the Governor's office proposed that changes be made to the *Family Court Act* in respect to parental accountability. The report stated that the purpose of the Act be redefined, and that it be made to include and promote "juvenile accountability and parental support... by requiring a parent to participate with the child in programs as a condition of probation."⁶⁶

There are also counties within the state that have enacted parental responsibility laws. One such county is Canandaigua in Upstate New York. The county's city council

⁶⁴ Child welfare agency for the city of New York.

⁶⁵ Citation was found at: www.nyc.gov/html/djj/pdf/release_to_parent.pdf. Accessed on-line on October 21, 2009.

⁶⁶Report of the New York State Comprehensive Juvenile Justice Plan 2000-2002. In June 1997, The New York State Assembly proposed its own juvenile justice reform legislation whereas, agreement about issues such as victim rights and parental accountability were raised and according to the 2000-2002 report "a comprehensive reform plan has yet to be adopted."

office determined that in recent years, youth delinquency was on the rise and youth were “committing acts which would be, if committed by adults, violations of the Penal Law of the state of New York.” It was felt that such offences by young people could not be overlooked and as such, city council made an effort to reinforce parental responsibility and greater parental awareness of the activities of their children by implementing a parental responsibility law.⁶⁷ The county now has in place, Chapter 514 “*Parental Responsibility Act*”, which coincides with the New York state *Penal Code*, and the county’s *Municipal Code* as well. Overall, the chapter states that in the case of any violations by the young person under the *Penal* or *Municipal Code*, where a parent fails “to exercise reasonable diligence in the care and control of a minor in his or her custody” he or she “shall be deemed [to have] constructive knowledge of and consent[ed] to the commission of a predicable act (as such term is hereinafter defined) by such minor.” Penalties for such violations are as follows: first violation, a fine of not less than twenty-five dollars but not exceeding seventy-five dollars. Second violations carry a fine of not less than fifty dollars but no more than one hundred dollars. Lastly, third time violations carry a penalty of no less than seventy-five dollars but not more than one hundred and fifty dollars.⁶⁸

⁶⁷ http://www.canandaiguaneewyork.gov/index.asp?Type=B_BASIC&SEC={C658A577-5672-414C-A859-4C071D2BAD54}&DE={8037B5A7-0776-49EF-B2F9-6B4DB8CB3082}. Accessed on May 28, 2009.

⁶⁸ Ibid at footnote 35. Accessed May 28, 2009.

Parental Responsibility Legislation in California

Like Illinois and New York, California also has criminal and civil sanctions pertaining to parental responsibility. The state's equivalent to such laws is found under several legislative directives and makes California one of the toughest states in the US with such legislation.⁶⁹ California is also known to have pioneered such parental responsibility laws since 1985, when it began aggressively pursuing gang violence across the state (Dantiz and Nagy 2000). Davies and Davidson (2001) have cited thirty-four different sections of various state codes that address parents. I will only touch upon some of these.

First, for criminal sanctions, the state's Penal Code (PC), §186.20 through to §186.33 is known as the "*California Street Terrorism Enforcement and Prevention Act*" (Chapter 11) where §186.21 explains "every person...be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups or individuals."⁷⁰ The state's objective for enacting the above legislation was part of the recognition that it found itself in a crisis, which had "been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods" (PC §186.21). According to Laskin (2000), California turned to laws for criminalizing parents in 1988 as a result of staggering gang related homicide rates during that year and she cited that in Los Angeles alone, 328 gang related homicides occurred.

⁶⁹ Kim Murphy and Melissa Healy. The L.A. Times, April 30, 1999 pg. 1.

⁷⁰ www.leginfo.ca.gov. Accessed July 15, 2009.

Penal Code §272⁷¹ is most commonly used for parental liability cases and addresses the cause of, encouragement or contribution to an offence by parents (Davies and Davidson 2001). In subsection two of *PC* §272, it states that “ a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child” (cited in *ibid*: 137). Parents can be ordered a fine up to \$2,500 dollars, jail term not exceeding one year or both. Likewise, a term of probation for a term not exceeding five years may be ordered as well [§272 (1) (a)]. Under the *Penal Code* §490.5. (b),⁷² which addresses “theft of property of others”, a parent or guardian can be liable for up to fifty dollars but not exceeding five hundred dollars if he or she has care and control over the child and a theft of property is caused by that child.

Likewise, civil liability is found under the *Welfare and Institutions Code*, (Davies and Davidson 2001) which stipulates that under §730.7⁷³, when a minor is ordered restitution, the parent/guardian

Who has joint or sole legal and physical custody and control of the minor shall be rebuttably presumed to be jointly and severally liable with the minor in accordance with Sections 1714.1 and 1714.3 of the Civil Code for the amount of restitution, fines, and penalty assessments so ordered.

Likewise, when ordering such monetary penalties on the part of the parent, a continuation of § 730.7 stipulates that the court does however, take into consideration the following things: inability to pay on the part of the parent, future earnings capabilities, present

⁷¹ Penal Code full citation is Title 9 “Of Crimes against the person involving sexual assault, and crimes against Public Decency and Good Morals” –Chapter 2: “Abandonment and Neglect of Children.”

⁷² Penal Code full citation is Title 13 “Of Crimes of Property” –Chapter 5 “Larceny.”

⁷³ Welfare and Institutions Code full citation is Division 2 “Children” –Part 1 “Delinquents and Wards of the Juvenile Court” –Chapter 2 “Juvenile Court Law” –Article 18 “Wards – Judgments and Orders.”

parental income, number of dependents under the care of parent, and duties of providing the necessities of life (i.e. shelter or food) that a parent is responsible for.

Furthermore, California's *Civil Code*, Part 3 "Obligations Imposed by Law" contains §1714.1⁷⁴ where civil actions can be ordered against parents for the injury (or death) to person or damages to property [subsection (a)]. The liability costs can be upwards to \$25,000 making California one of the US states with the highest claim possible against parents along with that of Texas as well.

Parental Responsibility Legislation in Texas

For the state of Texas, parental responsibilities fall primarily under *Family Code* legislation, where Chapters 41, 51 and 61 address various parental responsibility clauses.

Under the *Family Code*, Chapter 41 "Liability of Parents for the Conduct of Child", section 41.001⁷⁵ states that a "parent or other person who has the duty of control and reasonable discipline of a child is liable for any property damage proximately caused by (1) the negligent conduct of the child if the conduct is reasonably attributed to the negligent failure of the parent or other person to exercise that duty."⁷⁶ The limit for which damages can be claimed cannot exceed \$25,000 (section 41.002). Again this makes Texas, along with California the only states with a high claimable amount for damages against parents.

⁷⁴ West's annotated California Codes (2008 pg. 1); Davies and Davidson 2001.

⁷⁵ The full citation of this section is: Chapter 41, Chapter 2 "Child in relation to the family", subtitle B, "Parental Liability" –Chapter 41 "Liability of Parents for Conduct of Child."

⁷⁶ www.statutes.legis.state.tx.us. Accessed on July 20, 2009.

Under *Family Code*, Chapter 51⁷⁷, in highlighting the protection of the public, §51.01 (2) (C), states that this will be achieved by “[providing] treatment, training, and rehabilitation that emphasizes the accountability and responsibility of both the parent and the child for the child's conduct.”⁷⁸ Like other states within the US, Texas can also order that parents pay legal costs. Under § 51.10 (d) (2), parents are responsible for ensuring that their child have legal representation only in cases that the court determines that parents are financially able to cover the costs of counsel. However, as found under subsection (e) of § 51.10, the court may also appoint counsel on behalf of the child and order that the parent pay legal fees as then decided on by the court. Furthermore, if the court directly appoints counsel [subsection (f) and (g)] as a result of the parent’s inability to financially cover costs, the court can still make the parent liable for reimbursing the county that covered the costs of counsel [§ 51.10 (k)].⁷⁹ The *Family Code* also provides for a “guardian ad litem”, which points out that children should have a guardian or parent present during court proceedings. Under § 51.11 (a), should a child be present in court without a parent, the court can “appoint a guardian ad litem to protect the interests of the child.”

In recent years, the *Family Code* was amended by the state legislature to include a chapter that addressed bringing “parents more into the juvenile process to assist in rehabilitating their children” (Dawson 2004).⁸⁰ By adding Chapter 61⁸¹ “Rights and Responsibilities of Parents and Other Eligible Persons”, the Attorney General Office

⁷⁷ The full citation for Chapter 51 is Family Code Title 3 “Juvenile Justice Code” –Chapter 51 “General Provisions.”

⁷⁸ www.statutes.legis.state.tx.us. Accessed on July 20, 2009.

⁷⁹ www.statutes.legis.state.tx.us. Accessed on July 20, 2009.

⁸⁰ Cited in the Attorney General’s report “Juvenile Justice Handbook 2007: 27.

⁸¹ During the 78th Texas state Regular Legislature, Bill HB 2319 was passed thus adding Chapter 61 under the Family Code –Title 3 “Juvenile Justice Code.”

reported that this new chapter would recognize that “parents, guardians and custodians must be involved in the rehabilitation of their children after they have been placed on juvenile probation” (pg. 27).

Parental Responsibility Legislation in Canada

A brief mention of parental responsibility was made under Canada’s first youth legislation, the *Juvenile Delinquency Act*. Section 22 (1) of the *JDA* made charges against parents possible if they either contributed to or omitted to prevent the child’s delinquent act (Roy 2001). When the *JDA* was replaced, parental responsibility made an appearance within the *Young Offenders Act* (1982) under its “Declaration of Principle.” Section 3(1) (h), 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.”⁸²

Unlike the *JDA* that supported state intervention in cases where parents had proven to be inadequate sources of discipline for children, the *YOA* implied that individual accountability made the young person a “rational ‘cold, calculating’ criminal” (Havemann 2000: 33). Parental responsibility and accountability is mentioned under section nine and ten of the *YOA*. These sections pertain to those parents whose children

⁸² Cited in Havemann 2000: 29, highlighted in original. Under the *YCJA*, this clause is not included and only section 3 (1) (d) (iv) in the “Declaration of Principle” does it state that “parents should be informed of measures or proceedings involving their children and encourage to support in addressing their offending behaviour” (Carswell Publishing 2004).

have been arrested.⁸³ Section 9 –Notices to Parents –states that among other things, parents are to be notified of arrest and reasons for arrest of their children [section 9 (1)]. Likewise, court proceedings will not be invalid if notice to parent is not given [section 9 (8)]. That being said, section 9 (9) points out that “failure to give notice...in accordance with this section in any case renders invalid any subsequent proceedings under this Act relating to the case unless: (a) a parent of the young person against whom proceedings are held attends court with the young person.”

Section 10 of the *YOA* –Order Requiring Attendance of Parent –points out under subsection 3 (“Failure to Appear”) that a parent ordered to attend court fails to do so (without reasonable excuse) is (a) guilty of contempt of court; (b) may be dealt with summarily by the court and (c) is liable to the punishment provided for in the *Canadian Criminal Code* for a summary conviction offence. The *YOA* also stipulated a clause that would allow a young person to be placed in the care of a responsible person. Section 7.1 (1) states that a young person can be placed in the care of a responsible person when the court is satisfied that “(b) a responsible person is willing and able to take care of and exercise control over the person and (c) the young person is willing to be placed in the care of that person.”⁸⁴ Essentially, what section 7. 1 (1) addresses is unnecessarily detaining of the young person.

If we examine the role of parents under the current *Youth Criminal Justice Act* (*YCJA*, 2002), we find similar clauses as were in the *YOA*, which consider parents (or guardians). In the *YCJA*, the definition of parent or guardian is stated as “any person who

⁸³ This includes when child is detained in custody. I note that, under subsection 2 –Notice to Parent in case of Summons or Appearance notice – also requires that a parent be notified whether their children was released on for example, a summons or promise to appear.

⁸⁴ Martin’s *Criminal Code of Canada*, 2004.

has in law or in fact the custody or control of any child” (section 2(1) cited in Hillian and Reitsma-Street 2003). There is also the clause for notifying parents of the information pertaining to their child’s arrest and court proceedings (section 26 cited in *ibid*: 23). Furthermore, subsection four of section 26, states that notice can also be given to a relative or other adult when a parent’s whereabouts is not known. Section 27 (1) of the *YCJA* also contains the same clause as section 10. (1) of the *YOA* did for the requirement of parents to attend court proceeding. Similarly, Section 27 (4) (Failure to Appear) is worded identically as was in the *YOA*.⁸⁵ While subsection five states that in cases where parents who do not attend court proceedings as ordered to do so, the court can order a warrant to “compel the attendance of the parent.”⁸⁶

Another important clause I would like to highlight pertains to section 25. (Right to Counsel), subsection ten is written as: “Nothing in this Act prevents the Lieutenant Governor in council of a province or his or her delegate from establishing a program to authorize the recovery of the costs of a young person’s counsel from the young person or the parents of the young person.”⁸⁷ Therefore, the court can make the application to have parents pay for the costs of legal counsel.

Overall, despite clauses within the *YCJA* that highlight parents and their inclusion, according to Doug Hillian and Marge Reitsma-Street (2003: 23), “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.” This statement speaks volumes if we were to apply it in the context of parental participation in youth conferences or mediation measures as

⁸⁵ <http://laws.justice.gc.ca>

⁸⁶ <http://laws.justice.gc.ca>

⁸⁷ <http://laws.justice.gc.ca>

part of restorative justice initiatives. Perhaps then the participation of parents in the judicial proceedings involving their children is limited if parents are not supported by the courts as the authors suggest. Authors such as Paterson-Badali and Broekins (2004, cited in Bala and Roberts 2006) have observed that no where within the *YCJA* can there be found a clause that requires children to reside with their parents or that parents be required to partake in counseling.

According to some critical 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 2000; Reitsma-Street 1989-1990 cited in *ibid*: 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 (i.e. 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) cited in *ibid*: 22).

There are also provisions under the *YCJA* that stipulate that a child can also be released to a “responsible person”. As was the case under section 7. 1 (1) of the *YOA*, section 31. (1) of the *YCJA*, also speaks to placing a young person the care of a responsible person. This section states: “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) “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.”⁸⁸ According to authors such as Mary Vandergoot (2006: 22), when sentencing a young person, his or her family (and other extended family members) should be taken into consideration; she points to section 5 (c) of the *YCJA –extrajudicial measures* – that addressing youth crime should “encourage families of young persons – including extended families where appropriate – and the community to become involved in the design and implementation of those measures.” Interestingly enough, it was in 2005, that Pierre Poilievre (Progressive Conservative MP –Nepean-Carlton) put forth a Private Members’ Bill that would amend the *Canadian Criminal Code* and add a parental responsibility clause. Bill C-456 was to include parental responsibility “as a key principle to our youth criminal justice system in making parents responsible for the actions of their children” (Canadian Parliament, Hansard, November 24, 2005). Poilievre added that incorporating parental responsibility within the Criminal Code would bring “the principle of vicarious sentencing into our justice system and ensures that parents will be liable to ensure that their children do not commit crimes that affect victims in the community.” If the *Canadian Criminal Code* were to be amended, Bill C-456 would further add to section 179; amending section 179.1 c.c. to reflect the following clause

Every parent or guardian of a person under the age of eighteen years who contributes, through negligence, inappropriate action to behaviour that leads the person to commit an offence is guilty of an offence punishable on summary conviction.⁸⁹

It is important to mention that Bill C-456 was read to members of Parliament back on November 24, 2005 and since that time, nothing has come of it. According to Larry

⁸⁸ As per Government of Canada, Department of Justice website: <http://laws.justice.gc.ca/en>. Accessed on May 18, 2008.

⁸⁹ Upon review of the current Canadian Criminal Code, section 179 pertains to vagrancy and does not mention parental responsibility whatsoever.

Wilson (2000: 386), Canadian courts have resisted including “vicarious responsibility” into criminal law and instead the *Canadian Criminal Code* does, as Wilson points out, “create few opportunities for parental responsibility.”

While there were provisions in the *YOA* and currently in the *YCJA* that relate directly and indirectly to parental responsibility, in Canada it is only provincially that parental responsibility laws have been enacted. Specifically, there are only three provinces that have enacted separate legislation that can make parents civilly liable for the criminality of their children. These are: British Columbia, Manitoba and Ontario.

Provincial Parental Responsibility Legislation

The three Canadian provinces have laws under the same title of a “Parental Responsibility Act”. The BC law came into effect in 2001; for Manitoba in 1997 and for Ontario, in 2000. These acts are similar in nature and contain very similar clauses regarding parental liability and possible civil liability claims. All three provincial acts define “parent” as anyone who is the biological, adoptive or declared individual to be a parent of a child under each province’s separate family acts.⁹⁰

All three pieces of legislation also address how the court determines what constitutes reasonable parental supervision. Each province adds its own clauses as we see later, but the following are the general factors that courts can consider:

- Age of child/young person
- Prior conduct of child
- Potential danger of the activity in question

⁹⁰ BC: Family Relations Act; Manitoba: Family Maintenance Act and Ontario: Child and Family Services Act or Children’s Law Reform Act.

- Physical/mental capacity of child
- Psychological capacity of child
- Whether the child was under the direct supervision of parent
- If parent was not supervising the child at the time of offence, was reasonable effort made to arrange supervision by another
- Whether parent sought parenting skills or courses to improve parenting skills
- Whether parent sought professional help in discouraging activity that resulted in damage
- Other factors that the court sees fit

Furthermore, the provincial acts have the following similar section headings:

- Parents' liability
- Parental defence
- Maximum award possible
- Proof of conviction under youth legislation provided to victim or insurance company

British Columbia

The *Parental Responsibility Act* received Royal Assent on August 27, 2001 and it defines parental liability as applying to a “parent of a child [liable] for the loss of or damage to the property...by an owner and by a person legally entitled to possession of the property (section 3, part 2).” Claims can be filed with Small Claims court under the legislation of the *BC Small Claims Act* (section 4). The amount of damages that a parent can be liable for cannot exceed \$10,000 dollars [section 6 (1)] and should there be more than one accused, parent or victim pertaining to a case, damages still cannot not exceed this maximum amount [section 6 (2)].

The act also allows a parental defence to be admissible in court. In such cases, parents can appear in front of the courts and defend why they should not have to cover the costs for damages. Under section 9 (a) and (b) of the Act, the parent must satisfy the

court that he or she exercised reasonable supervision at the time of the offence and made reasonable efforts to prevent or discourage the act from occurring. Under section 10, there are a total of eleven factors that the court can consider when deciding whether reasonable supervision was exercised by the parent. BC incorporates the nine mentioned above and adds subsection 10 (j) for the court to consider the psychological, or medical disorders of the parent or whether the parent has learning, physical or emotional disturbances.

Authors such as Hillian and Reitsma (2003: 21) point out that in BC, the *Parental Responsibility Act* allows individuals or insurance companies to “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.” They add that “the burden of prove is not on the state to prove parental negligence, but on the parent to prove s/he should not be held liable.”

Manitoba

One reason for the enactment of Manitoba’s *Parental Responsibility Act* was the reaction of the government to a case filed with Queen’s Bench court in 1996 entitled *D.C.B v. Zellers*, which involved a young child who stole merchandise from Zellers. His mother (D.C.B) paid \$225 dollars back to the store. Shortly thereafter, the mother took the company to small claims court to receive the money back (see Roy 2001). The judge in this case made the following remarks after deciding that he had no authority to order the mother to pay the store back

There is no general rule that parents are liable for the torts of their children...[they may] only be liable if they, themselves, were in some way negligent or had engaged in tortious conduct in relation to the activities of their children.⁹¹

Such a decision prompted the Government of Manitoba to enact its legislation shortly thereafter, making it the first province to enact a *Parental Responsibility Act*. It received Royal Assent on November 19, 1996 and its purpose (section 2) was to “ensure that parents are held reasonably accountable for the activities of their children in relation to the property of other people.” Like the BC legislation, claims are also filed with Small Claims court, which is the jurisdiction of the Manitoba *Court of Queen’s Bench Small Claims Practices Act*. Furthermore, claims cannot exceed the same amount as in the BC case (\$10,000, under section 4). Interestingly enough, under section 6 of the Act, “no more than one award of damages may be made under [the] Act arising out of the same act of the same child” and this is to ensure “greater certainty” as stipulated in the section. Likewise, the Act also allows for parents to exercise a defence [under section 7 (1) (a) - (b)], whereas, section 7 (2) stipulates that the onus is placed on the parent to establish a defence to the court.

Like the BC legislation and its consideration of factors by the court pertaining to parental liability, the Manitoba legislation [section 7 (3)] contains eleven factors as well that the court can take into consideration when deciding if reasonable supervision by the parent was exercised. The Manitoba act includes subsection (f) to section 7 (3) as one of the factors that may be considered by the court to whether the “danger arising from the child’s conduct was reasonably foreseeable by the parent.” The Manitoba legislation also

⁹¹ See *D.C.B v. Zellers* (1996), 111 Man. R. (2d) 198 (Q.B.). cited in Roy 2001: 146.

addresses method of payment options should a parent be required to pay. Under section 8, payments can be made by a fixed date or in installments as seen fit by the court.

Ontario

Prior to the enactment of Ontario's *Parental Responsibility Act*, the province had a similar clause found under section 68 of the *Family Law Act* (1990 cited in Wilson 2000: 378). This section spoke to parental responsibility by stating that parents "must show 'reasonable supervision and control' over the child" and originally it was an amendment to the *Family Law Act* that added this. Furthermore, the section read:

In an action against a parent for damage to property or for personal injury or death caused by the fault or neglect of a child who is a minor, the onus of establishing that the parent exercised reasonable supervision and control over the child rests with the parent.⁹²

This section of the *Family Law Act* was repealed and replaced with the province's new *Parental Responsibility Act* on June 8, 2000. Despite opposing comments made by some MLAs towards the proposed act, Ontario followed suit and drafted legislation that was very similar to that of both BC and Manitoba. Some differences do exist however and the first pertains to the fact that the monetary amounts for damages claimable are not stated in the Act. Under section 2 (1) parents' liability is defined as "where a child takes, damages or destroys property, an owner or a person entitled to possession of the property

⁹² Under section 68 of the Family Law Act, there were three principle factors that the court could use in making its decision. 1) Age of child; 2) the activity and its potential danger with its resulting degree of necessary supervision or prior instruction and warning; 3) knowledge by the parent of prior acts or propensities of the child.

may bring action in the Small Claims Court against a parent of the child to recover damages, not in excess of the monetary jurisdiction of the Small Claims Court.”

Under section 2 (a) through (b), parents may also have the opportunity to defend him or her self in front of the court as to why they should not have to pay for damages caused by their child. The parent(s) must prove two conditions in order not to be liable: subsection (a), that they exercised “reasonable supervision over the child at the time of the activity that caused the loss or damage” and subsection (b), that the child’s activity was not intentional in causing damage or loss.

As is found in BC and Manitoba legislation, there are factors that the court can consider in deciding whether reasonable supervision was exercised by the parent. The province does not add any specific factors unique to the Act and has only implemented the nine common factors mentioned at the outset.

Parental Responsibility Legislation in England and Wales

According to Julia Fionda (2005) there are two rhetorics to the introduction parental responsibility in England and Wales: the scientific and political. The former pertains to a more welfarism perspective, (and criminology as well) which sees a connection between family relationships and parenting styles that may cultivate youth criminality (Fionda 2005); and what the question being asked is “where did things go wrong” that have led toward youth criminality? Such factors as limited parental supervision (i.e. knowing the whereabouts of children) or decreased parental attachment

to children are observed to be the cause of youth engaging in crimes (ibid). According to Utting et al. (1999 cited in Fionda 2005), governments should create a “three-tier” approach to handling parental responsibility and suggests that social policy “aim at encouraging more positive parental relationships with children.” Each of the tiers would provide social services and supports for parents while the last tier would target families with situations that require more state or law interventions (Fionda 2006).

The political rhetoric on the other hand is of course political and geared toward implementing parental responsibility into policy making. As we see in this example, once again the state is more likely to point the finger towards parents who lack the skills to properly raise their children. According to Fionda (2006: 212), it was the Labour Party’s “move toward a more authoritarian approach” and she adds that it was the Party’s perspective that “the roots of criminal and delinquent behaviour are planted in childhood.”⁹³ Consequently, this called for legislation that could target parents – thus placing greater emphasis on responsibility on the part of the parents through laws. When the Blair government prepared its “Respect Action Plan” in 2006, the report stood for the government’s firm approach against anti-social behaviours and overall disrespect that existed in communities across the UK. As Blair himself pointed out in the introductory pages of the report, what stood behind such “intractable problems” was the

Lack of respect for values that almost everyone in this country shares – consideration for others, a recognition that we all have responsibilities as well as rights, civility and good manners. Most of us learn respect from our parents and our families – they are later reinforced by good schools and by other people we know in our local communities.⁹⁴

⁹³ See J. Straw and J. Anderson. 1996. “Parenting: A Discussion Paper.” London, Labour Party.

⁹⁴ Straw and Anderson 1996: 1.

In previous years, the *Criminal Justice Act* (1991) and the *Public Order Act* (1994) allowed the courts to place bonds on parents “whose ‘negligent’ behaviours had contributed to the offending of their children” (Hil 1999: 3). Under the *Criminal Justice Act*, parents could be ordered to pay the fines or compensation of their children and parents were liable to pay about a thousand pounds if their child was to reoffend (Muncie 1999). Under the direction of the New Labour government, a complete overhaul of youth justice occurred in the UK (Graham 2002) and the Home Office based its reformation on six objectives that had to be followed by any person and/or agency that had responsibility over youth justice. Some of these objectives included: swift administration of justice; risk intervention and most importantly for our purpose, the reinforcement of parental responsibility (Bottoms and Dignan 2004).

The most notable part of this reform strategy was the 1998 *Crime and Disorder Act* (CDA). The Act was specifically intended for young people and their families. Anthony Bottoms and James Dignan (2004: 88) point out that parenting orders were “inspired by the connection that has been well established in criminological research between poor parenting skills and the development of criminal careers.” According to Hollingsworth (2007: 193 emphasis added), parenting orders under the CDA, were “the mechanism most *explicitly* aimed at instilling parental responsibility in the youth justice context.” Under section 8-10 of the CDA (cited in Goldson 2002: 88, emphasis in original), it is stated that under the court’s disposal, parenting orders are intended to:

...**Help** and **support** parents or guardians in addressing their child’s anti-social or offending behaviour...the parenting order can consist of two elements: a requirement on the parent or guardian to attend counseling [and] **requirements** encouraging the parent or guardian to exercise a measure of control over the child...if the parent fails without reasonable

excuse to **comply** with any requirement of a parenting order he or she will be guilty if an offence and will be liable to summary conviction.

Under the “Youth Crime and Disorder” section of the *CDA*, section eight speaks directly to parenting orders. Such orders are possible when (among other things) a child is convicted [8 (d)] and it requires that a parent comply with an order for a period not exceeding twelve months and to comply with conditions as decided upon by the courts [section 8 (4) (a)-(b)]. Subsection 4 (b) adds that counseling or “guidance sessions” may be ordered and attended by the parent for a period which does not exceed three months. Interestingly enough, section 6 of the parenting orders clause adds that parenting orders would be desirable in the interests of preventing “the commission of any further offence by the child or young person.” In section 10 of the *CDA*, parents who are ordered to comply with parenting orders can appeal them in High Court or to the Crown Court as well.

Furthermore, under such orders, the aim is to assist parents to “learn how to set and enforce consistent standards of behaviour and how to respond more effectively to challenging demands” (New Labour 1998 cited in Hil 1999: 3). Parenting orders could instruct parents to attend counseling sessions or to exercise care and control over their children for a set period of time with the assistance from “youth offending team” (YOT) counselors that assisted parents in their duties⁹⁵ (Graham 2002; Bottoms and Dignan 2004). From the perspective of Muncie (1999: 156), parenting orders as highlighted above are the “logical continuation...to criminalize what is considered to be ‘inadequate parenting’”.

⁹⁵ Part Three of the *CDA* “Criminal Justice System – Youth Justice” addresses youth offending teams under section 39-41.

It is also important to make reference to other orders that parents may be subjected to under the umbrella of Youth Offending Teams (YOTs). “Parenting contracts” differ from parenting orders and are prepared under the guidance of YOTs. Whereas parenting orders are court ordered, by definition, a parenting contract is a “voluntary written agreement between a YOT worker and the parents or guardians of a child or young person.”⁹⁶ There are essentially two important components to the contract; (1) that parents provide a written statement agreeing to comply with the contract and (2) that YOT workers agree to work with and support parents/guardians.⁹⁷ If parents/guardians do not comply with conditions of the contract or refuse to enter into one, it “can be used as evidence to support an application for a parenting order and may persuade a reluctant parent to engage.”⁹⁸

Parental Responsibility Legislation in Australia

Australia’s various states have also enacted parental responsibility laws that are similar to those in the other three countries. Its laws also make parents financially liable and place parents on parenting orders when it has been established that they did not exercise some care or control over their children.

⁹⁶ Page 8: Department of Constitutional Affairs. UK Home Office. February 25, 2004. Report revised October 2007.

⁹⁷ Department of Constitutional Affairs, UK Home Office. February 25, 2004. Report revised October 2007.

⁹⁸ Page 4: Department of Constitutional Affairs. UK Home Office. February 25, 2004. Report revised October 2007.

Western Australia

The state introduced the Parental Support and Responsibility Act in 2005⁹⁹ (Roth 2006). According to the Act, the objectives were to support the “primary roles of parents in safeguarding and promoting the wellbeing of children...[while] reinforce the role and responsibility of parents to exercise appropriate control over the behaviour of their children” (section 5 cited in Roth 2006: 27). This Act was also drafted to include parenting orders and to make amendments to the state’s *Children Court of Western Australia Act* (1988) and the *Young Offenders Act* (1994).¹⁰⁰

An important component to this Act is its stipulation that parents may be required to enter into “parenting agreements” that make them attend parenting classes or support groups [section 14 (2) (a); Roth 2006]. Roth (2006: 29) adds that parenting agreements are essentially a part of “responsible parenting orders” that require “parents to do one or more of the things that are outlined [in the] contents of the parenting agreement.” That being said, the author points out, that parents do have the right to refuse entering into such an order but should such a situation arise, applications to the courts can be made to command that a parent enter into an order if agencies such as the Department of Justice see fit. As we see in later chapters, during parliamentary debates pertaining to the Act, several members of parliament were firmly against adding sections to the Act that spoke to parenting orders (most notably Part 5 – Responsible Parenting Orders).

However, the end result was that such clauses were added and parenting orders can be made when a child has been found guilty of an offence [section 18 (a)], has been referred to a “juvenile justice team” representation under the conditions of the *Young*

⁹⁹ Act was given Royal Assent was April 15, 2008.

¹⁰⁰ Page 1 of the Parental Support and Responsibility Act.

Offenders Act (1994)¹⁰¹, or the child's behaviour would (i) harm the child or others; (ii) harass others; or (iii) cause damage to property (section 18 pg. 14).

Parts four and five of the *Parental Support and Responsibility Act* contain clauses that address parental responsibility. Part four speaks directly to "responsible parenting agreements" and these differ from that of parenting orders. Section 11 points out that an agreement can be made between an authorized officer and a parent for the parent to agree to attend – among other things – parenting counseling or support group initiatives to address problems in raising children [section 11 (2) (a)]. Section 11 (5) stipulates that such agreements do not "create obligations that are enforceable" and likewise, in section 12, that "no liability for failing to comply with responsible parenting agreement" can occur.

Under Part five of the Act – the section speaking to responsible parenting orders – there are notable sections that have caused some to disagree with the Act overall. Section 13 stipulates that responsible parenting orders can only be made at the request of officials (CEOs) from the following agencies: Child Protection, Education and Corrective Services. Whereas, under section 14, it adds that the court can also make orders against parents. As was the case in agreement orders, responsible parenting orders also require parents to attend counseling or support group initiatives [section 14 (2) (a)]. What is different about responsible parenting orders is that the court can also order interim orders and under section 15, such interim responsible parenting orders require that a parent takes steps in ensuring that his or her child attends school or avoids having contact with certain person(s) [section 15 (2) (a)-(b)].

¹⁰¹ Section 32 of the Young Offenders Act (1994), states that the powers of the Juvenile Justice Teams "determine the way in which it considers the matters should be disposed of and invite the young person to comply with terms to be specified by the team" (pg. 36).

One of the reasons why responsible parenting orders have caused some debate in parliament is perhaps because of section 21, which stipulates that noncompliance with a responsible parenting or interim-responsible parenting order could carry a penalty of two hundred dollars. Furthermore, when the Act went in front of the “Standing Committee on Legislation” in 2006, it was found that there was a division between committee members on whether part five of the Act should be included. Likewise, stakeholders (i.e. counseling services or community service organizations) that were invited to speak to the committee about their opinions about responsible parenting orders, it was stated in the 2006 report that “many stakeholders preferred non-legislative means of responding to irresponsible parenting” (pg. i).

Queensland

An interesting observation about Queensland is that its *Juvenile Justice Act* (1992) went through some significant changes in 1996, with a state report, which outlined why such changes were necessary. Despite the fact that the 1992 Act contained provisions pertaining to parental responsibility, the Act would be changed. The “Juvenile Justice Legislation Amendment Bill (1996)”¹⁰² would allow for such changes to occur and its objectives – among other things – were to “include reference to people other than the child”; and specifically, that “the community, the victim and the family will [also] be expressly recognised” (page 1). During the August 6, 1998, legislative assembly session in parliament, Anna Bligh (Minister for Families, Youth and Community, as well as for Disability Services), acknowledged that the Juvenile Justice Legislation Amendment Bill

¹⁰² Juvenile Justice Legislation Amendment Bill 1996. Explanatory Notes. The State of Queensland, 1996.

was “landmark legislation that provided Queensland with the most up-to-date juvenile justice policy framework” (pg. 1739). Secondly, the Bill sought to include provisions, which emphasized the role of the family.

Currently for example, section 258 (1) (a) – (c) of the Act –“Notice to Parent of Child Offender” reads:

(1) This section applies if it appears to a court, on the evidence or submissions in a case against a child found guilty of a personal or property offence, that—

(a) Compensation for the offence should be paid to anyone; and

(b) A parent of the child may have contributed to the fact the offence happened by not adequately supervising the child; and

(c) It is reasonable that the parent should be ordered to pay compensation for the offence.

Furthermore, under section 259 –“show cause hearing” – subsection seven stipulates the maximum amount of compensation that can be payable by a parent. The maximum is set at “67 penalty units”, which during the review of Queensland’s Hansard debates was meant to equal around five thousand dollars.

Lastly, the definition of “compensation” is stated as:

(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;

(b) Injury suffered by a person, whether as the victim of the offence or otherwise, because of the commission of the offence.

New South Wales

There is a sequence of events in New South Wales pertaining to its parental responsibility laws as they were amended or repealed over time. In 1994, the Children (Parental Responsibility) Bill was introduced and it addressed parental responsibility in forms of parental presence in court and ordering parents to comply with conditions of an undertaking, which guarantee “giving of security for the good behaviour of the child” (section 7). It was given Royal Assent on May 2, 1995. Under its clause 9 of the Act points out that if parents fail to exercise proper care or control over their children and this results in a criminal act on the part of the children, then the courts can argue that that the parent may be deemed guilty as well (Hil 1996). There were however, several amendments made to the above Act some years later.

In 1997, amendments were made to it with the *Children (Protection and Parental Responsibility) Act*. Some of the additions in the 1997 Act include, under Part 2 –Parental Responsibility – that clause 6, take into account that the “best interests of the child are the paramount consideration” (pg. 2)¹⁰³; whereas, in the previous 1994 Act, this was not addressed. Later on, the 1997 act was amended with the *Children and Young Persons (Care and Protection) Act* (1998). More recently, however, in 2006, the 1998 act was further amended to address and include parental responsibility contracts. As it stands currently, after the Children and Young Persons (Care and Protection) Amendment (Parent Responsibility Contracts) Act 2006 was repealed, section 38A (under Division 2 “Parent Responsibility Contracts”) was added to the original 1998 Act and states that a parent responsibility contract

¹⁰³ Explanatory Notes for the Children (Protection and Parental Responsibility) Bill. Act 1997 No. 78.

Is 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.

Furthermore section 5 outlines that parent responsibility contracts may include conditions such as alcohol or drug counseling or testing for caregivers, attendance in courses pertaining to parenting skills, behavioural or financial management skills. In the 2006 legislative assembly session, MLA Reba Meagher introduced the parent responsibility contracts as part of the work that the Department of Community Services was doing. The parent responsibility contracts would be used in cases where families were known to the department and where parents were “failing to meet their basic obligations to their children.” MLA Meagher also added that if the department suspects that children are at risk as a result of inadequate parental behaviour, it would seek a contract against the parent(s) in Children’s Court. The contract would last up to six months and as MLA Megarrity adds, “may require a parent actively participate in a range of programs including: positive parenting programs to better equip parents with life skills and behaviour management programs.”¹⁰⁴

Summary

As this chapter has shown, each of the four countries has implemented parental responsibility laws either within existing legislation or created separate laws that

¹⁰⁴ New South Wales, Legislative Assembly. Hansard, August 30, 2006, page 1166.

specifically speak to parental responsibility. The commonality between such laws is that parents are expected to maintain control and care over their children and what consequences shall arise if they fail in that regard.

The availability of options in holding parents responsible are also diverse – as not one particular method of holding them accountable is found – and depending on the legislation, they can be held financially accountable or placed on ‘parenting orders’ that address and monitor their parenting inabilities. Such parenting orders are seen as opportunities for creating opportunities for parents to improve their parenting skills so that future criminality by their children is averted.

In the following four chapters, I address the larger research question in this thesis, this being to discuss governmental debates in an effort to find the position of political leaders and to answer the question of how these laws came about. I also explore the opinions that elected officials held toward parents and the relationship with their children.

CHAPTER SEVEN **POLITICAL DEBATES IN THE UNITED STATES**

One of the unique components of this thesis is the focus on legislative debates and speeches related to youth criminality and parental responsibility. While so far I have touched upon each of the country's legislation that addressed youth justice and parental responsibility laws, it is also important to discuss the position of elected government officials in enacting parental responsibility laws in particular. Analysis of debates and speeches can help determine what the government's position was at the time of enacting such laws. Examining the views of politicians towards such laws can more broadly help us to better understand why they were enacted. While reading through debates and speeches, I searched for the dialogue that existed around parents and their responsibility toward their children, about what politicians thought about youth criminality, and on the type of the political rhetoric of reflected in their discourse. This chapter begins this examination by focusing on political debates in the United States.

The United States of America Congress

The US Congress consists of the House of Representatives and the Senate. The House of Representatives is made up of 435 members, while the Senate has one hundred members and is represented by two individuals from each state.¹⁰⁵ Both governing bodies

¹⁰⁵ Information gathered from the Library of Congress –THOMAS website at www.thomas.loc.gov. Accessed on October 9, 2009.

have equal powers and functions and introduce Bills,¹⁰⁶ which can eventually become US law.¹⁰⁷ When conducting research on the US, I came across several Bills pertaining to youth crime and parental responsibility or accountability that were never passed into law, but that are nonetheless important to examine for what legislators said at the time about the need for such laws.

In 1995, both the House of Representatives and the Senate supported a Bill pertaining to parental responsibility and the rights of parents in the upbringing of their children. The “*Parental Rights and Responsibilities Act of 1995*” (S.984) was read in the 104th Congress on June 29, 1995¹⁰⁸ with the acknowledgment that “the role of parents in the raising and rearing of their children is of inestimable value and deserving of both praise and protection by all levels of government”; and secondly, that “the tradition of western civilization recognizes that parents have the responsibility to love, nurture, train and protect their children.” Interestingly enough, given that such important findings were presented in Congress, it was also added, “Governments should not interfere in the decisions and actions of parents without compelling justification.” This Bill would reaffirm parental responsibility in four important areas: education, health care decisions, discipline and religious teachings assumed by parents.¹⁰⁹ The topic of parental responsibility came up when Bill S. 984 was introduced again as Bill H.R. 1946 in the House of Representatives. During a Subcommittee meeting on October 26, 1995, Senator Charles Grassley (Iowa) pointed to the fact that there existed parents who

¹⁰⁶ Except for spending Bills.

¹⁰⁷ House of Representatives or the Senate introduce Bills and both review them before handing over to specific committees for consideration. Committees can make recommendations and both the House of Representatives and Senate vote before the final presidential consideration and signature is obtained. A similar process occurs in individual US state assemblies.

¹⁰⁸ <http://thomas.loc.gov/cgi-bin/query/z?c104:S.984>. Accessed April 6, 2009.

¹⁰⁹ Under section 3 “Definitions” –Subsection 4 (Right of a Parent to Direct the Upbringing of a Child) (A)-(C)

neglected their children. In answering the question of how this particular Bill would function, Senator Grassley added (pg. 15)

Parents are required to demonstrate that the actions being questioned are within their fundamental right to direct the upbringing of their child. Second, they must show that the Government interfered with this right. If the parents are able to prove these two things, then the burden shifts to the Government to show that the interference was essential to accomplish a compelling Government interest and that the Government's method of interfering was the least restrictive means to accomplish its goal.

During a September 5th, 1995 Senate sitting, Senator Paul Simon (Illinois) requested that a following piece entitled “On Families and Values”, be heard and captured in the Senate Records. Senator Simon referred to the work of Herbert Stein (senior fellow at American Enterprise Institute), who had once prepared a piece on “Families and Values”. Stein wrote that the US was experiencing situations where children are growing up uncivilized and families deserved more attention and care (pg. S12624). Likewise, Stein believed that

The family is the best institution we know for rearing children. It is the best because it is mostly likely to be governed by certain values –love, responsibility, voluntary commitment to the welfare of others...children growing up in wretched families, [and] decent respect for family values calls for more concern with them and more commitment to them.

A year later, (May 30, 1996), (under H.R 1946), Congressman Steve Largent (Oklahoma) spoke of the “plight of children” in the US and that it was not government bureaucrats or child advocate groups that held the responsibility over children but “the best advocates for children today – and the most unappreciated – are moms and dads

standing together for their children” (pg. H5653). The Bill was meant to promote the idea that families were key providers and parents were the best in protecting and providing for their children. Congressman Largent pointed out that the Bill would protect families from “the harmful actions of government bureaucrats.” What he meant by this was that affirmation and support be given to families and not to allocate funds toward marginal programs that proved less successful. Bill S. 984 and H.R. 1946 were never passed into laws.

During the 106th congressional session (April 20, 1999), Senate considered Bill S. 838 entitled “Juvenile Crime Control and Community Protection Act of 1999”. Republican Pete Domenici (New Mexico)¹¹⁰ addressed Senate members and argued that while speaking to many community members across his state, the concerns of many were that youth criminality was problematic, that young people were “out of control” and that “children and teenagers [did not] have enough constructive things to do to keep them from falling into delinquent or criminal activities” (page S. 3926). Furthermore, Domenici argued that the current system had failed victims of crime and that

The time has come for a new federal role to assist the states with their efforts to get tough on violent young criminals...The federal government can play a larger role in punishing and preventing youth violence without tying the hands of state and local governments or preventing them from implementing innovative solutions to the problem.

What Domenici proposed under the Bill S. 838 was that funding (totaling \$500 million) should be granted to enable states to establish preventive youth crime programs.

¹¹⁰ On May 8, 1997 (105th Congress), Domenici introduced a similar Bill (S. 718) “Juvenile Crime Control and Community Protection Act of 1997.” The Bill was referred to the Committee on Judiciary and to the Subcommittee on Youth Violence.

Another relevant point that Domenici made was that extra funds would be made available to states, which implemented programs reflecting “get tough” reforms and included such things as mandatory adult prosecution for serious offences or adult records where fingerprints and photos would be recorded for a youth. Lastly, states could apply for funds in order to incorporate programs such as those supporting victim rights or parental responsibility initiatives. In his concluding comments, Domenici argued that

These programs are a combination of reforms which will positively impact victims, get tough on juvenile offenders, and provide states with resources to implement prevention programs to keep juveniles out of trouble in the first place.¹¹¹

This was not the first time that Pete Domenici tried to pass a similar Bill like S.838. In earlier years (1996), during the 104th Congress, Domenici introduced Bill S. 2062 “Juvenile Justice Modernization Act of 1996”, which contained similar amendments as Bill S. 838 did before it.

On September 10, 1996, while speaking to Senate members about Bill S. 2062, Domenici spoke of creating a modern and comprehensive Bill that would change juvenile justice. He argued that “the time [had] come for a greater Federal role in combating violent juvenile crime, but that new role should not tie the hands of state and local government nor prevent them from implementing new and innovative solutions to this growing problem.”¹¹² And when addressing parental responsibility, he pointed out that states should be encouraged to implement programs that “strengthen families in order to prevent the next generation of kids from growing up without parents and without discipline” (pg. 10195). He supported the imposition of civil liability on parents and

¹¹¹ Pg. S3926.

¹¹² Page. S. 10194

greater spending on preventive programs as giving “families a better chance to raise their children so that they never get into trouble.”

In 1999, the House of Representatives held a hearing before the Subcommittee on Early Childhood, Youth and Families.¹¹³ Several community and government officials were invited to speak about preventing youth violence and the roles that families, schools and the government play in this regard. Despite the fact that this hearing focused on preventing school violence, it highlighted important considerations towards parents and their responsibility to their children. In his opening remarks, Fred Upton (Michigan and subcommittee member), acknowledged that there was no one solution to tackle youth violence or crime and that a comprehensive solution to the problems should be sought. He added, “education, prevention, parental involvement, youth activities and accountability are just a few of the important elements of this very challenging issue” (pg. 6). Others such as, Dr. Kay Royster (Superintendent, Kalamazoo public schools, Michigan) pointed out that children who engage in criminal activities do so as the result of having unresolved issues whether, academic, social or emotional (pg. 6). She argued that “more often than not, these issues are rooted in the conditions of the family, the community, of the home” (pg. 6) and such issues follow them to schools where violence is possible.

Those such as Dr. Darnell Jackson¹¹⁴ spoke of parents as important stakeholders in addressing school violence in particular. What Dr. Jackson called for was a return to “instilling morals, values, and ethics in our children...[which] cannot be overstated” (pg.

¹¹³ This subcommittee is part of the “Committee on Education and the Workforce”. Title of report was “Preventing Youth Violence and Crime: The Role of Families, School and Government”. Hearing told place on June 21, 1999, during the 106th Congress -1st session in Portage, Michigan. Serial No. 106-54

¹¹⁴ Director of the Office of Drug Control Policy, Michigan Department of Community Health

10). He argued that parents would be assisted in reaching their objectives but likewise, be held “accountable for their actions” (ibid). When Dr. Jackson spoke of the shootings that occurred at Columbine high school in Littleton, Colorado, he was clear to point out that what occurred there was “a prime example of what can happen when parents fail to do the part of raising their children.”

Along the same lines, Dr. Jay Newman¹¹⁵ added that “schools, parents, and communities must assist in the development of the whole child...We must also address the psychological, social, emotional, intellectual and spiritual needs of our children” (pg. 14). Dr. Newman added, “Everything does start with the families. Families support, love, cherish, hold, and take care of you” (pg. 19). He raised the question of how much time is spent with one’s family considering, in today’s society, there were many single-parent families, high divorce rates and both parents working; hence making time spent with the family much more difficult. Later in his address, Dr. Newman pointed out that many parents today also deal with isolation within their communities and they lack connections with others. He argued that parents are raising their children in isolation and without seeking help from other parents or organizations such as the church (pg. 27). Pastor Phillip McElhenny¹¹⁶ was also invited to this subcommittee hearing. He spoke of his own experiences working with children and with “picking up the pieces of children that have been left abandoned or uncared for by parents” (pg. 20). He argued that today, American society lacks moral leadership and that this is lacking within the family, schools and government. He pointed out

¹¹⁵ Superintendent, St. Joseph County Intermediate school district, Centreville, Michigan.

¹¹⁶ First Assembly Christian School, Portage Michigan.

There is a lack of teaching the principles relating to right and wrong behavior. Synonyms such as ethical, virtuous, righteous, and noble help raise a standard of what is right and good. Children need to be taught not only to make choices for themselves, but to make the right choice (ibid).

He was also critical of previous generations, which have failed to maintain positive leadership to young people. In his concluding remarks (page 21), Pastor McElhenny said

The previous and current leadership in homes and government continue to fertilize this crop with amoral leadership. There are few heroes of our day and fewer examples of what is good.

This subcommittee also invited members from the community to speak about the effects of youth violence and crime. Pat Fitton (South Haven, Michigan) was one such individual and she provided her personal thoughts on the subject matter. As a member of the community, Fitton believed that the family was a pivotal part forming the character of children as well as, in teaching self-respect. She argued further “when families...share some common values, the entire community reaps the benefits of relative safety and peace” (pg. 22). Despite the fact that Fitton believed that “families [were] the basic building blocks of any community” (ibid), she was also critical of those parents who support the “rotten behavior” of their children. On September 10th, 1999, at a Senate hearing on “Youth Violence Prevention”, Senator Arlen Specter (Pennsylvania) argued that there are many factors that can contribute to a young persons’ propensity toward criminality and these include familial ones as well. He introduced a youth violence prevention initiative that sought to be “comprehensive and to eliminate the conditions which cultivate violence” (pg. S10739). Under the initiative’s heading of “Parental Responsibility/Early Intervention”, it was stated that a child’s cognitive development

“sets the foundation for life-long learning and can determine an individual's emotional capabilities” and where parents have the “primary and strongest influence on their child... [Playing] a pivotal role at this stage of development” (Page: S10740).

The 107th Congressional session saw the introduction of Bill H.R 1900 (the “*Juvenile Justice and Delinquency Prevention Act of 2001*”), which proposed changes to the 1974 *Juvenile Justice and Delinquency Prevention Act*. H.R. 1900 was considered in the Committee on Education and the Workforce, where issues pertaining to the family were highlighted.¹¹⁷ The committee named the family as the “strength of America”, and stated that where at times when families face difficulties, the justice system, community organizations or faith based organizations “all have a responsibility in assisting families whose children become faced with the consequences of law breaking” (page 24). In the committee report, Ohio family court Judge, David Grossman was quoted as saying that

Juveniles are not miniature adults. They are strongly influenced by their families and their peers, and more often than not, they can be rehabilitated or diverted from a life of crime.¹¹⁸

Likewise, the committee believed that funding must be expanded to include community-based juvenile delinquency and accountability programs. It was its perception that such programs “will encourage a comprehensive and balanced approach to reducing juvenile crime” and that such programs should be designed for

¹¹⁷ September 20, 2001. This House of Representatives, Committee on Education and the Workforce report was coded as “House report 107-203” and can be accessed from www.thomas.loc.gov by following the links to Bill H.R. 1900.

¹¹⁸Page 24 of the House Report. Judge David Grossman appeared in front of the Subcommittee on Select Education on June 6, 2001 and was cited for the purposes of this Committee on Education and Workforce hearing on H.R 1900.

Juveniles, their parents, and other family members during and after incarceration for the purpose of strengthening families and keeping juveniles in their own homes whenever possible. Too often youth return to a community without the support they need from family or other community support systems, and thus return to the juvenile justice system as a repeat offender.¹¹⁹

In its concluding comments, the committee stated that it welcomed “changes to juvenile crime policy that promote flexibility, a continued emphasis on prevention, early intervention and accountability, while maintaining important protection for juveniles” (page 139).

The issue of fathers was also discussed during a hearing for the Committee on the Judiciary in 2000, entitled “Youth Culture and Violence.” In the opening statement prepared by Chairman Henry Hyde (Illinois), the purpose of this “Youth Culture and Violence” committee meeting was to address the issues that related to – as the title suggested – youth culture and violence, but which also implied reference to a “culture of death” in the US (pg. 8). Chairman Hyde acknowledged that the issue of parental responsibility came up as the result of the events in Littleton, Colorado but he proposed the question of to what extent the lack of parental control or attention contributed to the Littleton killers becoming immersed in violence. He stated (page 10)

Everyone dealing with children, whether it is parents raising them, companies marketing to them or schools educating them, should evaluate how their work may be contributing to the problem of youth violence.

¹¹⁹ Page 25 of Report No. 107-203.

Following the opening remarks of Chairman Hyde, Congressman Steve Chabot (Ohio) pointed out to those present “there certainly is no substitute for responsible and attentive parenting. All the societal influences...become ancillary when children are raised with clear expectations, boundaries and rules” (pg. 15). When he made reference to the two young men who were responsible for the events at Columbine High School, he acknowledged no one would really ever know what turned them into

Killers... But I suspect that no one person or group is to blame. The likely answer lies in a myriad of factors all interacting in just the precise way at just the right time to create a profound tragedy (pg. 15).

Others such as Don Eberly¹²⁰ offered this statement (pg. 81) when referring to the importance of fathers in the family

The family, in particular, has been weakened, both through fragmentation and through a real erosion of parental authority. Any reference to family fragmentation must be understood to be synonymous with father absence, since the consequence of family breakup in over 90 percent of the cases is children being raised apart from their fathers.

As a result of this, Eberly argued that young men living without the presence of a father are more likely to engage on criminality and develop false ideals about their roles as men in the greater society. Eberly also referenced the work of James Q. Wilson (political scientist and criminologist) in pointing out that in order to curb aggressiveness in males, the responsibility lies with fathers. He quotes Wilson in saying that “every society must be wary of the unattached male, for he is universally the cause of numerous social ills” (pg. 82).¹²¹ Likewise, Eberly added

¹²⁰ Director of Civil Society Project, and Chairman/CEO of National Fatherhood Institution.

¹²¹ See also: Don Eberly. “Families, Fathers and the Making of Democratic Citizens. As part of the Civil Society Project Volume 99. No. 1. Pp. 1-7.

The relationship of father absence to numerous negative outcomes among children and youth is now well documented, and especially the relationship of poorly fathered males to crime and acting out. Studies show that the chief predictor of crime is not race or poverty, but the presence or absence of a father.

Summary

As the discussion of US Congressional debates suggests, there was some dialogue offered in both the House of Representatives and the Senate about parental role and responsibility. Certainly, it is not surprising that political leaders were pressing for greater involvement of parents in the lives of their children and where the family was the strength of the country. On the other hand, the US Congress was also supporting the notion that government involvement in the familial domain should occur only when justified as necessary in order to assist those families, which faced difficulties. There was also the intention in this chapter to address some of the individual state legislative discussion about parental responsibility. However, this proved more challenging and nothing meaningful was found as a result of searching each state's legislative assemblies. The specific problems I confronted in attempting to examine the legislative debates of individual states are discussed in the concluding chapter of my study.

As I move through the rest of the political debates in the other three countries, indeed a very similar political thought process is expressed as was within the US. To start I speak to the Canadian context and show how federal members of parliament were trying to change youth legislation; while provinces looked to each other for precedents.

CHAPTER EIGHT **POLITICAL DEBATES IN CANADA**

The Canadian Parliament

In the early 1990's under the Progressive Conservative political leadership, there was much discussion about the *Young Offenders Act* within the Canadian parliament. As the Hansard debates show, there continued to exist the debate between the Act's "welfare and criminal law orientation" (Doob and Sprott 2004: 194). What members of parliament (MPs) were mainly focused on were the very fundamental objectives that the *YOA* had come to represent: protection of citizens, rights and responsibilities of young offenders and due process (Bertrand et al. 2002). What I want to focus on are the discussions that revolved around responsibilities of young offenders and how their parents were a part of this equation. In other words, where an opportunity presented itself for calling attention to accountability on the part of the young person for their crimes, parental responsibility and familial dysfunctions were not far from being discussed either. During the era of the *YOA*, members of the Progressive Conservative Party called for an offence that targeted "poor parenting" styles (Havemann 2000) 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."¹²²

As the political reign changed to that of a Liberal leadership in late 1993, amendments to the *YOA* such as through Bill C-37 were seen as ways to recognize that

¹²² Justice and Legal Affairs 1982 (cited in Havemann 2000: 33).

“crime prevention is essential to the long term protection of society and [required] addressing the underlying causes of crime by young persons.”¹²³ MPs were also aware that the Canadian public was wary of the *YOA* and that it was not effectively addressing youth criminality in particular the social issues as possible catalysts for youth criminality. As Liberal MP Russell MacLellan adds¹²⁴

Current public discussion about the Young Offenders Act has also alerted law makers to the limitations of legislation. We are quite convinced that legislation alone will not eliminate youth crime. Poverty, unemployment, family violence, racism, illiteracy, alcoholism and drug abuse and many other factors may contribute to criminal acts by young people.

Reform Party MPs such as Paul E. Forseth (New Westminster-Burnaby May 12, 1994) had proposed that changes be made to the *YOA* by adding clauses to section 50.1¹²⁵ so that parents could be made liable and ordered to pay compensation for the damages caused by their children. During the same legislative session, Bloc Québécois MP Pierrette Venne (Saint-Hubert) made the following comment

In 1984, the new Young Offenders Act was based on a humane approach to juvenile delinquency...realizing that young people were not criminals and that the dependency on their parents had the effect of reducing the risks, the legislator, after countless consultations, passed a law which favours a helping relationship between the various officials and the young person guilty of an offence.

Others on the other hand, were less convinced that such measures to include parental accountability into law would work. Reform Party MP Ian McClelland

¹²³ Russell MacLellan Liberal MP –Parliamentary Secretary to the Minister of Justice and Attorney General of Canada. Hansard, May 11, 1995.

¹²⁴Parliamentary Secretary to the Minister of Justice and Attorney General of Canada. Hansard, May 11, 1995.

¹²⁵ Section 50.1 under the *YOA* pertained to “Inducing a young person.”

(Edmonton Southwest, May 12, 1994) pointed toward more attention on the social and community factors than toward what law could accomplish. He adds

I submit it goes much deeper than changing or applying the law. It has to do with the values that we treasure in our society. It has to do with things like family values, with a sense of community.

During the 1995 parliamentary sessions, many MPs continued speaking of the *YOA* as not entirely capable of dealing with issues that pertained to social and familial dysfunctions that many young offenders were faced with. During the Private's Members Business pertaining to discussions around amending the *YOA* (through Bill C-37)¹²⁶ in particular to addressing the accountability of and rehabilitation young offenders, some MPs such as Jack Ramsay (Reform Party member for Crowfoot) expressed that “the justice system cannot prevent dysfunctional families... [it] cannot prevent the negative aspects of society that lead to crime” (February 20, 1995). The member continued by stressing that the justice system “no matter how tough, no matter how lenient, no matter what their rehabilitative efforts may be, the Young Offenders Act and likewise Bill C-37 cannot change the hostile environments that bred many of our young offenders” (ibid). MPs were also targeting dysfunctional families and calling for greater accountability to be expressed by young people who committed crimes. For example, Derek Wells (Liberal Party MP) shared his perspective by adding that criminal behaviours stemmed from sociological factors and therefore that

Legislation is only one part of the solution...legislative efforts at reducing youth crime will continue to be deemed as insufficient...youth who turn to criminal activity often come from an environment where

¹²⁶ See 35th-1st session February 20, 1995 parliament session for full discussion.

poverty, neglect, substance abuse, physical abuse and unemployment are the norm.

On a similar note, MPs such as Morris Bodnar (Liberal Party member for Saskatoon-Dundurn, February 20, 1995) emphasized that young people come from dysfunctional families and where “the parents are drunks. They [children] are not raised with direction. They go out into the world with the problem of not knowing how to deal with it.” It was the opinion of some, that young people who committed crimes indeed had problems where “they may have been abused or they may have grown up in a less than supportive family.”¹²⁷ As Keith Martin (MP Reform Party, Esquimalt-Juan de Fuca, February 24, 1995) pointed out

As I have said before many youths who commit crimes tragically come from horrendous family situations, often broken families, and are subject to the improper or inadequate parenting, sexual or physical abuse and alcohol and drug abuse often rampant in their history.

MPs often used such words as “broken families”, “urban dysfunctional families”, “latchkey kids who have nobody to come home to”, “battered mothers” to describe dysfunctional families and that such description of familial environments were a contributing factor in youth criminality. Others such as Jesse Fils (Parliamentary Secretary for Minister of Foreign Affairs, June 6, 1994) expressed that crime prevention “has to begin at home...helping parents to give them parenting techniques so that children from day one are not led down the road to crime.” Reform Party MPs believed that

¹²⁷ Steve Mahoney, Liberal MP for Mississauga. Hansard March 26, 2001.

The strongest social programs to be had are policies to create and to build strong families...when there is a strong family that can look after themselves, feed the children properly...they have lower crime rates...and the security that comes from having a family that is not stressed out completely.¹²⁸

In essence, the family was regarded as the most important social institution. MPs such as David Anderson expressed that families were the “foundation of society” and “we need strong families if we are to have stable young children.”¹²⁹

To bring about parental responsibility within youth legislation, MPs were advocating greater parental presence and involvement in court proceedings. For example Bill Mills (Reform Party, Red Deer) on June 6, 1994, stressed the importance of bringing parents back into the criminal justice system as a way for allowing parents to see what their child’s criminality has caused for others. He adds

The parents have to be forced to be there to hear what the victim went through and what their little darling did to that person. If they are found in any way to be responsible, they have to be part of that restitution; that money that is paid back...whatever that damage has been.

This same thought was expressed some years later during the October 21, 1999 parliamentary session that introduced once again a Bill that would repeal the *YOA*. Bill C-3 would see that the future *Youth Criminal Justice Act (YCJA)* take a balanced approach “combining prevention and a community-centered approach.”¹³⁰ One of the topics discussed during this particular session was that of parental responsibility. Here

¹²⁸ Chuck Strahl, Hansard November 7, 1996.

¹²⁹ MP for Cypress Hill-Grasslands, Canadian Alliance. Hansard March 29, 2001.

¹³⁰ Hansard, October 21, 1999. John Maloney, Parliamentary Secretary to the Minister of Justice and Attorney General. Liberal Party MP.

Progressive Conservative MP Peter MacKay spoke about it as an important consideration under Bill C-3, and that parents be involved in court proceedings in order to create “a more holistic approach, a family style approach, to the problems that often lead up to and continue to exist when a young person runs afoul of the law.” Furthermore, MPs such as Gurmant Grewal (Reform Party, Surrey Central) viewed Bill C-3 as moving in the right direction in respect to two key points. One was that it required parents to attend court proceedings and two, it allowed for increased penalties should parents fail to comply with orders when they enter into an Undertaking requiring them to supervise their child(ren) while in the community. Such measures were in the “best interest of the child.” Grewal also made mention that Bill C-3 would allow for the increase of penalty for parents who failed to comply with supervision conditions as part of signing into an Undertaking. This was seen as an important measure that would make sure that parents were fulfilling their obligation when supervising their children in the community.

In 1999 debates MPs also stressed that by parents attending court proceedings, the “degree of accountability, not only for the young person but for the parent, is crucial in addressing youth crime.”¹³¹ Elected officials believed that court officials such as judges should be allowed to question parents about the activities of their children that resulted in criminality. For example, the MP for the Progressive Conservative and Justice Critic Peter MacKay’s address to the House (October 21, 1999) suggested that judges should continue to question parents in an “open fashion” as to the activities of their children. He adds

It is a fair question, I suggest, for a judge to ask a parent in a courtroom in an open fashion, “Where were you when your 14 year old was breaking into your neighbour's house? Why was your child out on a school night under the influence

¹³¹ Hansard, October 21, 1999. Progressive Conservative Party member, Peter MacKay.

of alcohol or drugs committing a criminal offence? Why is your child acting out in such a violent way?" These are relevant questions, and questions that I feel a parent should be held to account for as well.

Another goal of this thesis was to find evidence of dialogue that referenced other countries. There was indeed such evidence in various debate sessions. At one point, Liberal MP Ted McWhinney made reference to "continental Europe" and its laws that can hold parents responsible for the crimes of their children. Unfortunately, given McWhinney's comments about European initiatives, he did not specify which countries he was speaking of. He only used this example within the context of laws in Canada that would allow young offenders the opportunity to not "merely purge an offence in terms of suffering punishment but should also assume the burden of correcting the social situation that he or she has so rudely disturbed [and] to repair the property as part of their sentence."¹³²

Despite the fact that political leaders have spoken of parental responsibility within the context of youth criminality, the current *YCJA* does not include specific clauses that depict a more aggressive stand for parental responsibility. Perhaps it was the federal government's intention to leave out such clauses and focus on what the *YCJA* was intended to be –an act that reflected rehabilitation, integration and to only include the family in measures that would promote and support such actions (i.e. section 3 and 4 *YCJA*). Furthermore, the involvement of the family within youth justice created a more holistic approach to dealing with youth criminality where if parents failed to comply with court orders (i.e. Undertakings instructing them to look after their children while in the community) some accountability on their part would be expected. It was thought that

¹³² Hansard February 20, 1995.

such initiatives would make parents more involved in the lives of their children by attending court proceedings or answering their children's criminality more directly (i.e. Peter MacKay, MP, Progressive Conservative Party or Reform MP John Reynolds). MP John Reynolds further added that parents would be "called upon to become involved with representatives of the community to design and implement extrajudicial measures."¹³³ Questions surrounding the federal government's exclusion of parental responsibility within the *YCJA* can also be evident in the dialogue that political leaders offered when speaking about the overall relationship that parents should have with their children. As was presented above, leaders were leaning towards supporting the idea that parents are indeed the source of positive upbringing and nurture; surprisingly though, this came from MPs who represented all political parties. This observation would continue to support the theory of responsabilization by suggesting that political leaders want to see more responsibility placed on parents and not necessarily on the youth justice system or its legislation to handle youth criminality.

Perhaps another reason why the federal government did not include parental responsibility in the *YCJA* was because of the assumption that provinces would take responsibility over such things as rehabilitation programs within their own jurisdictions. For example, as MP Michel Bellehumeur (Bloc Québécois, Hansard March 22, 1999) expressed in reference to the previous *YOA* and diversion programs: "the federal government had no choice but to set the stage for diversion measures...still, since the administration of justice comes under their jurisdiction, it was the provinces that had to set up diversion programs." Clearly, as this statement may suggest, the federal government hoped that provincial initiatives could indeed curb youth criminality as well.

¹³³ Hansard, May 10, 1999.

As we see next in the discussion on individual provinces, some enacted parental responsibility laws as a result of recognizing what the federal government was not doing much in regards to parental responsibility.

The British Columbia Legislative Assembly

On April 28, 1998, Geoff Plant (MLA Richmond- Steveton) introduced Bill M205 to the assembly with the intention of being an act that would present a “creative response” to youth criminality in the province. According to Plant, the purpose of the Act would be to “enhance the accountability and responsibility of parents for the actions of children who damage property.” In his speech however, Plant also reminded the assembly that “[the] act does not in any way purport to solve all the problems of youth crime, it is but one small piece of a very large puzzle.”

A few years later, Bill M205 would become known as Bill 16 and would set the stage for what would become BC’s future *Parental Responsibility Act*. When the Bill was again introduced by Rich Coleman¹³⁴, he called the introduction of such a Bill “another ‘new –era’ commitment”.¹³⁵ Mixed reviews were presented to the assembly before the Act’s Royal Assent on August 27, 2001 and while the purpose of it was to allow action against parents of children who caused property damage¹³⁶, some were less convinced that the Act would do any good. Questions arose more about the Act’s content than its intended purpose.

¹³⁴ Rich Coleman, MLA for Fort Langley-Aldergrove. Minister of Public Safety and Solicitor General Hansard August 15, 2001.

¹³⁵ “New-Era” commitment was the Liberal Party campaign approach used in creating changes across government sectors.

¹³⁶ Rich Coleman, Hansard August 15, 2001.

Initially, Bill 16 was introduced with the acknowledgment that it would allow for the burden of proof to be removed from the victim and onto the parent(s) of that children who committed the crime. MLAs such as Joy MacPhail (Vancouver-Hastings)¹³⁷ pointed out that the Bill was a step in the right direction and “very much targeted the family unit” and was a “path to proper parenting”.¹³⁸ Despite her efforts in pointing out the Bill’s intentions, MacPhail did conclude that the Bill would not be effective at all. In fact, she was quite critical of it and asked the assembly why the government would want to encourage a “punitive approach to parenting?” She added “After we give [parents] all these supports, [and help them] through the very difficult time there is in raising children, only then if you fail will we impose the penalty of \$10,000.”¹³⁹

MLAs such as Jenny Kwan (MLA Vancouver-Mount Pleasant) drew attention to Manitoba’s Act by citing that since 1997, only 14 claims were made and one prosecuted effectively.¹⁴⁰ Kwan’s continued disapproval of the Bill was expressed in her opinion that the Act would potentially send the wrong message to young people. She pointed out that once a young person was charged and matters are also filed under the Act, what messages were young people getting when their parents were accountable as well. Kwan continued her address to the assembly by pointing to the motives of other governments that enact such laws. She stated

It seems fairly clear that this government was perhaps *just shopping around* for some ring-wing boilerplate legislation... the funny thing is the only places in Canada that have brought it in are very right-

¹³⁷ Leader of the Opposition (NDP).

¹³⁸ MacPhail’s comments were as a result of citing editorial pages of newspapers across her riding.

¹³⁹ Hansard, August 22, 2001.

¹⁴⁰ Hansard August 22, 2001.

wing governments, with the same willingness to pander to the extreme law-and-order constituency that is widely unsuccessful.¹⁴¹

The Attorney General for the province, Geoff Plant stated that he did not think that the Bill was the complete answer to the problem of youth criminality in the province. He pointed out that this Bill was not “the complete answer to the problem...that this Bill is anything more than a modest part of a large and complicated puzzle” (August 22, 2001).

The Manitoba Legislative Assembly

Even when the Canadian parliament was discussing making changes to the *Young Offenders Act* to include greater parental responsibility, the Manitoba legislative assembly was following suit and paying close attention to what the federal government was proposing. On April 7, 1994, the Lieutenant-Governor, W. Yvon Dumont expressed, in a Throne speech, that the government was committed to “addressing youth crime and violence by acting on a comprehensive, nine-point plan”, where, “my ministers will also continue to press the federal government to toughen the *Young Offenders Act* and include stronger links to parental responsibility.”

The members of the legislative assembly (MLAs) would address the federal government’s proposed changes to the *YOA* to include parental responsibility for the majority of 1995. The Minister of Justice at that time, Rosemary Vodrey expressed that “there is *some parental responsibility put back into the system*” (June 19, 1995, emphasis added), and it was during this year, that the legislative assembly was proposing civil

¹⁴¹ Hansard, August 22, 2001, emphasis added.

sanctions against parents that would go above and beyond the *YOA*. Despite the fact that the province of Manitoba went ahead with its own initiative to include parental responsibility legislation, it would continue to lobby the federal government to include such clauses under the *YOA*. When Vodrey was given the opportunity to speak to the proposed changes to the *YOA*, she made it clear to the federal government that parental responsibility should be included. She also stated that if the federal government did not include such clauses, “we would be looking at ways that provincially we could *bring parental responsibility back into the system* if the federal government refused to do it” (emphasis added).

During the second session of the 36th assembly, Lieutenant-Governor W. Yvon Dumont continued to officially endorse the government’s continued efforts in urging the federal government to implement changes pertaining to youth justice and the inclusion of parental responsibility laws at the federal level (Hansard December 5, 1995). This echoed his Throne speech delivered back in the 1994 as well. Others such as MLA Vic Toews (Minister of Labour at that time) had compared the *YOA* to the old *JDA* by adding, “it strikes directly at that issue, that lack of accountability, that lack of responsibility to the greater society that the present act [The Young Offenders Act] has inherited from the old Juvenile Delinquents Act” (October 10, 1995¹⁴²). In 1996, Rosemary Vodrey also briefly addressed the assembly, pointing out that the federal government was again not considering parental responsibility within the *YOA* nor would they “put parental responsibility into the [*YOA*]” (Hansard June 6, 1996). A year later, a similar point was made by Vic Toews (then MLA for Provencher) while endorsing the province’s parental responsibility law that it was an initiative which was developed as a result of such a

¹⁴² Private Members’ Business.

section lacking within the *YOA*. He added, “the provincial government has, in its area of constitutional legislative authority, decided to proceed to advance a policy goal that we feel is missing in our Young Offender Act.” Toews further added that citizens would play an important role in the implementation of this law, to “ensure that not just law enforcement officials but citizens of our community have speedy access to justice” (Hansard, May 21, 1997).

During the 1995-1996 legislative sessions, some MLAs continued to speak of parental responsibility and its link to the issues surrounding victim rights. An interesting observation to make at this point is to acknowledge that the *Manitoba Victim Bill of Rights* received Royal Assent on July 24, 1998, following the *Parental Responsibility Act*, which was assented to in 1997. However, early in the debates, victim rights were at the forefront of discussion anytime, parental responsibility was mentioned. This was to call attention to the fact that by implementing legislation that addressed parental responsibility would enable victims the opportunity to file civil claims in court for damages caused.

David Newman (MLA for Riel) emphasized the importance of addressing the needs of victims, and crime prevention strategies that included victim support initiatives as well (Hansard December 11, 1995). Rosemary Vodrey (Minister of Justice and Attorney General) in 1996, when speaking to crime reduction strategies, acknowledged that placing emphasis on parental responsibility would “put the victim back into the picture in the area of criminal activity” (Hansard April 25, 1996¹⁴³). A month later (Hansard May 29, 1996¹⁴⁴), during question period, MLA Gary Kowalski (for the

¹⁴³ Oral Question Period.

¹⁴⁴ Oral Question Period.

Maples), wanted to point out that the government at that time (under Gary Filmon) was trying to feed the public “the misconception that the kids of today are out of control and running wild and it was the parents fault.” He directed his question to Premier Filmon and asked whether the premier believed that “youth crime was caused by the acts or omissions of parents?” or whether each time a criminal act was committed by a youth, it was so because of bad parenting? To this, the Premier replied “no”. Premier Filmon was asked whether he believed that his government was “willing to put as much effort in helping families prevent crimes rather than trying to help victims after crimes have been committed?” The Premier replied positively but added that Kowalski was also trying to convey the message that the Filmon government was wrong in its attempts at creating strategies for implementing victim rights policies. Interestingly enough, after this dialogue between the two MLAs, nothing more was discussed on the topic.

When the topic of parental responsibility and youth crime was resumed the following day (May 30, 1996), MLA Gerry McAlpine (Sturgeon Creek) addressed the assembly by acknowledging that the introduction of Bill 58 (future parental responsibility act) was a means by which “parents must also assume a greater responsibility for what their children do.” The MLA continued to add that

We can no longer perpetuate the notion of a society devoid of responsibility...as a parent, you have *an obligation* to ensure that your children, your child, is contributing to the betterment of our society and not to its demise (emphasis added).

When speaking to the assembly about the purpose of the proposed parental responsibility Bill, Rosemary Vodrey stated, “the purpose of the legislation is not to punish the parents

but it is in fact to bring an element of parental responsibility back, and to assist the victim and put the victim back into the equation” (Hansard June 19, 1995).

The introduction of Bill 58 by Vodrey was an attempt at addressing the frustrations that many citizens in the province had toward youth criminality and the failure of the *YOA* in dealing effectively with it. It was the government’s intention to increase parental responsibility by incorporating policies that addressed assistance to victims of crime by claiming for property damage caused by young offenders. In her speech to the assembly, Vodrey continued to focus on victim rights as such issues were to take precedence and where parents must take responsibility for the deliberate criminal acts of their children. She pointed out that “In many instances of property crime, we can legitimately ask where are the parents, what have they been doing to control the child?” (Hansard, June 4, 1996). This kind of criticism toward irresponsible parenting came after she pointed out that “After all, it is the parents *who decide* to bring a child into this world and they assume responsibility at that time for raising the child” (emphasis added, *ibid*). As was the opinion of MPs for the Canadian parliament regarding the importance of involving parents in the court proceeding of their children, so to was it for MLAs in Manitoba. Once again, it was Rosemary Vodrey who encouraged parental involvement in court in order to speak to their children’s criminality and to attest to whether they acted “reasonably in raising their child to try and prevent the kind of damage the child caused?” (*ibid*).

It was not until later that same year that debates resumed around Bill 58 and parental responsibility. When the issues of restitution came up among members of the assembly, some were less than optimistic about such conditions being fulfilled. MLA

Doug Martindale (Burrows) told the assembly “unfortunately, there are probably parents in our society who would not force their son or daughter to pay restitution. Who would not enable their child to accept responsibility for themselves.”¹⁴⁵ Martindale acknowledged that Bill 58 was the right way to proceed as to make the person responsible for his or her actions and that this also required parental guidance.

During this particular session, some members of the assembly did not meet the proposed Bill with optimism. Some, such as Kevin Lamoureux (Inkster), were quite critical about the government’s recent cut backs to various community centres in the north end of the city of Winnipeg that provided services to children and engaged them in sporting activities as opposed to “getting in trouble.” Lamoureux also addressed the cutbacks that were made to ‘parent-child’ centres that provided support services for families in need. The speaker’s purpose in addressing such examples was an attempt at proving that in many cases families need support and that government funding could be better utilized to provide services to families most at risk of experiencing youth criminality. Lamoureux’s final address to the assembly was to argue that while on the one hand “this government wants to make parents responsible for everything their children do, on the other hand, they are making life much, much more difficult for families in the city.”

For the majority of the October 29, 1996 assembly session, MLAs were quite adamant in expressing their disapproval with Bill 58. Again, Doug Martindale (Burrows) spoke to the difficulties of obtaining a conviction under the proposed parental responsibility act either at the small claims or civil court levels. He argued that proving

¹⁴⁵ Hansard, October 29, 1996. This comment was made shortly after Martindale spoke to his own experience when his son stole a chocolate bar from a local store. He made his son write a letter of apology and return to the store with the letter and payment for the item stolen.

parental negligence would be difficult because of the requirements that must be met under each court level or that it would prove difficult for a victim to obtain a judgment in court. Martindale also made reference to the US and its policies pertaining to parental responsibility laws. He quoted Howard Davidson, director of the American Bar Association Centre on Children and the Law in his interpretations of what these laws meant in the US context. Martindale read the following quote, which was made by Howard Davidson, to the assembly

Parental responsibility policy initiatives are neither inherently conservative nor liberal approaches toward crime and delinquency, far too many courts as well as family youth service agencies have either undervalued or ignored the role parents play in their children's severe misbehaviour and what should be done about it.

The proposed Bill continued to gain less and less support from other MLAs during the session¹⁴⁶. Those such as Gord Mackintosh (St. Johns) called the Bill a “desperate state of government [trying] to divert public attention from both its creation of conditions that breed youth crime in this province” to arguing that the Bill was a “token measure...no more than one raindrop on the fire of youth crime.” In a later address to the assembly, Mackintosh told the house that the current government's movement “toward parental responsibility legislation is based in large part to blind faith.”

Marianne Cerilli (MLA –Radisson) called the proposed legislation a “gimmick” that the government used for “political salient kinds of issues that [were] emotional.” Cerilli added that the legislation contained a punitive and punishment oriented aspect and pointed out that it focused on the idea “that the way to deal with children is to use fear of

¹⁴⁶ Hansard, October 29, 1996 session.

consequences to control them and that these kinds of deterrents are the best way to deal with children and youth” (Hansard, October 29, 1996).

For the remaining sessions that addressed Manitoba’s parental responsibility legislation, the support continued to be mixed among members of the legislative assembly. After its Royal Assent on November 19, 1996 and the discussion that did continue throughout the years, MLAs such as Vic Toews (the Minister of Justice at that time) pushed the government to look at the legislation as reflecting the idea that “the family unit owes a measure of responsibility, not just the child” to the province as a whole (Hansard, July 6, 1999). Gord Mackintosh on the other hand, was critical of the legislation and its inability to show proof that parents were being charged. His address was directed to the Minister of Justice to confirm how many parents were actually being held financially accountable. He added “will he [Toews], confirm that since it was announced four years ago not one single parent has been found financially responsible under this centrepiece legislation?” Toews replied by quoting from a report showing that between August 1998 and December 1, 1998, there was an increase from one case filed in Small Claims court to eleven (Hansard, July 7, 1999).

The Ontario Legislative Assembly

Ontario’s *Parental Responsibility Act* was introduced to the assembly as Bill 55 and after April 4, 2000 it was debated in several sessions leading up to its Royal Assent on June 8, 2000. The Attorney General at that time, Jim Flaherty spoke of Bill 55 as a

step toward “helping restore the time-honoured values of respect and responsibility.”¹⁴⁷ The Act would place onus on parents and allow the victim to get compensated for up to \$6,000 dollars. According to Flaherty, the Bill was drawn up as the result of concerns raised by individuals who were a part of a forum held by the “Ontario Crime Control Commission” and those polled, believed that parents “should take a more active role in shaping the behaviour of their children.” In his address to the assembly, Flaherty stated

The people of Ontario and our government firmly believe in the values of respect and responsibility – respect for others, respect for the law and an understanding that actions have consequences. These are values that we must teach our children...the Parental Responsibility Act is aimed at reinforcing the principles of respect and responsibility, values that make our communities safer for everyone.¹⁴⁸

Others such as MLA Michael Bryant (St. Pauls) shared Jim Flaherty’s perspective and as a Liberal Party member, he shared with the assembly that

Crime is a top priority, because we care about the safety of our communities. So too we support, respect, laud and wish to push forward family responsibility and parental responsibility. Who wouldn’t?

Despite Bryant’s earlier comments during the April 4th session, his support for the proposed Act turned into criticism. This time around, he accused the government of engaging in “social hot-button politics” with the end result of coming across as inventing a new concept by proposing this new Bill that already existed in other provinces.¹⁴⁹ He also questioned whether the attorney general was “going to take family responsibility

¹⁴⁷ Hansard, April 4, 2000

¹⁴⁸ In the April 18, 2000 Hansard, Joseph Tascona (MLA –Barrie-Simcoe-Bradford) made reference to the Commission’s poll and added that those who were polled said that they would support a law that held parents accountable for the criminality of children.

¹⁴⁹ Bryant spoke to the example of Manitoba, where the Tory Government had implemented such laws, which made no difference at all.

seriously [or] just going to continue to play politics?”¹⁵⁰ His further criticism about the proposed Act was in regards to its “arsenal to stand up for parents instead of helping victims.”

To response to Bryant’s questions, Flaherty replied by continuing to praise the proposed Act and reiterating the ‘responsibility and respect’ connection. He added

The Bill certainly deals with important issues like the responsibility of parents in our society to supervise children and the *effort that parents ought to make*, and many parents do make to instill respect for the law in their children (emphasis added).

During a lengthy session, MLA Gerry Martinuk (Cambridge) drew attention to Manitoba’s Act but reassured other MLAs that Ontario’s act was not the same as Manitoba’s; whereas Manitoba’s Act places the burden of proof on victims, the Ontario act would not and would assist victims of crime in their legal actions. He also made reference to US state implementations of parental responsibility laws, but only spoke of the variation in what some acts would cover or the financial limits some carry regarding liability claims. Indeed, it was Martinuk’s intention to point out the important role of parents in the lives of their children. He continued to point out that when one becomes a parent, they “sign up for life” and where asking parents to be accountable for the behaviours of their children was “not unreasonable” (April 13, 2000).

In his later address to the assembly, Michael Bryant went into great lengths to prove how the parental responsibility act in Manitoba has been less successful. Given the fact that the Ontario proposed legislation was modeled after the Manitoba Act, he presented the assembly with numerous cases that came before the Manitoba Small Claims

¹⁵⁰ Hansard, April 6, 2000.

Courts but failed at getting judgments. In speaking to ten claims, only three were successful and the others brought orders in favour of parents. Bryant continued that by calling something parental responsibility does not mean that there would be “radical social change” (April 13, 2000). Peter Kormos addressed Manitoba’s parental responsibility act again on April 18, 2000. He was critical of the act because it proved to have no successful cases to test its validity. Kormos also referred to similar laws in the US, which were professed to be capable of decreasing youth criminality but believed to have been enacted in a “fashionable, trendy sort of approach.” Kormos continued that Ontario’s proposed parental responsibility law was “an embarrassment to this government” and that it was simply intended to “exploit public concerns” about youth crime. Others who also referenced Manitoba’s law did so to argue that it was “not a model of something that’s really going to advance parental responsibility” (MLA Lyn McLeod –Thunder Bay-Atikokan).

Likewise, MLAs such as Shelley Martel were quite concerned over the government’s approach towards parents and what this law would convey. Martel felt that the proposed act would send a negative message to parents in that if children are bad, they have bad parents or put another way, parents who do not care about the wellbeing of their children at all. She expressed her disapproval of the proposed act by adding

I say to this government, you are going down a very bad and very dangerous road when you start pointing fingers at the parents of kids who are in trouble and condemning them and saying that somehow they don’t care what their kids are doing and they’re bad parents...when you start pointing fingers at parents and saying that all because they are lousy parents, their kids are in trouble.¹⁵¹

¹⁵¹ April 19, 2000

Despite the criticism that was expressed throughout the debates leading up to the Royal Assent of the Parental Responsibility Act, there continued to be supporters. Julia Munro (MLA –York North) spoke of the proposed act as directing the financial responsibility at parents as this was ultimately where the responsibility should belong. She added, “Parents under *normal* circumstances must be responsible for their children’s actions.”¹⁵² She was cautious however to add that holding parents accountable did not mean “that we are here to punish parents for incidents that are beyond their control” but her message was that there were parents who have taken steps to monitor the activities of their children, and what was unique about the proposed act was that “every case under this act [would] be judged on an individual basis to ensure fairness to the families as well to the victims.” Munro continued by adding that she felt “this Bill can encourage parents to become more involved in the activities of their children” and she reminded the assembly that, “we live in a fast- paced society where it is very easy to fall behind in quality time with our family.”¹⁵³

Others who supported the province’s parental responsibility act did so in an attempt to show that the government was committed to promoting community safety. Gerry Martinuk (MLA –Cambridge) spoke of the Act as helping to “restore principles of respect for the law and taking responsibility for actions.”¹⁵⁴ Martinuk once again drew attention to victims of crime and how again, the parental responsibility act was seen as an important factor in promoting these rights. He added that victims would receive the justice they deserve and clauses within the Act would reduce onus on victims to prove

¹⁵² Hansard, April 18, 2000, emphasis added.

¹⁵³ Hansard, April 18, 2000.

¹⁵⁴ Hansard April 25, 2000

their case in court. What Martinuk was adamant in stressing parents would be liable to the court in proving the child acted “unintentionally or that the parents exercised reasonable supervision.”

As a rebuttal to Martinuk’s comments, MLA Garfield Dunlop (Simcoe North) added that if parents were able to prove that the child’s actions were in fact unintentional, then the parent(s) would not be held liable. He also stated that initially, it was the victim that would have to prove to the court what and how much damage the child did and also to prove it was as a result of lack of parental supervision.

Summary

When discussing political debates in the Canadian context, an important consideration to address is that given that the federal cabinet members were in support of the fact that parents played an important role in the lives of their children, why would clauses pertaining to parental responsibility be omitted from federal youth legislation? Despite that changes to youth legislation were suggested –by incorporating more emphasis to the role that parents should play –at the same time however, arguments were offered about how such changes to laws would not address the social circumstances that potentially lead to youth criminality. For example MP Jack Ramsay (Reform Party, February 20, 1995) spoke of the proposed Bill 37 (the future *YCJA*) as being unable to change the kind of environments that young people grow up in. Whereas, MP Derek Wells (Liberal Party) added that legislation was only part of the solution and where “legislative efforts at reducing youth crime [would] continue to be deemed as

insufficient.” Geoff Plant (BC MLA –Liberal Party, April 28, 1998) told the assembly that the province’s *Parental Responsibility Act* was only a small piece of a larger puzzle that included addressing the problems of youth criminality –both its causes and symptoms. While MLA Jenny Kwan (NDP) asked whether it would be wiser for the government to “investigate the complex issue of why young people sometimes come into conflict” than using legislation as a penalty.

Within the three provinces studied, separate legislation was passed and was it believed to offer some solutions in making parents more accountable. The BC government’s implementation of a parental responsibility law was introduced with the intention that it would only be a small piece in the larger puzzle in combating youth criminality. Its supporters believed that it targeted the family unit, where parenting was most crucial; while others believed that the government was just “shopping around” for new legislation to implement. MLAs felt that this legislation sent the wrong message to young people that their parents were more accountable than they were for the crimes committed. For example, Liberal Party member MLA Michael Bryant (province of Ontario) felt that young people would be “off the hook” for their criminal acts because their parents would be made responsible if prosecuted under Ontario’s law. (April 13, 2000). Likewise, Marianne Cerilli (Manitoba MLA and NDP¹⁵⁵ member) who believed that parental responsibility laws might turn parents against their children and where “fear of consequences” to control children’s behaviour was better than implementing preventative measures for criminality. Jenny Kwan (MLA for BC and NDP member) asked the question of whether or not it would be more helpful actually assist families and their children so that criminality would be prevented in the first place. She called for

¹⁵⁵ The New Democratic Party

programs that were geared toward prevention and interventions than attempts that appeared to be reactive (August 22, 2001).

Despite reference being made to Manitoba's laws as being ineffective and unsuccessful in prosecuting cases, Manitoba did have valid reasons for implementing its parental responsibility law. In the case of Manitoba, it began to consider parental responsibility laws around the time that the federal government was considering changes to its youth justice legislation. Manitoba felt that the shortcomings of the *Young Offenders Act* could be compensated for with two closely linked provincial acts that addressed victim rights and irresponsible parents. The implementation of Ontario's parental responsibility laws was based on similar reasons as suggested in the discussions about BC and Manitoba. While some MLAs opposed the law and believed it appeared too trendy or reflected a negative perception that all parents of misbehaving children were irresponsible, others cautioned the government to avoid shaming parents because they appeared not to care about the wellbeing of their children. The following chapter turns to a discussion of political debates in England and Wales and offers insight into the varying ways that the House of Commons and Lords approached parental responsibility laws.

CHAPTER NINE
POLITICAL DEBATES IN ENGLAND AND WALES

When researching for debates for England and Wales, I searched debates for both the House of Commons and House of Lords. Each House discussed many topics that pertained to youth justice legislation and parental responsibility. In the following chapter, House of Common and House of Lords debates are considered separately to show the variety of opinions about these topics that were expressed in each House.

House of Commons

The topic of parental responsibility in the House of Commons came around the time when the Blair government put forth its “White Paper” report, which was concerned with addressing the country’s youth crime rates. The paper entitled “No More Excuses: A New Approach to Tackling Youth Crime in England and Wales” (1997) opened with the statement “today’s young offenders can too easily become tomorrow’s harden criminals” (pg. 1). Indeed this statement shaped debates in both Houses.

The White Paper was introduced by Jack Straw (Secretary of State – Home Department) and in his address, Straw pointed out “there are children whose misbehaviour goes unchecked and escalates into crime, and children who offend repeatedly, with no meaningful intervention.” It was the government’s realization that “there must be no more excuses for youth crime.”¹⁵⁶ When youth criminality was discussed in the House of Commons, early on, the issue of parental responsibility was at

¹⁵⁶ Hansard November 27, 1997.

the forefront. In Straw's continuing address to the House, he stressed the importance of the "parent and child" relationship and the level of supervision exercised by parents.

Straw pointed out

Parents of young people who offend or who are at risk of offending need particular support and guidance. They should be made to face up to their own responsibilities.

It was in his opinion, and shared by his government, that "families are the fundamental unit in society, providing mutual care and support and helping to shape the values of future generations." Too often however, Straw argued, lawyers were hired to represent young people and to make excuses for their clients' criminal and anti-social behaviours. Straw urged that a 'restorative approach' be added to the government's platform when dealing with youth criminality, as "there is no way for youngsters –or their parents –to hide from their personal responsibilities in committing their crimes." However, at the same time, Straw was also clear in his address that if parents were not willing to face up to their duties as parents, that state would have to step in. He added

I can think of no other final sanction. I wish that it did not have to be used, but sometimes all of us have to accept that the state, through local authority, must step in and remove parents' rights because they are not accepting their responsibilities.

Other MPs such as Sir Brian Mawhinney (North West Cambridgeshire) were in agreement that parents had a responsibility to their children and "adults must set standards that are good templates of behaviour for young people."

When the House of Commons met in 1998, talks reflected around the proposed Bill, which would eventually become the "*Crime and Disorder Act*" (CDA). This Bill

would in part address parental responsibility within youth justice by instituting parenting orders to “reinforce the crucial role of parents” in making “young offenders properly responsible for their actions.”¹⁵⁷ The *CDA* would radically reform the youth justice system in the UK and as Jack Straw pointed out to the House time and time again, it will be ensured that “young offenders make reparation to victims or to the community, and that their parents take greater responsibility for their offending behaviour.”¹⁵⁸ At the second reading of the Bill, Straw pointed out the Bill “has a simple, practical ambition: to build a safer and more responsible society. My wish is that everyone should enjoy that most basic of human rights: the right to live life free from fear and free from crime” (April 8, 1998).

However, some MPs, were less supportive of the government’s plans to deal with anti-social behaviours through enforcing legislation pertaining to parental responsibility. Despite the fact that some MPs such as Oliver Letwin (West Dorset) agreed that society should strive towards order and respect, and not “streets that [were] controlled by gangs, hoodlums, drug dealers and pimps”, he was critical that the government continued to introduce Bills since legislation was already “seeping out of every pore of the Home Office.” He was quite doubtful whether the “Home Secretary’s prodigious legislative energy” would be able to fix the issues of crime and disorder.¹⁵⁹

Like other MPs discussed in the other legislative assemblies already reviewed, the UK’s House of Commons also paid great attention to giving support and encouragement to families, and not only to making parents liable through enacting laws. MP Steve Webb (Northavon) stated that parents did fulfill an important role but “[would] never be *perfect*

¹⁵⁷ Jack Straw, Hansard April 8, 1998. “Doli incapax” is the term to mean “incapable of crime.”

¹⁵⁸ Hansard, July 21, 1998.

¹⁵⁹ House of Commons, Hansard March 12, 2003.

parents.”¹⁶⁰ Webb continued by pointing out that the government should “do much more to encourage and enable parents...it [was] about Government policy supporting parents [and not] about condemning those who fail to spend time with their children, but helping those who want to spend more time with them.”¹⁶¹ He called for the government to establish an agenda that encourages the development of strong relationships between parents and children. For Webb, the main concerns were that parents were working irregular hours and could not spend quality time with their children. There are also those who had work commitments and the pressures of working due to financial strains. The MP also added that parents who are in low socio-economic groups and occupy low-status jobs did not have “the negotiating power with an employer to refuse [working on] weekends. The bargaining power of such parents [was] often very weak.”¹⁶²

Despite the overwhelming support and voice given to such families by MPs, the thought across the House of Commons continued to be less supportive towards assisting such families. MP Graham Allen (Nottingham, North) called MP Steve Webb “innovative” and a “creative thinker” for his attention to such issues but was also quick to point out that “inadequate parenting skills often lead to anti-social behaviour” and that “social behaviour and its development are tied inextricably to better parenting.”¹⁶³ Ultimately, it was the investment in parenting skills that MP Allen believed would improve social behaviour and lessen anti-social behaviour as well. The fact that the majority of MPs in the House of Commons also accepted this view led to the enactment of the *Crime and Disorder Act* that contained elaborate legislative provisions concerning

¹⁶⁰ Emphasis added, Hansard, November 4, 2003.

¹⁶¹ Hansard, November 4, 2003.

¹⁶² House of Commons, Hansard, November 4, 2003.

¹⁶³ House of Commons, Hansard, November 4, 2003.

parenting orders, anti-social behavior orders, and Youth Offending Teams.¹⁶⁴

House of Lords

The debates in the House of Lords were at times more candid and attempted to emphasize the importance of good parenting over all other things. The Lords did debate amendments to the *Crime and Disorder Act*, but I focus here on what they said more generally about parental responsibility than their reasoning concerning the need for amendments to the legislation.

At the beginning of her speech to the House in 1996, Lady Gould of Potternewton used a quote taken from Leo Tolstoy that read, “All happy families resemble one another, but each unhappy family is unhappy in its own way.” Potternewton continued to add, “There is ample evidence that the interaction of social and economic pressures and inadequate parenting produces fertile grounds for delinquency.”¹⁶⁵ The connection between parenting skills and youth criminality was also made in the House of Lords. In speaking about youth crime, Lord Judd argued that behaviours that led to criminality could escalate “out of control as a result of inadequate skills in parenting or lack of confidence on the part of the parent in dealing with difficult behaviour patterns” (July 2, 1997). During the July 2, 1997 sitting, Lord Graham of Edmonton pointed out that

The two major institutions involved in whether a youngster drifts into or is kept out of crime are the family and the school...I am sure that none of us is brave enough to say which is more important.

¹⁶⁴ As already discussed in detail in Chapter Six.

¹⁶⁵ Hansard, December 11, 1996.

The use of the term “inadequate parent” was used throughout the House of Lords debates and several Lords addressed some of the factors that could cause inadequate parenting. These factors included poverty, poor housing, lack of occupation, or mental illness on the part of the parent (Lord Rea, July 2, 1997). Others such as Lord Northbourne spoke to the values that parents must instill in their children. He supported the government’s White Paper, which was introduced to the House of Commons by Jack Straw, and referenced the report again citing that the major cause of youth criminality continued to be lack of appropriate parenting.

Others such as Baroness Blatch¹⁶⁶ pointed to the issue of low parental supervision over children. In her address to the House, in support of the government’s proposed Act, she noted that “too many parents will not accept responsibility for their children that they have brought into this world” and that as a result the government has proposed “parental responsibility orders to ensure that parents face up to their responsibilities.” The Lord also urged that steps be taken to support parents by providing guidance or “possibly sympathy when they fail or fall down.” She was adamant that “education in parenting skills is extremely important and should be a significant core of what we are doing.” Others such as Lord Dixon-Smith believed that parenting contracts were critical as he pointed out

“We are dealing with difficult parents who need help...The parents accept obligations to take up that assistance and, most important, to get their children to school or improve their behaviour. That has to be a serious contract.”¹⁶⁷

¹⁶⁶ Hansard, July 2, 1997.

¹⁶⁷ Hansard, September 17, 2003.

The proposed *Crime and Disorder Act* was also debated in the House of Lords. On December 16, 1997, Lord Williams of Mostyn¹⁶⁸ introduced the proposed Act to the House as the first step to “safeguard and reinforce responsibilities for all.” During this day’s sitting, those such as Lord Rodgers of Quarry Bank shared mixed feelings about the proposed Act. He called the Act as innovative with the potential to “get to grips with real problems” but at the same time, it proved “ill-thought throughout and cosmetic.” Lord Rodgers’s concerns were extensive and included a caution to the government about what it considered to be behaviours, which were considered anti-social in nature. He argued, “We must be careful that we are not introducing into statute wide powers which can be used against anyone who does not conform to a standard pattern of respectable behaviour or a lifestyle which is acceptable.” He was concerned over the “disturbingly authoritarian overtones of anti-social behaviour.”

During the day’s sitting, the House also debated the proposed parenting orders that could be ordered under the *CDA*. Lord Bishop of Hereford pointed out that such orders were a “doubtful method of coping with problems” and if put into effect, “if they work at all, too late in the day to prevent young people being caught up in bad company and acquiring bad habits.” The Lord further added that “the threat of financial penalties on parents who are often already poor, inadequate and sometimes in despair is unlikely to achieve very much that is positive...many of the parents involved will probably be single mothers.” The topic of single parenting families continued later in the day’s sitting as well and Viscount Tenby (William Lloyd George) noted that single parent families are usually those headed by mothers alone. He questioned the compliance rate of parenting orders by “single parent mothers, with say, three sons by three different and absent

¹⁶⁸ Parliamentary under secretary of state –UK Home Office.

fathers” being controlled by and intimidated by her sons and thus, unable to comply with such orders. The Viscount added

It is not enough to categorise mothers in this predicament as being inadequate...this is almost certainly so...almost certainly too, they will be unable to pay any fine imposed as a result of their inability to control [their sons].

Furthermore, in speaking to parenting orders in later House of Lords sessions, Lord Thomas of Gresford called them “wonderfully idealistic” and a template “of the new Labour family.” He made reference to section 9 (7) of the proposed *Crime and Disorder Act*, which pertained to summary convictions and where some parents may opt to “seek to give up their responsibilities altogether rather than face being dragged through the courts and punished for what their children have done.” It was one thing to allow parents to voluntarily enter into parenting courses but another to force them “under [the] pain of conviction and fines.”¹⁶⁹ Others such as Lord Bishop of Bath and Wells commented that making parents pay fines would cause unnecessary pressure and hardships and he added

To punish a parent for a child’s action could also result in injustice and increased resentment on the parent’s part, thereby putting children even more at risk...we also feel that the provision will not work with the psychology of most parents who would be asked to take that responsibility.

Some caution was also raised in the House from Lord Northbourne. He argued that, despite the importance of reinforcing parental responsibility, “the severity of the

¹⁶⁹ Hansard February 10, 1998.

sanction in many cases will seem unreasonable, because the problem arises not from ill-will but from a lack of parenting skills.” The Lord continued to explain that a parent ordered to pay fines or placed in jail as a result of his or her child’s criminal acts, may turn to violence inflicted against the child. He predicted that there is grave danger in such sanctions as fines or jail terms and could potentially led to increased domestic violence against parent and child.

In the November 2, 1999 session of the House of Lords entitled “Fathers in the Family”, Lord Northbourne asked the House what the role of fathers was in today’s society. He addressed members by arguing that fifty years ago, such a question would be easily answered. Lord Northbourne’s observation was that many women are establishing careers and want to raise families as well; but his criticism of this was that such social changes also cause problems like “young men with no role in their families and families without fathers.” More specifically, he argued that “today we are creating an underclass of young men who are detached from socialising obligations of the family...and who see no role for themselves in the legitimate economy or family.” While trying to be the head of a single parent family is a “heroic job”, especially for single parents (mostly women) who also wanted the opportunity to return to work, this, in his view, was leading to a new generation of “young men, some of whom are uneducated, untrained, unemployed, unsocialised and unwanted.” Lord Northbourne concluded by asking the House

Will boys and girls receive clear messages about the needs of children, that fathers have a role in families, that children are likely to have a better chance if mothers and fathers bring them up together in a loving family, and that in an age of effective contraception there is no excuse for a man to bring a child into the world unless he has made the

commitment to love and care for it for 18 years or more? A child is not a toy.

There were other Lords such as Viscount Hood who believed

Good parenting is so fundamental to the progress of society throughout the generations...it is only when it is absent that one realises the time, effort and resources required to instill what good parenting should have provided (emphasis added).

Viscount Hood also distinguished the between the roles that mothers and fathers traditionally played in the household; the former, playing a greater maternal role, and the latter, as the provider, often less involved in directly raising children. Some Lords also suggested that the traditional roles for both women and men have changed over the years and some brought the “vulnerable position of fathers” to the attention of the House. From the perspective of The Earl of Mar and Kellie¹⁷⁰, this vulnerability was caused by dilemmas faced by young men. Indeed, he noted

Young men are facing dilemmas as to their very purpose in being. Women are finding their place in the world and not before time. Unfortunately, this advance seems to be at the expense of young men. This is not a call for women to rein back, but rather a call for men to find a way forward into a more, I suspect, androgynous future.

The Earl concluded with a final point about families

The family, both nuclear and extended, has a major role to play. Families need to sharpen up on how they encourage –or, often, discourage –their children about education and training...The boys of today must be encouraged to see learning and training as being manly, and not just for girls. Men must establish a new equilibrium with women. Until the parents are sorted, the children will not receive the lead they need.

¹⁷⁰ See www.biographies.parliament.uk for information. Accessed September 16, 2009.

In speaking further to the importance of families, other members of the House were advocating the crucial role that fathers in particular played in the lives of their sons. Lord Warner during the day's session pointed out that boys "who have no contact with their fathers are statistically more likely to be violent, get hurt, get into trouble and do less well at school... It means that we have to look critically at father-child contacts when adult relationships break down."

The Earl of Rosslyn spoke to the House about the aims of the youth justice system and its aim at preventing criminality. His remarks addressed the important influence that parents had in this regard and stated

We know a good deal about the risk factors which can result in criminal behaviour. They include poverty, poor housing, drugs and alcohol misuse, peer pressure, truancy and exclusion from school. But they include also poor parenting, harsh and inconsistent discipline, and lack of parental supervision.

Other members of the House of Lords made reference to studies done in the US regarding the impact that fathers have in the lives of their children. Lord Ashbourne quoted a 1995 report compiled by the Heritage Foundation (Washington DC)¹⁷¹, which reported that the increase in violent crimes paralleled an increase in fathers abandoning their families. The report also quoted past US president Ronald Reagan, who the Lord repeated as saying, "the family is the fundamental building block of society and that families without fathers are dysfunctional and contribute to the breakdown of law and order in this country."

¹⁷¹ Full report entitled "The Real Root Causes of Violent Crime: The Breakdown of Marriage, Family and the Community. March 1995.

In previous sessions, there was also discussion about parental contracts made between parents and youth offending team (YOT) workers. Such orders are voluntary and only valid upon the written agreement made by parents and the YOT worker. Despite their voluntary nature, if parents do not agree or comply with such contracts, YOT workers can make formal applications to the courts for court –ordered parenting orders instead. Some members of the House of Lords expressed concerns over such practices because it was viewed as the interference into the private lives of families.

Even though I stated that I would cover debates around the time when legislation was introduced or amended, when I came across debates made much later, I felt it necessary to add them as well. In 2003, the House of Lords was in session and Lord Thoroton addressed members about how society was still affected by the “irresponsibility, disrespect and loutishness of others” (March 12). He believed that anti-social behaviour goes unpunished if enforcement is poor. He believed that the government was “leading a new drive to work with individuals, families and communities to build effective action against anti-social behaviour.” He also acknowledged that the legislation was aimed “to put in place support and help for those who are prepared to accept it, and clear, speedy and effective enforcement they are not.” In his address about children and families, Lord Thoroton said that children of anti-social and ‘dysfunctional families’ would be offered, “intensive fostering”. His beliefs were that the government has acknowledged, “Family problems, poor educational attainment, unemployment and alcohol and drug abuse can all contribute to unacceptable behaviours.” Such familial and social dysfunctions as those mentioned by Lord Thoroton could no longer be excuses for criminality or anti-social behaviours and that persistent

failure to deal with such issues would result in “parenting orders, fines or fast track court action.”¹⁷²

During the September 17, 2003 House sitting, the *Anti-Social Behaviour Act* was discussed and in particular the Act’s clause addressing parenting orders. Lady Sharp of Guildford spoke to the House voicing her concerns over the voluntary nature of parenting contracts and how this aspect of the contract could be compromised if a parent does not enter into it but face a court ordered parenting order instead. Baroness Sharp of Guildford argued, “what should be a voluntary contract will be tinged with compulsion...in other words, someone who does not sign will have a parenting order forced on them.” She continued to add that a voluntary agreement would essentially turn into compulsion and the potential “for interference with the right to respect for family and private life.”

In her continuing address to the House of Lords, Baroness Sharp of Guildford made reference to a report compiled by both the House of Lords and Commons (“Joint Committee on Human Rights”)¹⁷³ in which the committee had addressed this issue of imposing parental orders and was quoted by Baroness Sharp of Guildford as stating that “in our view, the imposition of requirements on parents under a parenting order would certainly engage the right to respect for private and family life.”

¹⁷² MP Blunkett of the House of Commons made similar remarks during the March 13, 2003 session.

¹⁷³ Thirteenth Report of the 2002-03 Session. House of Lords Paper 120 and House of Commons Paper 766.

Summary

Both the House of Commons and House of Lords offered very different perspectives regarding parental responsibility. The House of Commons was critical of parents and their lack of involvement in the lives of their children but was also more likely to endorse the view that support programs were a better alternative than laws. The House of Lords presented the view that inadequate parents were clearly responsible for the criminality of their children and the Lords were not afraid to put blame towards parents who had failed in raising their children. Likewise, the Lords approached parental responsibility in a fashion that emphasized more traditional families, which included a strong male father figure as crucial in preventing youth criminality and that strong families were significant to the progress of society for generations to come.

I move to the discussion of Australia's introduction of parental responsibility laws by highlighting three separate states. Although these states have taken different steps to including such laws, discourses concerning the foundational importance of the family and parental responsibility continue to come through clearly in Australian debates.

CHAPTER TEN **POLITICAL DEBATES IN AUSTRALIA**

The states chosen all use the Hansard debates and all three were easily accessible. The governmental structure is also similar with legislative assembly (MLAs) and council (MLCs) members. Only the state of Queensland does not have a legislative council.¹⁷⁴ The legislative assemblies are the lower chamber of each state's parliament and the legislative council is the upper chamber.¹⁷⁵ Furthermore, constituency membership forms both the legislative assembly and council.

Western Australia

Several parliamentary sessions occurred prior to the Royal Assent (April 15, 2008) of Western Australia's *Parental Support and Responsibility Act*. The Bill (under the same title as the future Act) was heard in both the legislative assembly and council chambers starting in 2005.

The Bill was introduced to the legislative assembly on June 1, 2005 by MP Margaret Quirk (Parliamentary Secretary) with the intention of upholding "responsible, capable, and positive parenting as fundamental" in working along side the state in supporting and protecting children. Indeed, there was significant emphasis placed on parents as Quirk argued that parents

Do not know what to do...may be unable or unwilling to care for their children...[and] some of these parents do not access appropriate assistance to help them do a better job.

¹⁷⁴ The Legislative Council was abolished March 23, 1922.

¹⁷⁵ Information from each state can be found on each government's website. Western Australia: www.parliament.wa.gov.au; NSW: www.parliament.nsw.gov.au and Queensland: www.parliament.qld.gov.au. Accessed September 21, 2009.

Furthermore, it was the state's intention to introduce responsible parenting agreements and orders to address – as Quirk called them – parenting “incapacity or reluctance.”

Likewise, Margaret Quirk addressed the objectives of the Bill as those, which would encourage parents, to

Exercise their role to safeguard and promote the well being of their children and to reinforce and support their role – indeed their responsibility – to exercise appropriate control over the behaviour of their children.

In her closing speech, Quirk acknowledged

Quality parenting can be rewarding and enjoyable, giving us happy, healthy and successful kids. However, it also provides us with much more; *good parenting is a powerful instrument for prevention and early intervention against some of the serious social problems* confronting us. The spirit and intent of this bill is to support and strengthen the most powerful institution we have – the family (emphasis added).

Continuing during the September 1st 2005 legislative assembly session, other MLAs spoke about their personal child rearing experiences and used such experiences to make a point about how to properly raise children. While MLAs such as Rob Johnson expressed to the assembly how he raised his children to be respectful, polite and courteous, he was critical of those parents who failed to do the same with their children. He pointed out that many parents did not take such responsibility seriously and put their own pleasures ahead of their children. He believed that the Bill would allow the interests of children to be paramount when their parents are not fulfilling their obligations. He also argued

It is very easy to have a child...it does not take much to have a baby...however,[there are] the ramifications for the child for the rest of his or her life. A couple must take responsibility for their actions. *Children do not ask to be born into the world.* They are born because of their parents and it those parents who are responsible for the child (emphasis added).

During the September 13, 2005 legislative council session, the Parental Support and Responsibility Bill was read a second time and MP Kate Doust (Parliamentary secretary for the legislative council) spoke about parenting agreements and orders as “supervised support to help [parents] take responsibility for their children.” In her speech, Doust argued that “Parents are the first and most powerful teachers in every child’s life, playing a significant role in shaping opportunities and life outcomes for their children.”

Interestingly enough, on November 30, 2005, during the legislative council session, Norman Moore (leader of the Opposition) put forth a motion that would allow the Parental Support and Responsibility Bill to go in front of the Standing Committee on Legislation.¹⁷⁶ The concerns of those that were a part of this committee were expressed during the November 23, 2006 legislative council sitting with criticism unfolding toward the Parental Support and Responsibility Bill. Most notably was the amendment that would see Part Five of the Bill (regarding parenting orders) quashed.

MLCs such as Ken Baston (Division of Mining and Pastoral¹⁷⁷) had a difficulty with this section, as it was the most “punitive measure” of the Bill itself. He could not comprehend giving a parent a two thousand dollar fine for not complying with a parenting order. In his view, parents were placed on these orders because they were viewed as not good parents and fined because of their inability to provide for their

¹⁷⁶ Report entitled: “Report 5 Standing Committee on Legislation – Parental Support and Responsibility Bill 2005. November 2006.

¹⁷⁷ This is the MLCs division (constituency).

children.

Another MLC, Peter Collier, was also very adamant to put “his name” against the Bill, which he also called a punitive measure against parents. Collier was a member of the 2005 Standing Committee on Legislation that reviewed the Bill. He found it offensive that parents could be fined two thousand dollars for what some thing that was regarded as poor parenting. He addressed his concerns to council and made the following remarks:

I found it absolutely offensive that punitive provisions could be applied to what is deemed to be ‘poor parenting’. It is simply unpalatable to me. Coercion is not a good method for developing harmonious relationships in any shape or form...Imagine a single parent who already has communication and relationship difficulties with his or her child. Imagine if, for some reason, he or she was issued with a parenting order and was fined. Do members think that will improve the relationship with the child?

Collier also added that the Bill will punish parents and would add another “layer into the legal system”.

Likewise, Collier’s thoughts about the Bill had not changed even during the third reading of the Bill on April 7, 2007 in the legislative council. He argued again that he could not in “good conscience support a bill that contained coercion as a form of positive parenting. Coercion will never produce a positive parenting result.”

In her reply to council, Kate Doust (South Metropolitan – Parliamentary Secretary) responded to the comments offered by Collier and argued that removing Part 5 of the Bill would in essence make the Bill a useless piece of legislation. Her intent was to reiterate the point that responsible parenting orders would engage resistant families and as a result would save children from being “destined to repetitive, and even escalating,

problems, behaviours and exposed to harm.” Doust argued that the continuation of such behaviours would force the community to “bear the burden and cost of this entrenched antisocial and criminal behaviour.” She made it clear that responsible parenting orders were the first steps in intervening with families and to provide skills to parents to enable them to deal with the behaviours of their children. Essentially, what Doust wanted council members to realize was that there was a responsibility attached to raising children and that imposing responsible parenting orders

Reinforces the role of responsibility of parents to exercise appropriate control over the behaviour of their children and makes it clear that the government agencies also have a responsibility to provide the appropriate service and support.

Doust also commented on the kind of families that parenting orders would greatly assist. She spoke of families where children do not attend school because they are caring for younger siblings; about parents who grew up not parented themselves and

Thus have no role models upon which to base a positive family life...we are talking about some very sad families who need support and assistance...most of these families will take up the support when it is offered. However, a small number require the impetus of a court order and supervision to encourage them.

The third reading of the Parental Support and Responsibility Bill occurred in the legislative council on April 4, 2007. However, it is interesting to note that even this session, Helen Morton (East Metropolitan) pointed out that when the Bill was submitted to the Standing Committee on Legislation, thirty of the thirty-nine organizations that were invited to speak about responsible parenting orders had agreed that they were in fact unnecessary. While speaking to council members, Morton questioned why responsible

parenting orders continued to be supported when many community organizations that spoke at the Standing Committee meetings opposed the orders.

When debate on the Parental Support and Responsibility Bill was resumed in the legislative council (March 11, 2008), members such as Giz Watson were critical of the government's position in supporting the Bill and felt that this legislation was another "political appeasement in order to look tough in this area."¹⁷⁸ Instead, what Watson urged for was more government attention toward "provision of services instead of introducing law and order type of parenting provisions, because they are totally inappropriate." In response to this, Sue Ellery (Minister of Child Protection) argued that in order to break the cycle of youth criminality is necessary to

Give the child a loving and supportive family. If we can assist those parents to step up to their responsibility, we should do that...we can help them to undertake a parental support program. For those parents who will not exercise any parental responsibility and their child continues to be at risk, the courts will have the capacity to issue an order...we want parents to parent.

Furthermore, when the Parental Support and Responsibility Bill returned to the legislative assembly, (September 6, 2007), members continued to support its inclusion of responsible parenting orders. Members such as David Allan Templeman argued that the government had good reason for making responsible parenting orders central in the legislation. He went on to point out that, young people are contributing to unacceptable behaviours and such orders would "compel those parents who repeatedly fail to control their children." Likewise, those members such as Sue Walker gave her support to the

¹⁷⁸ Hansard, March 11, 2008.

orders, pointing out that “Some members would be shocked by the multiple pages of criminal offences that some young people present to court. *They are a nuisance to society* [and] some parents do not take responsibility in many respects.”¹⁷⁹

Summary

The debates in Western Australia were about promoting and strengthening the family unit. Some parliamentary members also referred to the family as the most important “institution” there was. Interestingly enough, some MLAs also used their own parenting experiences to question why others have not adopted parenting skills geared towards raising law-abiding and respectable children, and criticized those who have children but fail to accept the responsibilities attached. Others, who did not support parental responsibility legislation, felt that it was coercive and would do nothing to inspire positive relationships between parent and child. Despite such views however, the overall feeling toward this legislation was that it would allow for greater involvement of the state in the lives of troubled families and remind parents of their responsibilities within the family. As we will see in discussing the experience of Queensland, sections pertaining to parental responsibility were added to its existing youth legislation in order to incorporate a greater emphasis on parental responsibility.

¹⁷⁹ Emphasis added.

Queensland

As was mentioned in previous chapters, the state of Queensland does not have separate legislation that speaks to parental responsibility laws. That being said, it has incorporated clauses under its *Juvenile Justice Act* (1992) stipulating actions against parents when their children commit crimes. Queensland had also gone through the process of amending its *Juvenile Justice Act* some years ago. These amendments did address parental responsibility and in this discussion, I have attempted to capture most of what has occurred during this period within several of the governmental sessions that spoke to changes to the Act. In 1996, a Bill – known as the “*Juvenile Justice Legislation Amendment Bill*”¹⁸⁰ – was passed in the legislative assembly to amend the *Juvenile Justice Act* as promised by the National/Liberal coalition government.¹⁸¹

Denver Beanland (Attorney General and Minister of Justice) gave the second reading of the *Juvenile Justice Legislation Amendment Bill* to the legislative assembly on July 11, 1996. It was the government’s position to amend the original 1992 *Juvenile Justice Act* as a result of concerns raised in communities across the state, in particular “the dismay about juvenile crime and the system’s response to it.”¹⁸² Beanland stressed that “this Bill will begin the process of correction. It is the first step in dealing with juvenile crime.” He also gave emphasis to the role of parents, how the family would be “expressly recognised” and where the “principles of juvenile justice, which underpin the legislation, refer to the community, the victim, the parent and the strengthening of the family.” In attempting to fulfill the objectives of the Bill as stated above, Beanland cited legislative changes pertaining to parental attendance in court, and the penalties associated

¹⁸⁰ Act no. 22 of 1996, Queensland Government.

¹⁸¹ Queensland, Legislative Assembly, Hansard July 11, 1996.

¹⁸² Denver Beanland

with the refusal of attending court procedures of their children; Beanland added that this would be the only punitive measure against parents as part of the Bill's objectives.

MLA Thomas Barton (Waterford) opposed the Bill and he addressed the assembly by first asking whether or not the Bill had "any chance of solving the problem" of youth criminality. He encouraged members to avoid rhetoric that would not change the situation of youth criminality. He also urged that young people be treated with "care and compassion...and [not] treat them as small adults who are crooks." Barton later argued that he was quite concerned over the implementation of penalties against parents, as in his riding, there were many dysfunctional families who relied on social assistance and services. During the July 24 1996 session, Theodore Radke (Greenslopes) gave full support of the Bill and believed that the amendments were "long overdue", since a "child's parent should be encouraged to fulfill the parent's responsibility for the child's care and supervision." Radke believed that children should be dealt with in such ways that would strengthen the family. He argued that the Bill's amendments would "require the behavioural change of not only juveniles but also their parents...[the amendments would] contribute to the well being of the decent citizens of Queensland." Other MLAs such as Naomi Wilson agreed with Radke and argued further by stating that there was no surprise to why some children engaged in criminality as this was the result of their parents who "completely abandoned" their responsibilities.

Wilson strongly believed that it was the government's intention to "strengthen and emphasise the role of parents of juvenile offenders and ensure that they become responsible for their youngsters." Ironically however, Wilson spoke of "family bonding" as contributing to the development of a young person's self-esteem but she mentioned

court ordered compensation against parents or compelling parents to attend court as another contribution. She was under the impression that “a youngster needs the support of a family member, even if the support is imposed [by] legislation.” Likewise, she also rhetorically questioned whether it was too much to expect that a parent support his or her child, and replied, “I believe not.”

MLAs such as Frank Carroll (Mansfield) spoke about parents and argued that it was sad that legislation had to be implemented so as to ensure that parents take responsibility over their children. When he specifically cited clause 62 of the Bill (which was amending section 197 – notice to parent of child offender) Carroll said

It is an unfortunate situation that today a very small minority exists of those types of *parents who are perhaps not worthy of that title...* They set bad examples by their own behaviour and their expressed attitudes. They train their offspring to be irresponsible and insolent vandals...clause 62 of the Bill will be a measure for dealing with that type of influence (emphasis added).

On July 25, 1996, when referring to parents, Beattie assured members that parents would not think to pay the fines or compensation under the proposed Bill. He called the clause, pertaining to ordering parents to pay (clause 64 – amending section 199 – unpaid compensation amount) a stunt by the attorney general, in an effort to make the Bill appear as though to reassure victims and make them “feel good” that something was being done. He argued further that this clause was fraudulent, phony, ill advised and dangerous; and that many parents would not be affected by the requirement to pay. Likewise, Beattie added, “it was a fraudulent misrepresentation to say that parents will be caught by this, because the overwhelming majority of parents will not.” Furthermore, Beattie called the

Bill a “poor excuse for tackling crime...misrepresenting what it is trying to do and betraying the people who put it [the government representatives] here.”

During the same July 25, 1996 session however, once again there were MLAs who praised the Bill. Those such as Marcus Rowell (Hinchinbrook) argued that despite the implementation of the original 1992 Act, there were continual problems that were not being properly addressed by the original Act itself. In his speech to the assembly, Rowell pointed out that even though many parents have it “pretty tough”, there were those who did not “consider their children’s well-being, and that [was] causing an enormous amount of problems.” Rowell also addressed the kinds of issues that young people faced, and that where there was peer pressure, inattentive parenting had consequences as well. When making his statement, Rowell was interrupted by MLA Fouras who asked how this particular Bill would be able to address some of the concerns that Rowell spoke of. Rowell replied by stressing that no longer can the police or the courts deal with young people by the “softly softly approaches” that had proven unsuccessful and caused only disrespect towards such organizations.

Rowell spoke of “family conferencing” initiatives that would enable victims, families and the young person to come together and address how the criminal act affected all parties involved. Rowell cited how such initiatives originated in New Zealand and were used in other states such as New South Wales and in other parts of the world such as Canada. I mention Rowell’s reference to other states within Australia and to Canada to show how some cross-jurisdictional “lesson drawing” also occurred in Queensland pointing to how other legislatures were attempting to deal more effectively with youth criminality through implementing parental responsibility laws.

In continuing to support the Bill, MLAs such as Elizabeth Cunningham (Gladstone) argued that the “primary responsibility for preparing children for life belongs to – as it should be – parents.” Cunningham also stressed again that the Bill amended the current legislation so that not only the young offender would be recognized but that victims and the family as well. She thus recommended the Bill to the assembly without hesitation. When the legislative assembly met again on August 6, 1996, it was again to resume debate from the July 25 session. MLAs such as John Hegarty (Redlands) spoke again to the importance of family conferencing and how such initiatives were crucial. Despite his praise however, Hegarty added that such measures would be unnecessary if young people had the “support of a good family”; or if parents who were “there to love and support them – they would not come to the attention of the law.”

During the August 7, 1996, session when the discussion about the Juvenile Justice Legislation Amendment Bill continued, MLA Matthew Foley pointed to the changes being implemented to section 198 especially regarding “show cause” hearings. By way of background, show cause hearings fall under section 258 of the Juvenile Justice Act (and procedural clauses under section 259).¹⁸³ Essentially, what these hearings entail is that the court may call upon the parent to “show cause” why they should not have to pay compensation –thus placing the onus on parents to explain their reasons. What Foley was arguing was that instead of ordering parents to pay compensation and state why they should not pay, the government could “do a lot more good by providing support and assistance to parents than by using the big stick of compensation orders.” He believed by having compensation orders in place would allow the courts greater opportunity to rely on them and that such a course of action would be an erroneous approach, “one that does

¹⁸³ I have detailed both sections in Chapter six of this thesis.

not respect the proper basis of criminal law, and one that does not show proper respect for the rights of parents.”

The issue of parental responsibility was mentioned during other legislative assembly sittings that pertained to other matters. In 1999, the *Police Powers and Responsibility Act* was up for discussion as a Bill was read to amend some of its clauses. The purpose of the Act among other things is to “provide powers necessary for effective modern policing and law enforcement” [section 5 (b)]; and to “standardize the way the powers and responsibilities of police officers are to be exercised” [section 5 (d)].¹⁸⁴

On March 4, 1999, the legislative assembly discussed the “*Police Powers and Responsibilities Amendment Bill*”. One of its objectives would be to allow the police to remove children under the age of twelve from residences where they were at risk or where parental supervision was not provided. MLA Thomas Barton addressed the issue of parental responsibility while speaking to this particular objective in the Bill. He argued that “we will have to assist families that are either dysfunctional or lack adequate parenting skills.” In making further reference to the Bill’s objective to remove children who were at risk, Barton commented, “we have to get families much more involved and parents have to take greater responsibility for their children”. He also urged that problems should not only be in the hands of the police for instance, but also that strides should be made in “finding ways to provide skills and assistance to parents so they can address the problem.”

Even though amendments were made to the *Juvenile Justice Act* with the 1996 Juvenile Justice Legislation Amendment Bill, the Queensland government yet again introduced another Bill that would amend the Act, this time making changes to different

¹⁸⁴ See: www.legislation.qld.gov.au/Acts. Accessed on October 10, 2009.

clauses. MLA Judith Spence (Mount Gravatt)¹⁸⁵ introduced the next “Juvenile Justice Amendment Bill” to the legislative assembly on June 19, 2002. The Bill was read twice and during the second reading, Spence commented that this Bill would amend the *Juvenile Justice Act*, and other legislation relevant to the juvenile justice system “to provide an improved, relevant and cohesive legislative basis for the administration of juvenile justice in the State.” This was a shorter session devoted to the Bill and it resumed again on August 21, 2002 with other MLAs speaking about it.

In addressing the assembly, MLA Lawrence Springborg (Southern Downs) spoke about both young people and parents. He pointed out that there were small numbers of young people who continue to offend and “continue to be a nuisance in our community.” While in his later comments, he spoke of children as “time bombs waiting to explode” while referencing bad behaviours in schools. He was critical of the upbringing that such children receive and argued that parents “do not really care one little bit about what they get up to.” He also thought family environments were appalling when parents had no awareness of the kinds of decisions their children were making when it came to access to drugs or alcohol. As also argued in his speech that parents must take their parenting responsibilities seriously and that his views were not about a “philosophical mantra, but the [practical] way in which people [should] bring up their children to be proper, *useful* and *conforming* members of society” (emphasis added).

Other MLAs such as Peter Wellington (Nicklin) painted a similar perspective about parental responsibility. He felt that “too many adults bring children into this world and then walk away from their parenting responsibilities...I have no sympathy – and I stress no sympathy – for the parents who ignore their responsibilities to care for their

¹⁸⁵ Also the Minister for Families; Aboriginal and Torres Strait Islander Policy; Disability Services.

children.” He went as far as to compare parental roles of humans to that of animals and argued that some animals would not neglect their young the ways that adults do and he was not sympathetic to those that blamed the state for its lack of supports to families in need. He argued

Many people complain to me that the state and federal governments should do much more to teach parents and require parents to be more responsible when they raise their children. It is too easy to blame the government and call for more money, employ more counselors, have more programs.

Other MLAs such as Kerry Shine (Toowoomba North) pointed to research conducted in England and Scotland to argue that the “foundation of a lot of recorded juvenile crime lies with the family unit.” He also added that a strong influence for starting criminality was low parental supervision and in Shine’s opinion this had to be taken into consideration as well. Furthermore, MLA Jeffrey Seeney (Callide) felt that parental responsibility and the family should be promoted as the source of where care and control over children should come from; and he expressed his amazement at how some parents lack supervision over their children. Following Seeney’s address, others such as MLA Dorothy Pratt (Nanango) believed that parents felt disempowered to address the criminality of their children and where “frustration in parenting is rife”. That being said, Pratt also argued, “there are also many parents who should not have children.”

Summary

The government of Queensland introduced new parental responsibility sections into its existing *Juvenile Justice Act*. The purpose of these additions was to highlight the importance of family and to incorporate parental presence in court proceedings involving their children. MLAs were also critical of parents who do not fulfill – and at times intentionally avoided – their parental responsibilities, but at the same time were not surprised that as a result of this, children engaged in criminality. As was the case in previous government debates of other jurisdictions already highlighted, MLAs in Queensland also believed that there existed those individuals that should not be having children at all.

New South Wales

Prior to the Royal Assent of the *Children (Parental Responsibility) Act* on May 2, 1995, the Bill was discussed at length in 1994. It was the government's intention to implement a law, which sought to "reduce juvenile crime in [the] community." The Premier (and Minister for Economic Development), John Fahey spoke to the legislative assembly and provided two important reasons why the Bill was significant. For one, the government had a responsibility to ensure safeguards existed to protect citizens and two, that young people be protected as they are easily influenced and potentially led into criminality.¹⁸⁶ It was also at this time that the topic of parents would be prominent and

¹⁸⁶ Hansard November 24, 1994.

Fahey added, “In many cases, the behaviour of juvenile offenders is the result of family dysfunctions, with children being forced to fend for themselves.” In his further address to the assembly, Fahey pointed out that the Bill “constitutes the first serious attempt in this state to recognize the role that family responsibility should play in the criminal justice system’s dealings with juvenile offenders.”¹⁸⁷

In pointing to several clauses within the Bill, Fahey argued that introducing such efforts as family counseling would assist in dealing with family dysfunctions or the “disharmony” that occurs when families are faced with youth criminality. Likewise, Fahey pointed out that family counseling would assist the “family in coming to terms with the family’s role in supervising the child.” Fahey also cited clause nine of the Bill that would see it that a parent’s contribution to the child’s offence be an offence as well; specifically, a parent’s negligent care or supervision would be viewed as contributing to the offence. The intention of this clause was not to be viewed as imposing criminal penalties, but as Fahey pointed out, was “intended to enable parents to understand the role that inadequate or neglectful parenting may play in the unlawful behaviour of their children.”

On November 30, 1994, discussion of the Bill had resumed with Richard Amery (Mount Druitt) speaking to the legislative assembly about this topic adding that it would be difficult to prove such negligence on the part of the parent. Instead, he pointed out that what could occur was “perhaps some form of revenge will be taken on the child...the result this bill hopes to achieve may be negated by the actions of parents and the break-up of families.”

¹⁸⁷ Hansard, November 24, 1994.

Despite the criticism toward the government for introducing such a Bill for assembly consideration, Amery was also concerned about the issue of responsibility that parents are in fact lacking towards their children. His concern was that the Bill did nothing to “focus on the need to build infrastructure support to ensure that parents take responsibility for their kids”; and in his concluding remarks to the assembly, Amery argued

To those who say you cannot force the issue of parental responsibility, I say hog wash. It is an absolute right of any community to insist that parents take responsibility for the actions of their children...to some degree parents should be culpable and responsible for the actions of their kids, particularly when the children are at an age that parents should know their whereabouts and what they are up to.

Despite the response that was received from MLA Richard Amery, other MLAs such as Anne Cohen praised the Bill, citing the importance of parental attendance in court to “establish what is happening to their children, to support them and to attempt to prevent a reoccurrence.”¹⁸⁸

Other MLAs such as Dr. Elizabeth Kernohan followed in agreement about the implementation of the Bill and asked whether it was so terrible that parents were made to attend court proceedings involving their children. She added, “parents will be asked to give undertakings that they will look after their children. Is there anything wrong with that?...Perhaps I am old-fashioned, but I believe that when one had children one has the responsibility of caring for them.”¹⁸⁹ MLA Gerald Peacocke argued that it should be

¹⁸⁸ Hansard, November 24, 1994.

¹⁸⁹ Hansard, November 30, 1994

common sense that the enforcement of parental obligations is sometimes necessary and he maintained

Parents daily are rejecting more and more of their obligations to their children, leaving it to the State, the police and welfare officers to carry out functions that parents should readily perform...parents often forget their obligations to try and stop young people drifting into a permanent life of crime, which wastes lives and society's resources.

Peacocke continued to point criticism at irresponsible parents and went as far as to say that

If parents are not prepared to be responsible for their children, they should not be having children...society is sick and tired of people finding excuses for parents, for kids and for criminals...the bill is a genuine attempt to address an extraordinary serious problem, it is trying to bring some sense of responsibility of parents (emphasis added).

In further support of the state's parental responsibility Bill, MLA William Beckrodge added that this Bill would place responsibility onto parents when their children have not acted responsibly, while others were harsher in their arguments and pointed criticism toward young people. MLA Albert Schultz argued, "Children have created massive problems for society in cost and inconvenience." His comments also took a racial turn when Schultz spoke about minority groups not holding up traditional family values found in Australia. Schultz argued, "I actively and publicly promote the need to return to the traditional values that minority groups are intent on eroding at the expense of the community."¹⁹⁰

The criticism toward irresponsible parenting continued to be voiced among members of the legislative council as well. For example, during the December 2, 1994

¹⁹⁰ Hansard, November 30, 1994.

second reading of the proposed Bill, Ronald Dyer (Deputy Leader of the Legislative Council) spoke about the potential failure on the part of parents to pay fines or comply with court ordered undertakings as “their problem” and an “indication of their lack of responsibility.”

However, there was also opposition to the Bill in both the legislative assembly and council sessions. For example, as was the logic during sessions of the UK House of Lords about the potential consequences of making parents pay fines for the crimes of their children, the same arguments were expressed in the New South Wales legislative assembly as well. Some MLAs were concerned that if parents were ordered to pay fines, parents would try and “get rid of their children at the first opportunity” –this implying that some parents may remove their children from the home because they are not prepared to take responsibility over paying fines or being accountable for their criminal activities. In his statement to the assembly, Fahey added

Most responsible parents believe they have an obligation to accept responsibility for their children and to pay for any damage they cause but to impose that responsibility on all parents by law will result in the break up of many families.

Others such as Dr. Peter MacDonald further supported Fahey’s comments by adding, “Good parenting comes through family support services, counseling and education. The imposition on the parents of young offenders is potentially damaging and divisive to households.”¹⁹¹

¹⁹¹ Hansard, December 1, 1994.

During the November 30, 1994 legislative assembly session, there were others such as MLA John Hutton who were quite adamant in opposing the Bill. Hatton argued that only in about twenty to thirty percent of families do problems actually exist and that in only ten percent are there serious problems. In his view, the government had “no idea of the complex dynamics, the challenges, the stress and the suffering faced by families when there is serious family dysfunctions.” In making reference to some family issues as drug or alcohol abuse or parental psychiatric issues, Hatton asked the assembly whether the government was willing to go ahead and punish such families, children or parents for such situations where “punishing parents will not fix that background.”

When the Bill was read again to the legislative council assembly on December 2, 1994, John Hannaford (Attorney General and Minister of Justice) gave a speech to members and in it, he acknowledged that the government recognizes that “the behaviour of juvenile offenders is often the result of family dysfunction and that family counseling can be more beneficial in addressing juvenile crime than harsh penalties.” There were also legislative assembly members who agreed with parental attendance in court, but felt that any further conditions in the legislation could be viewed as the state interference in the roles of parents.¹⁹² MLC Elisabeth Kirby questioned whether penalties against parents would accomplish any good at all. She addressed council members by adding

Even in dysfunctional families, perhaps single parents, are aware of their responsibilities and are in despair because they do not know how to carry them out. Is fining them or sending them to gaol going to assist them?

¹⁹² MLA Paul Whelan, Hansard November 30, 1994.

The government of New South Wales also spoke about amending the 1998 *Children and Young (Care and Protection) Act* by adding section 38A, “parental responsibility contracts” and this was done through the Bill entitled “Children and Young Persons (Care and Protection) Amendment (Parental Responsibility Contracts) Bill.” I believe that it is important to highlight the discussion around the issue of such contracts to point out how far the government was willing to go in order to hold parents more accountable for the criminality of their children.

The topic of parental responsibility contracts began to receive attention in August 2006, when MLA Reba Meagher (Minister for Community Services) spoke to the assembly about the importance of parental responsibility and acknowledged that some parents were “indifferent to the welfare of their children.” She added that it was the government’s way of looking for new ways to “improve the system” and to introduce contracts as means of ensuring that “parents meet their obligations when it comes to their children.”¹⁹³

During the second reading of the Bill, MLA Gladys Berejiklian spoke to the purpose of parent responsibility contracts as “[encouraging] parents to improve their parenting skills and accept greater responsibility for their children.”¹⁹⁴

Parent responsibility contracts continued to be supported by other members of the legislative assembly during the September 20, 2006 session. Those such as Barbara Perry (Auburn) expressed that these contracts were an intervention and strategy against social problems. Perry argued that since there was a link between inadequate parenting and youth criminality, placing parents on such contracts would reduce anti-social behaviours

¹⁹³ Hansard, August 30, 2006.

¹⁹⁴ Hansard, September 20, 2006.

and build more “cohesive and harmonious communities.” Other MLAs such as Linda Burney (Canterbury) supported contracts because in her view “the reality [was] that we do not live in a perfect world and some families cannot provide sound parenting” and she pointed to the government as having the “important social justice responsibility of breaking that cycle of dysfunction.”

Despite the fact that MLAs such as Burney maintained that the government has some responsibility to promote better parenting, others such as MLA Dawn Fardell pointed the criticism toward parents themselves. She spoke of irresponsible parents as those who blame others for the welfare of their children and who have “total disregard for the law, their children and themselves.”¹⁹⁵ In her opinion, any parent who would disregard the law should be placed under a parent responsibility contract. In her speech to the assembly, this was what she thought of irresponsible parents

Let us be honest when we talk about irresponsible parents, we are not only talking about parents from housing estates or single parents. This *epidemic* does not discriminate. The latch keys kids are helping themselves to dad’s mini bar, not attending school, experimenting with drugs and engaging in illegal activity to relieve their boredom...Their parents also need to be looked at.¹⁹⁶

The amendment to the *Children and Young Person (Care and Protection) Act* to incorporate parent responsibility contracts was discussed in the legislative council during two sessions in September 2006 before returning to the legislative assembly for final deliberation. John Della Bosca (vice president of Executive Council and leader of the opposition) introduced the Bill to council and its aim was to “[reinforce] the efforts of

¹⁹⁵ Fardell made her comment in reference to incidents where police arrest children and parents fail (or take hours) to attend at the station to be with their children.

¹⁹⁶ Hansard, September 20, 2006 –emphasis added.

parents to teach respect and responsibility and supporting a more inclusive society.”¹⁹⁷ Della Bosca acknowledged that within stable and nurturing families, “children and young people learn respect for the core values of our society and assume responsibility for their social behaviour.” Della Bosca also acknowledged that as a result of poor parenting skills displayed by some parents, children developed into adults with ineffective social skills and a lack of “personal responsibility; commitment to the community and respect for others.” This concept of “respect and responsibility” teaching on the part of the parent was repeated throughout this second reading of the Bill in council and as Della Bosca pointed out, creating parent responsibility contracts would be a way of treating parents for their own problems as well as to better enable them to meet their own parenting obligations.

During the September 27, 2006 legislative council session, there was also support for these contracts from religious political parties such as the Christian Democratic Party. I mention the speaker’s speech to council to show how religious thoughts about the definition and role of family can influence political discussion and decisions.

Reverend Fred Nile (representing the Christian Democratic Party) supported parent responsibility contracts and believed that they would assist parents whose children were at risk and that such contracts would “champion responsibility within our communities.” His party greatly supported the positive approach that was underway with these contracts and that intervening early with families would be an effort in keeping the family together. In this speech, Reverend Nile added

¹⁹⁷ Legislative Council. Hansard, September 27, 2006.

We recognize that the family is the God-given unit of society and that it is preferable for parents and children to stay together...we hope that it will prevent major family breakdowns that facilitate the removal of children from the family. That must be an act of last resort.

He further added that the family was in essence the building block of society but arguing

Sadly, we know that in modern society there has been a breakdown in values. Physical and verbal abuse, drug addiction and anger seem to be the norm in some dysfunctional families.

In Reverend Nile's later address, he said he believed that the "measures in this bill are paternalistic in nature, [and] some parents need to be shown a way out of their destructive behaviour." Reverend Nile also pointed to similar initiatives found in England and Wales and added that despite the country's aim at trying to reduce youth crime by enacting parenting orders, he believed that the New South Wales initiative differed somewhat because reducing youth criminality was not the sole objective of the parent responsibility contracts. Reverend Nile acknowledged that parental responsibility contracts would not fully address the multi-faceted issues that are present within some families and that contracts would only act as "band-aid" solutions for much deeper issues.¹⁹⁸ Secondly, he argued that using contracts would come across as "individualistic" rather than "holistic" in nature; whereby parents entering into these contracts may or may not receive the proper family counseling for them and their children. Lastly, his concerns lead again to the consequences that the contract may have on the relationship between parent and child; where hostility or embarrassment on the part of the parent could cause further grieve within the family. What Reverend Nile urged was that the Department of

¹⁹⁸ See Roy (2001) and Dimitris (1997-1998) as well.

Community Services has “the necessary expertise to deal with such an environment and that they are supportive and assist parents not to feel they are failures in their roles as parents.” In his final address to the legislative council, Reverend Nile said,

We should pray that struggling families will get the help they need and to remember, as is stated in the Bible, that children are to be encouraged to honour parents and parents are told not to provoke or exasperate their children, but to bring them up in a Godly manner, in a loving Christian, caring and nurturing environment.

Summary

As the discussion above suggests, the New South Wales government implemented parental responsibility laws with the intention that they would give the state the power to force parents to come to terms with the criminality of their children, if need be, by compelling parents to agree to parenting contracts. Such contracts would enable parents to begin understanding the importance of how adequate parenting contributes to decreasing criminality of their children. What was interesting to uncover in this particular debate discussion, was the inclusion of the views of religious political parties.

As was the case with the other government debates selected, politicians in New South Wales varied in their viewpoints and indeed displayed a harsher approach to what role parents must play in the lives of their children. As the next chapter suggests, the political opinion about parental responsibility does not vary significantly between the four countries and common themes do arise.

CHAPTER ELEVEN **DISCUSSION AND CONCLUSIONS**

The goal of this thesis was to discuss the incorporation of parental responsibility laws into the fabric of youth legislation across four countries. The thesis introduced the youth justice legislation that exists in the four countries and provided a detailed discussion of the creation of their respective parental responsibility laws. In answer to the question of why such laws were enacted, guided by Garland's theory of responsabilization, I found evidence that through supporting the enactment of such laws, governments and policy makers in each of these countries have attempted to put more responsibility onto citizens, and parents in particular, for the prevention of youth criminality. Like their children who face judicial penalties, parents, to varying degrees depending on the country they reside in, are also subject to "penalties" including being placed on parenting orders, made to attend parenting classes or ordered to pay financially for property or personal damages caused by their children.

The primary method I used for gaining answers to the reasons behind the implementation of such laws was my use of a qualitative data analysis technique into government parliamentary and state debates that occurred in various periods throughout the years when legislation –or changes to it –were being considered. My reason for studying these debates was to show how political speech could provide insight into the reasons why parental responsibility laws were promoted, criticized and/or supported. The purpose of my examination of the Hansard and US Congressional records was to analyze what elected officials were saying about parental responsibility laws, parents and

young offenders and to gain an understanding of the circumstances surrounding the enactment of parental responsibility laws.

In applying the theory of responsabilization I have argued that parental responsibility laws were enacted in order to place greater responsibility on parents in controlling their children and this kind of legislation will also continue to maintain a degree control over parents. What the theory of responsabilization argues in part, is that there exists a shift of responsibility from the state onto families (parents), by creating parental responsibility laws, it enables the state (or juvenile justice) to continue being involved, even more intrusively, in the lives of both children and their parents.

As I began reading through government documents, I started to see certain themes that emerged and a commonality began to form in the recorded text from the various political speakers. On some occasions, the debates discussed the proposed or enacted legislation in greater detail and criticism was addressed toward the creditability of the legislation. For example, this was evident in the debates of the three Canadian provinces, where politicians spoke at length about the legislation and its attempts at bringing the family and parental responsibility to the forefront. Overall though, the debates featured indicate that governments across these four jurisdictions hold similar perspectives on youth criminality and work toward similar methods of addressing it.

Indeed there does exist this conservative political tone that I spoke of at the beginning of this thesis. Government debates, whether in parliament, a legislative assembly or House of Representatives session, have a distinctive voice that was similar to all governing bodies. When politicians spoke of parents and their relationship to their children, what I gathered was this sense that for one, greater responsibility over children

ultimately was within the family and two, governments step in only when criminality has resulted and intervenes to correct parenting errors by either placing parents on contracts or making them financially responsible. While reading through sessions, there is an orchestrated set up where not only are most governments presenting a 'get tough' on crime perspective, there is also the tendency to promote parental responsibility legislation to opponents; while the opposition critically assesses the creditability of the proposed or enacted legislation. While both sides present their arguments, there were definite themes that emerge as a result. I highlight these themes below.

The Role of Parents in the Lives of Their Children

The repeated mention of parents by elected officials, when speaking about youth criminality, cannot be overlooked. As some authors have pointed out in other contexts (see Muncie 1999; Burney et al. 2008), the concept of the 'parenting deficit' seemed to reappear through out all the political debates I researched. If we recall, the parenting deficit was one way to explain how youth criminality develops primarily within the home. In this view, the domestic domain breeds youth criminality depending on the kind of relationship that exists between parents and their children. The data examined in the current study, reflects that politicians expressed strong views about the specific role that parents should play in the lives of their children while raising them to become law-abiding citizens. It was strongly believed that the family was the first and foremost institution where individuals learn from and the foundation of society for the upbringing

of children. Furthermore, it was the belief that ‘bringing parents back’ into the criminal justice system would enable them to see what their children have done in terms of their criminal activities and the impact it has made on victims and the rest of society.

Furthermore, as those such as Mooney (2003: 101) have commented in other contexts, the current study has also shown that “juvenile delinquency... is blamed on maladministration in controlling the young...and on the inherent nature of individuals, perhaps influenced by events earlier in life.” In this case, I found support for this when politicians spoke about youth criminality as the result of varying familial dysfunctions. Likewise, the term “dysfunctional” was continually used in varying contexts. For example, a family was dysfunctional when it dealt with such issues as alcoholism, drug abuse or parents lacking proper upbringing themselves. Likewise, dysfunction within the home was mentioned as the result of irresponsible parents who were not taking their parenting responsibilities seriously and that a non-parenting approach was argued to lead to youth criminality. Furthermore, those parents who were never aware of the whereabouts of their children, or who failed to attend court proceedings or police stations after the arrest of their children, were viewed with criticism and disappointment by political leaders. Politicians often questioned why parents chose to neglect their responsibilities to their children or why they became parents in the first place if they were not willing to take their responsibilities seriously; while others believed that people signed ‘up for life’ when they became parents. This perception on the part of politicians is quite remarkable as it suggests that many supported the idea that certain individuals should not be having children based on the evidence that they cannot in fact raise their children properly.

Labeling parents as dysfunctional and irresponsible tends to be shifted towards those in low-income brackets, single parents or minority groups or parents who held disadvantages in the workforce. For example, politicians spoke of parents who lack power in their workplace, those who worked several jobs or had irregular incomes as well, or minority families were criticized for not adopting the family values of their new country. Rarely, did politicians mention middle or upper class groups and if they did, it was in the context of selfish “workaholic” parents who made no time to be with their children.

Such statements that target single parent families – especially those under the care of a lone mother – have been used as criticism against parental responsibility laws. Authors such as Dimitris (1997-1998: 674) have supported this notion and add that these laws have imposed “class-based ideals on families that cannot meet these goals...[and] disproportionately affect women.” What the political rhetoric does suggest is that emphasis was placed more on what parents were not doing (i.e. properly raising their children) as opposed to what crimes their children actually committed. This is again supported by Dimitris (1997-1998: 673), who has stated that parental responsibility laws “hold parents responsible for parental action or inaction that was directly responsible for the delinquency”, and do not address the actual criminal acts committed by that child.

The Role of Laws

Since an overwhelming majority of politicians saw the important role that parents played in the lives of their children and believed that this was linked ultimately to the prevention of youth criminality, the majority of them also supported the introduction of parental responsibility laws and believed that these laws would enable parents to be more involved in not only the lives of their children, but also in the criminal proceedings involving their children. As the data presented in earlier chapters have shown, like academics, politicians across the four countries placed great emphasis on making the connection that youth criminality is in part the result of poor parenting, where the parent(s) lack the necessary skills to discipline their children properly.

However, unlike the academics who criticize parental responsibility laws, politicians, on the other hand, rely on this connection to argue for the implementation, and justification of these laws rather than admit to their ineffectiveness in addressing youth criminality. This is further supported by work of those such as Schmidt (1998), who have referred to parental responsibility laws as “symbolic lawmaking”, which I would agree with and uncovered in my research. Clearly, politicians argued for these laws as a method of showing that they are doing something about youth criminality and to gain public support and admiration for addressing it with whatever means possible. The laws are justified as necessary to make parents think more closely about raising their children properly and furthermore politicians believed that holding parents accountable under these laws was a method of acknowledging their parenting incompetence. In view of these laws, when children commit a criminal act, legal authorities place the burden of

proof on the parent to answer to why such criminality occurred and hence the relationship between parent and child is questioned, as it is believed that something went wrong in the upbringing of the child by the parent.

That being said, government officials were also quick to point out criticisms of policies and laws in place that did not address youth criminality properly or more aggressively. The criticism included comments that these laws infringed on the privacy of the family and were gimmicks to gain public support for re-election purposes. Several debates remained as attempts at ‘finger pointing’ at the opposition for its lack of creating more concrete laws that addressed youth criminality as a whole, or for not supporting programs that were proactive in eliminating criminality to begin with. Parental responsibility laws were viewed as another piece of legislation that would not work. As was observed, many debate sessions reflected a political dynamic that pinned one political party against the other. The arguments for and against such laws were met with criticism from the opposing side while supporters urged the government to consider such laws as a means to deal effectively with youth criminality.

Despite strong support for parental responsibility laws, some politicians were critical of the way such laws interfered with the privacy of parents. Parenting or civil orders against parents were viewed as interferences in the lives of families and would infringe on the right of maintaining privacy within the home. The issue to some politicians was how involved should the law be in the lives of families that continue to experience youth criminality. Some suggested that more initiatives regarding social programs which work to create positive and enriching relationships between family members should be developed and to avoid legal actions against parents because such

actions would only cause greater conflicts within existing unstable familial situations.

Evidence of Policy Transfer

Another question posed in this thesis was also whether countries are looking at what others are doing in handling youth criminality and whether they are learning something from each other? When political discussions turned to referencing other jurisdictions, many countries referred to the US styled youth justice model or its legislation overall. In some cases, politicians cautioned whether their youth justice policies were heading in a more aggressive and punitive direction as found in the US. In Australia, attention was paid to UK initiatives by examining its parenting orders and drawing comparisons between legislation. A lot more policy transfer occurred at the provincial level when Canada's three provincial laws were examined. Since Manitoba was the first province to implement parental responsibility laws, both BC and Ontario used Manitoba's law as an example of its ineffectiveness and how such a law would prove unsuccessful in their respective jurisdictions.

Policy transfer is also suggested in the wording of some of the laws across jurisdictions. The three Canadian provinces developed their parental responsibility laws almost identically with the same principles and clauses attached. Parenting orders across England and Wales and states such as Western Australia commonly stipulate that parents be placed on them in order to attend parenting classes or making sure their children attend school. In the case of US laws, states vary but an underlining theme exists in that parents can be held responsible and a monetary amount is attached, where parents may be

ordered to pay for damages occurring from the child's criminal act. It has been noted that California and Texas have the highest dollar amount that can be ordered against parents.

In Canada, only BC and Manitoba have a monetary amount that parents can be ordered to pay, while Ontario does not. Under Canadian provincial laws, parents cannot be given parenting orders (like those found in England and Wales or Australia for example), but as in other jurisdictions they can be spared from having to pay if they prove to the court that efforts were made to obtain parenting counseling to improve their parenting skills. Therefore, while there exist some similarities in the legislation of the four countries, I would argue that my thesis only provides evidence of generalized policy transfer or "lesson drawing".

A related consideration for future research developed from this thesis would be to include an in depth look into one or two of these countries, their respected parental responsibility laws and actual application in a judicial setting. Likewise, in order to delve deeper in to the extent of actual policy transfer between these countries at bureaucratic and political levels one would have to expand research to include interviewing policy markers about the specific manner in which, if any, they communicated with counterparts in other jurisdictions for ideas about implementing parental responsibility laws.

Research Limitations

The task of searching through government debates also posed other more practical limitations. First, I ran into issues pertaining to terms used interchangeably. For example, the term "parental responsibility" does not only refer to cases of youth criminality but can

also refer to topics such as child custody or shared-custody between parents when related to marital or family law cases and debates. Likewise, terms such as young person, do not necessarily mean young offender in some of the countries. Terminology such as “juvenile delinquent” (or “juvenile delinquency”) is a term used in the US context, while “young offender” (or “youth crime”) is a more commonly cited term in Canada.

A limitation in the research process pertained to finding information for the US, and this proved to be more challenging than researching the other three countries. Since each of the fifty states is responsible for its own juvenile justice laws and affairs, the states chosen for this analysis were researched individually. As a start, I relied on academic articles that dealt generally with US parental responsibility laws and then referred to the laws mentioned in these articles and performed searches in each of the states’ separate websites to find more detailed relevant information, such as state debates and/or government reports.

Likewise, one drawback to using the US Library of Congress (THOMAS) database is the time limit restriction. If the specific page is not used for a period of time, the search results were reset and hence, I had to start from the beginning by entering my key term(s) again. Furthermore, the database LexisNexis was not available for public viewing and as such librarians at the Law Library in Robson Hall, Faculty of Law at the University of Manitoba assisted me to researching for US related information.

All this being said, researching US material proved to be the most challenging part of my study. Federal Bills and debates in the Senate or House of Representatives were easily accessible but tracking any Bills in the individual states was difficult. Given the extensive support I received from librarians at the Elizabeth Dafoe Library

(University of Manitoba), it was their conclusion as well that a lot of time may be spent looking for information but efforts would yield little – if any – concrete results.

Despite its limitations, this thesis is an important contribution to current studies in youth criminal justice because it offers a comprehensive comparison of parental responsibility laws across four countries. The importance of comparative studies cannot be overstated. According to Bala et al. (2002: 3), by comparing, we can “better understand the strengths and weaknesses of [youth justice] approaches in each country.” Likewise, since youth criminality is a universal issue (ibid; Muncie 2004, 2005), countries are inclined to learn from what others are doing to combat this problem. Furthermore, by looking at parental responsibility laws across a number of countries we are able to better address the role that parents hold in the overall youth criminal justice process. In a recent contribution to the issue of parental involvement in criminal proceedings of children, Peterson-Badali and Broeking (2010: 4) argued that there are ongoing concerns over the lack of “meaningful parental responsibility involvement in their children’s justice system experiences...[and] conflicting messages in current Canadian youth justice policy and practice about what roles parents should play.” Unfortunately, this was the only recent discussion that I found pertaining to parents and their involvement in the Canadian youth criminal justice system. Further studies should be conducted in this sort of manner and to explore these laws by examining if any recent legal cases exist and their outcomes.

Another important contribution that this thesis has made was the manner in which it addressed the concept of responsabilization and the efforts governments have made in the directional shift of managing youth criminality; from relying primarily on state

agencies to increasingly including parents. Furthermore, by observing what government officials say about these laws, enables us to observe the influence that government officials have in adopting or changing our legal discourse. One of the interesting questions that arise from this thesis is to question whether political debates reflect a realistic viewpoint of what citizens really believe to be true about parents and the relationships they have with their children. In other words, does the state reflect the true perceptions of society as a whole?

Concluding Thoughts

Authors such as Tyler and Segady (2000: 88) have questioned whether parental responsibility laws can in fact “legislate away juvenile delinquency” or whether despite having good intentions attached, these laws offer “no guarantee of success, especially in a time of rapid social change, changes in the family...and lack of consensus even on how ‘good’ parents should deal with their children’s problems.” Nevertheless, some recent evaluative work conducted on these laws may indeed provide insight into their effectiveness. Despite that the UK (and in this case England and Wales) have more aggressive legislative provisions, in a recent study conducted by Holt (2009 cited in Holt 2010: 117), the author interviewed seventeen parents who were placed on parenting orders, and found that parents experienced negative feelings such as anger (i.e. toward the ‘sentence’ they were given as a result of their child’s criminal act) or felt humiliated (i.e. as a result of being publicly labeled a ‘bad parent’). More importantly, in all these cases, “none of the parents reported any changes in their children’s offending or troublesome

behaviour as a result of the parenting support programme.” The author also concluded that the “structural problems [poverty or unemployment] they were battling with remained long after the parenting order expired” (pg. 119).

On the other hand, research conducted by Scott et al. (2006¹⁹⁹ cited in Arthur 2009: 77) pointed to varying results when evaluating parenting orders again in England and Wales. The authors found that parenting programmes improved the use of effective discipline techniques and that parenting programme interventions “had lasting effects on the parent –child relationship for at least 6 months after the intervention ended.” But their conclusions were that despite their supportive aspects, parenting orders fall short as, “using compulsion and the threat of fines and imprisonment is not an effective way to change the behaviour of parents and their children.”

In this study I have focused on a qualitative analysis of political debates on parental responsibility in four countries. While this type of analysis cannot answer the question of the effectiveness of these laws, it has made an important contribution to understanding the legislative process involved in their enactment in selected specific jurisdictions. The argument for and against parental responsibility laws will doubtfully, if ever, be resolved, especially if governments continue to praise current laws for their supposed effectiveness and continue to fail to seriously question the nature of parent-child relationships and how they can be affected by changes in law and the youth criminal justice system.

¹⁹⁹ Full title of study: *What Makes Parenting Programmes Work in Disadvantaged Areas*. York: Joseph Rowntree Foundation.

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