



In early 2007 Wells was reported in the national (and fragments of the international) media as wanting to make it illegal for parents to smack their children. Actually he was arguing that our present law allowed bad parents and carers to inflict physical abuse on their children, and the law needed changing. While not in favour of corporal punishment, Wells does not think the law should criminalize parents and carers who smack their children. Rather he thinks it should criminalize those who commit serious assaults on their children but are now protected in all states of Australia.

Such a thing would never happen, but let us say that (an honourable member of this House) walked out into the main street, ripped off his belt and started flailing into passers-by. What would happen? He would be arrested and charged with assault. ...On the other hand, if the same honourable member maintained his rage until after the House had adjourned and then went home, ripped off his belt and started flailing into his children, uttering by way of context some words of criticism of their recent behaviour, either he would not be charged with assault or he would have a defense to assault under section 280 of the Criminal Code, which states that it is lawful for a parent to use such force as is reasonable in the circumstances for the purposes of domestic discipline, correction, management or control.

...The harsh and morally objectionable reality of our criminal law is that a whole range of assaults, from minor slapping to painful and even injurious blows, are unlawful if perpetrated against an adult but are lawful if perpetrated against a child. Those whom society should be most concerned to protect are, in fact, most vulnerable to violence of a certain kind and are authorised by the law to be its routine victims. We have a law that permits too much violence. Section 280 of our Criminal Code has an exact parallel in section 59 of the New Zealand Crimes Act.

...In 2001, a jury in the Napier District Court acquitted a man who beat his son on the buttocks with a lump of wood. The paediatrician in the case testified that the man had used considerable force

and inflicted injuries on his son. After the acquittal, the Paediatric Society called for a change in the law.

Again in 2001, the Hamilton District Court acquitted a man who had bashed his daughter with a horsewhip. The jury was shown prosecution photos of the 12-year-old girl and the raised 15 centimetre lump across her back. The jury found that the force was reasonable in the circumstances. The New Zealand Children's Commission pointed out that if he had done it to his wife it would have been a crime. On the other hand, the defendant said that his acquittal proved that the public supported parents' rights to discipline their children.

...Perhaps out of the mildness of their nature some honourable members might think that we should not be criminalizing parents who unacceptably assault their children and that rather we should try to understand them and educate them. If they think that, they should consider this. Law has more functions than merely regulating and punishing specified kinds of antisocial behaviour. Law also has a normative aspect; it is also a way of setting a standard of what society expects. If we have a law which provides carte blanche to parents as to how they should deal with their children, what we are doing is giving a nod and a wink to bad parents as well as providing what is actually unnecessary security to good ones. Our laws should not address merely the lowest common denominator. Our laws should inspire that action which will lead to a better society without of course actually requiring the behaviour of saints and heroes.

While section 280 is lauded by some as providing protection to parents, it is actually a section that provides protection to people who would be classed as criminals if they did it to anyone else other than their own children. I would not for one minute say that a parent did not have the right and indeed the responsibility to discipline, set boundaries, guide, train and effect the upbringing of their children without interference from the community. However, nobody has an inalienable human right to do physical or psychological harm to another person.

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