

CRIMINAL LAW CONSOLIDATION (DOUBLE JEOPARDY)

AMENDMENT BILL 2008

8 April 2008

The Hon. D.G.E. HOOD: I rise to indicate Family First's support for the second reading of this bill. It has been a somewhat controversial bill, although not as controversial as I expected. I think the most significant aspect is this bill's retrospectivity, which is a controversial matter in criminal law. This sort of reform makes sense to bring justice for the victims today only if it is retrospective. The Attorney-General advised us in his second reading that a pending bill in the New Zealand parliament and a private member's bill in Queensland both failed to have retrospectivity and, in that regard, they can hardly be called reform at all for the present victims of injustice. Those bills fail at the hurdle of blind adherence to legal principle when, in the double jeopardy scenario, one could hardly argue that, had they known what the law would have been, they would not have behaved the way they did.

Over 20 years or more, prospective bills such as those in New Zealand and Queensland will serve to be useful reforms, but to leave out retrospectivity is to create two classes of victim in one sense—that is, victims then and victims now. As an advocate for victims, I would not be supportive of that. Fortunately, here the government has seen fit to follow the British and New South Wales models of retrospectivity.

Recently we traced the origins of laws of riot and affray, and my research shows that double jeopardy has much older origins. In 1164, Henry II wanted his secular courts to try people who had been given soft penalties by ecclesiastical courts. Henry, like other Norman kings of the era, sought full dominion over church and state. However, the Archbishop at the time, previously Lord Chancellor Thomas Becket, insisted that no man should be tried twice for the same offence. This sort of resistance to the king led ultimately to Becket's assassination six years later in

1170. Becket's stance on double jeopardy remains sound only in part, namely, when one has been punished for an offence once before. In another part, that reasoning is not sound, specifically when one has been acquitted for some of the reasons described in this bill. Of course, Becket was referring to this scenario only where ecclesiastical courts had already convicted people of an offence.

In 1642, Lord Edward Coke completed his *Institutes on the Laws of England*, which included four double jeopardy scenarios: the conviction and acquittal scenarios, which I have mentioned, as well as scenarios of convictions of a lesser offence and the scenario where a person had been pardoned for the offending. In 1765, when William Blackstone set forth the common law in his famous *Commentary on the Laws of England*, he brought across both the conviction and acquittal scenarios. However, I think it worth noting that the statute book has exploded with a great deal more offences than existed in the days of Becket, Coke or Blackstone.

At its formation, the United States, like several other jurisdictions, included both the convict and acquit scenarios in its constitution—specifically, in the Fifth Amendment in the case of the US. However, the US Supreme Court has done a poor job of articulating why that country should retain the acquit aspect of the double jeopardy laws that we are dealing with in this bill.

Blackstone's commentaries have served as a foundation for the common law across the Western world since the 18th century and, therefore, Australia inherited the conviction and acquittal scenarios. In South Australia, we follow New South Wales and now end that tradition, and rightly so, in my view. I note that it seems that this bill will have widespread support, including opposition support, which is not surprising, given that the former prime minister supported the removal of double jeopardy in a speech to the Queensland Press Forum in April 2003.

Even though the bill is going to pass, I think it worth mentioning the case of Julie Hogg to demonstrate the merit and importance of this reform. Unfortunately, she was killed in the UK by Billy Dunlop, a person the press dubbed the 'Billingham Monster', in November 1989. Two trials in 1991 found Dunlop not guilty. In gaol he confessed, somewhat later, thinking he was safe to do so thanks to the double jeopardy laws that prevailed. The UK parliament had other ideas and retrospectively changed the law so Dunlop could be charged again. Dunlop was convicted of murder in September 2006, and he was the first person to be successfully charged retrospectively, free of the interference of double jeopardy laws. The Dunlop case illustrates the clear cause of justice for victims and their families to ensure that criminals do not get away with their crimes.

I do think it would assist honourable members of the chamber, and indeed the public, for the government to outline the kinds of scenarios where double jeopardy will remain available, such as the previous conviction scenario I have just outlined. In short, Family First indicates support for the second reading and likely support for the passage of this bill.