9-30-2011

Uruguayan Right Moves to Lower Criminal-Responsibility Age.

Andrés Gaudán

Follow this and additional works at: https://digitalrepository.unm.edu/notisur

Recommended Citation

This Article is brought to you for free and open access by the Latin America Digital Beat (LADB) at UNM Digital Repository. It has been accepted for inclusion in NotiSur by an authorized administrator of UNM Digital Repository. For more information, please contact amywinter@unm.edu.
Uruguayan Right Moves to Lower Criminal-Responsibility Age.

by Andrés Gaudín

Category/Department: Uruguay

Published: Friday, September 30, 2011

With slightly more than 3.4 million inhabitants and a birthrate of 13.52 per 1,000, Uruguay has what demographers call a "mature population," with just 270,000 young people between the ages of 13 and 17. Official statistics, backed by the UN Children's Fund (UNICEF), indicate that between 400 and 500 of these minors are criminals.

Less than 10% of the crimes recorded in 2010 were committed by minors, all of them living in the most abject conditions. Nevertheless, the idea has been planted in the Uruguayan society's subconscious that minors are responsible for most crime. The media, especially television, dedicate the bulk of news coverage to police information and morbidly focus on crimes committed by minors. Thus, a perception of insecurity has been created that is intimately associated with young people. Various international studies indicate, however, that Uruguay is the most secure country in the region.

It is only a small step from there to criminalizing childhood, and the far right is willing to do so using the convocation of a referendum with which it will attempt to amend the Constitution to set 16 as the minimum age of criminal responsibility.

Specialists, the government, democratic parties, bishops (but not the Catholic Church as an institution), the Methodist Church (but not the Pentecostal and evangelical congregations), and UNICEF, among others, are firmly opposed to the referendum text.

In the century-old Partido Blanco, one of the two-oldest political groups in the country, the consultation has even led to a division between the two most influential party leaders, confronting each other with the harshest arguments.

Uruguayan society—participatory and highly politicized—seems impervious to the polemic, however. All opinion polls indicate that more than two-thirds of the population plan to vote to lower the age of criminal responsibility, and one poll even showed that 46% are willing to go further and reduce it to 14.

Former dictator's son behind referendum

On April 13, Partido Colorado Sen. Pedro Bordaberry, son of and defense lawyer for former dictator Juan María Bordaberry (1973-1976) who is serving a 25-year sentence for crimes against humanity, including seven homicides, released the text of the proposed referendum to be held in October 2014, alongside national elections. Before the referendum can be held, however, it is necessary to collect signatures of at least 10% of registered voters (approximately 250,000).

The text says that "all persons over 16 years of age and under 18 are criminally responsible." If approved, it would mean that minors "will be punished, according to provisions of the Penal Code, for willful commission" of all crimes under Uruguayan law. It also says that, "in the criminal
proceedings for those under 18 years of age, the relevant court can admit as exculpatory or as extenuating circumstances the lack of maturity or sufficient discernment."

The proposal does not call for creating a special jurisdiction—minors will be tried by the same judges who try adults—or a specialized body of advisors to assist judges.

Finally, regarding crimes involving youth 13 years old and above, Bordaberry proposes that the cases be archived so that the accused "can be subjected to legal processes after they turn 16."

Critics contend that this is a back-door way of lowering the criminal-responsibility age even further. "It is like setting aside a child's most trivial misbehaviors to make them pay when they are older," said former interior minister Daisy Tourné.

The insecurity discourse used by the right and the far right in every country of the region is supported by facts, but "it takes on dangerous connotations when it is manipulated for petty political ends," explained sociologist Rafael Paternain.

In mid-July, three incidents touched Uruguayans. In a single neighborhood in the capital Montevideo, three merchants tried to resist assailants. The criminals shot first. In none of the three cases were the assailants minors. Nevertheless, those unfortunate incidents are still being used to promote the signature-collecting campaign.

The three cases had a common component: the victims were armed and tried to resist. Each time someone dies, amid the voices of understandable indignation and pain, the discourse of the right is embellished denouncing an apparent, or real, lack of response from the government. And, at those times, voices arise demanding the death penalty—a foolishness that quickly evaporates, as soon as the first signs, real or apparent, of pain have been extinguished—and the right to self-defense and to freely have and bear arms.

The debate is not new, but the novelty is that it is taking place amid a campaign to lower the age of criminal responsibility. In that context, the self-defense arguments seem to be symptoms of a society willing to take ever-more-extreme measures, a society willing to defend itself and respond irrationally. A quick glance around the world is enough to see where arming a society leads.

**Polls show support for measure**

Various polls show that between 66% and 77% of the population say they support reducing the criminal-responsibility age. What is unusual is that the figures are consistent throughout the country, when cities in the interior of the country do not have the same violent incidents as those described in Montevideo.

"The power of TV penetration has made this miracle possible," Joaquín Núñez, a young militant in the Partido Socialista (PS), said sarcastically. Núñez is active in the "No a la baja" campaign against reducing the criminal-responsibility age.

But more serious is the result obtained by the firm Equipos Mori, perhaps the most trusted of all national polling firms. While what Bordaberry is trying to do is lower the criminal-responsibility age to 16, the Equipos poll indicates that more than 46% of Uruguayans apparently want to lower it even further, to 14. "It is worrisome that we are creating security policies based on a perception of insecurity," said Paternain.
The Equipos analysts say that "the position on reducing the criminal-responsibility age is tied to perceptions regarding the proportion of crime committed by minors. The point is that this perception is mistaken. Although impossible to measure exactly, the number of crimes committed by minors is small, somewhat less than 10%.

Despite those illustrative figures, everything indicates that at this time society says one thing but does another. It becomes evident in an irrational manner, but when the Partido Colorado and the sector of the Partido Blanco that proposes the constitutional reform go out looking for signatures or people willing to participate in the signature-gathering effort, the numbers are different.

Convoking a referendum on any initiative requires the signatures of 10% of registered voters, approximately 250,000 people. Interestingly, neither the Colorados nor the Blancos will say how many signatures they have gathered in the nearly five-month campaign. There has never been such a well-guarded political secret.

Some campaign promoters say, "We have surpassed 170,000 signatures." Others deny that figure. "I understand that it is very difficult to obtain them, it would seem that the effort is not worth it," said Pablo Abdala, a Blanco deputy who supports the signature-collecting campaign.

Eber da Rosa, a Blanco senator who opposes the age reduction, said, "I have information that the signatures gathered are much fewer than the 170,000 that they talk about."

UNICEF warns that "any modification to the national legislation that allows trying those under 18 as adults will violate the commitments assumed by the Uruguayan state with the international community." The UN organization refers specifically to the UN Convention on the Rights of the Child and the Código de la Niñez y la Adolescencia in the Uruguayan legal system.

The Associated Press and Agence France-Presse stories containing the UN opinion were reproduced only in the Uruguayan newspaper La República and on radio station El Espectador. The same occurred with the moderately critical opinions of Catholic bishops Pablo Galimberti, Luis Sanchis, and Rodolfo Wirz, and with the stronger statement by the president of the Iglesia Metodista del Uruguay (IMU), Raúl Sosa.

Nor did the press run statements by various former interior ministers, in charge of internal security, all Blancos and Colorados and all opposed to lowering the age. In general, they agree with Pastor Sosa, who said, "The concern for security is legitimate, but we need to be very alert so that the desire for greater security does not turn against us and end up generating a perverse cycle of violence that leads us to arm ourselves in self-defense, setting us against each other under the logic of fear, suspicion, and prejudice, or that looks for scapegoats that inevitably will be found in the places of the greatest social vulnerability."

-- End --