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Spare The Rod And Spoil The Child: Should The Abolition Of Corporal Punishment Be Reversed?

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About the Author

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Abstract

The classic English case of *Williams v Eady* (1893) had, for over a century, supported a teacher acting *in loco parentis* when inflicting punishment on a child, so long as the punishment was reasonable and given in good faith. But in response to the European Convention on Human Rights, which calls for all to respect a child's right not to be "subject to torture or to inhumane or degrading treatment" (Article 3), many countries have banned the practice of using corporal punishment in schools. This might even include the use of reasonable force to prevent a student from injuring others or causing damage to property if it is seen as a form of discipline or punishment. Schools, therefore, have a difficult task of striking a balance between providing a safe environment for the whole school community and a child's individual rights. This paper gives an overview of the trends in the United States, Australia, New Zealand, England, Canada and Singapore concerning corporal punishment, and then discusses the implications for employing or banning corporal punishment as a disciplinary strategy. The discussion takes on a brief jurisprudential analysis of this issue: that is, whether, corporal punishment, if carried out reasonably, is seen as a proper form of discipline, ensuring a safe and disciplined environment in which the school community, as a whole, might operate. Is the teaching profession over regulated in the area of physical discipline? If so, would the continuation or reintroduction of corporal punishment make sense, or would it make education an even riskier business?

Introduction

Corporal punishment, in the education context, according to the dictionary¹, is any kind of punishment that is inflicted on the body, and is intended to cause some degree of pain or discomfort, however light. The dictionary does not include words such as violence and brutality, which have become part of the vocabulary of the anti-corporal punishment advocates². The use of physical contact such as smacking, striking, spanking, caning or rubbing substance (such as soap or chilli) into the mouth of a student by an educator constitutes corporal punishment. The classic case of *Williams v Eady*³ had, for over a century, supported a teacher acting *in loco parentis* when inflicting punishment on a child, so long as the punishment was reasonable and given in good faith.

Although common law does not prohibit corporal punishment, there is an increasing trend towards banning it, with a call to respect a child's right not to be "subject to torture or to inhumane or degrading treatment or punishment" (Article 3 of the European Convention of Human Rights 1950 (ECHR)). This might even include the use of reasonable force to prevent a student from injuring others or causing damage to property if it is seen as a form of discipline or punishment.

While advocates of corporal punishment may argue that the punishment administered in schools is generally not "degrading", parents who are against it claim a right to have their child educated in conformity with their "philosophical convictions". Schools therefore have a difficult task of striking a balance between providing a safe environment for the whole school community and a child's individual

rights. The following pages give an overview of the trends in the US, Australia, New Zealand, England, Canada and Singapore concerning corporal punishment, and then discuss the jurisprudence of the courts, the research on this issue, and the implications of intervention into the school's ability to exercise discipline.

Corporal Punishment in the US

Corporal punishment is a controversial practice that generated much debate until 1977, when the US Supreme Court intervened by upholding the practice of corporal punishment in the case of *Ingraham v Wright*⁴ (*Ingraham*). The two issues addressed by the Court were whether the administration of corporal punishment represented cruel and unusual punishment in violation of the Eighth Amendment, and whether prior notice and an opportunity to be heard was required before the punishment. The Eighth Amendment of the US Constitution states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted". The Court studied the history of the Eighth Amendment and concluded that it was never intended to apply to schools but was formulated to control the punishment of criminals who were incarcerated in closed institutions. The Court was of the view that the decision as to whether children or youths should be physically punished was not a legal matter but rather a policy question for educators to decide, having considered factors such as the psychological or developmental outcomes of such punishments. The Court further held that, where such punishment was allowed by legislation and local school boards, it must remain within reasonable limits, in that it had to relate to an educational purpose and not be merely an expression of a teacher's anger, frustration or malice. Where punishment was excessive and unreasonable, students had the legal avenue of suing the perpetrators for compensation for the suffering endured and could even make out a criminal charge for assault and battery. The Court ruled that these traditional remedies were enough to deter educators and to minimise abuse⁵.

With regard to the second issue concerning the student's rights for prior notice and a fair hearing, the US Supreme Court ruled that the existing remedies would suffice and that by adding procedural safeguards to protect students' rights, schools would suffer a "significant intrusion into an area of primary educational responsibility"⁶. One can conclude from the case of *Ingraham* that, in the absence of legislation to the contrary, teachers may inflict corporal punishment on their students. It should be noted, however, that, despite the ruling in *Ingraham*, more than half of the states in the US have banned the practice of corporal punishment⁷.

Corporal Punishment in Australia

Section 280 of the Queensland Criminal Code states: "It is lawful for a parent or person in the place of a parent, or for a school teacher or master to use, by way of correction, discipline, management, or control, towards a child or pupil, under the person's care, such force as is reasonable under the circumstances". In *Sparks v Martin*⁸, a teacher gave a pupil five to nine strokes of the cane on the back of his thighs, leaving several bluish marks, when the pupil refused to answer questions put to him by the teacher. It was held that pursuant to the criminal code, the punishment was not excessive. In another case in 1959, when a 15 year old boy was rude to the teacher, the teacher responded by slapping the boy twice across the face, and several times on the left shoulder. The magistrate concluded that, while facial punishment is unreasonable, it was not likely to, and did not, cause the boy any real injury. Thus, the magistrate held that the punishment was not excessive⁹.

Educators from that same era may agree that the teacher's punishment was not excessive. However, in the 1970s and 1980s, disapproval of such harsh discipline escalated to the extent where methods of corporal punishment, such as smacking, caning, or even psychological techniques like the dunce's cap, were prohibited¹⁰. For example, in Queensland, due to the increased support by teachers and parents for the total abolition of corporal punishment in schools, a decision was made by the Department of Education in 1992 to phase it out. As part of the reform of student behaviour management, each school community, including teachers, students and parents, was given the responsibility to develop a code of behaviour. At the beginning of the 1995 school year, corporal punishment in Queensland state schools was finally abolished as a policy¹¹.

Corporal punishment in the other states of Australia is regulated at the respective state levels, and there is a noticeable trend against its use¹². The move is certainly towards prohibiting the use of corporal punishment, either by way of policy or by legislation. For example, in New South Wales, the Australian Capital Territory and Victoria, legislation specifically bans corporal punishment¹³. It is interesting to note that, where education policy is used to curb corporal punishment, the common law defence of “reasonable chastisement” will arguably be available to teachers. This proved to be the case when a magistrate in the Gold Coast, Queensland, dismissed an assault charge against a teacher, who admitted to slapping a Year 8 student. The magistrate cited the recognition of “domestic discipline” (a defence under the Queensland Criminal Code that allows a teacher to use reasonable force “by way of correction, discipline, management or control”¹⁴). Advocates of corporal punishment will see this decision as a lifeline to their rights to punish a child in a culture where educators’ authority to discipline *in loco parentis* can be undermined by a child’s individual rights.

Corporal Punishment in New Zealand

Corporal punishment in schools in New Zealand is illegal. Section 139A of the *Education Act (1989)* prohibits the use of force, by way of correction or punishment, towards any student or child enrolled at or attending a school, institution, or centre. Although this law was passed many years ago, there is still a conflict between the concept of children’s rights and the traditional concept of parental rights in disciplining their children. This is seen in the call on the Education Minister by a member of Parliament, Sue Bradford, in February 2007, to take action to protect children who attend schools that continue to allow corporal punishment with the “blessing” of parents¹⁵. One reason for this is the legal defence available to parents in section 59 of the *Crimes Act (1961)*, which provides the legal defence of the use of reasonable force “by way of correction”. However, as at 1 January 2008, this defence is no longer available. Under the new section 59 of the *Crimes Act 1961*, parents are allowed to use reasonable force for the purposes of protection from danger or prevention of damage to people or property, but the section then goes on to specifically disallow parents to use force (even if reasonable) for the purpose of correction. For parents who use corporal punishment as a form of discipline, this piece of legislation will potentially land them in trouble. But, at least for the time being, the law in section 59(4) ensures that minor assaults will not easily be brought to the courts¹⁶.

Corporal Punishment in England

Corporal punishment in all schools (both state and private) is prohibited by legislation, namely, the *School Standards and Framework Act (1998)* (SSFA), which amends the *Education Act (1996)* to state “corporal punishment given by, or on the authority of, a member of staff to a child...cannot be justified in any proceedings on the ground that it was given in pursuance of a right exercisable by the member of staff by virtue of his position as such”¹⁷. The decision to ban corporal punishment was the result of a ruling made by the European Court of Human Rights in the case of *Campbell and Cosans v United Kingdom*¹⁸ (*Campbell and Cosans*). The issue in this case was not so much Article 3 of the ECHR, which reads, “No one shall be subject to torture or to inhumane or degrading treatment or punishment”, but Article 2 of the First Protocol of the ECHR, which provides that

No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and teaching, the State shall respect the rights of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.

The parents in *Campbell and Cosans* were opposed to corporal punishment and the European court held that, although the use of corporal punishment was not “degrading”, the State must respect the “religious and philosophical convictions” of parents as declared by Article 2 Protocol 1 of the ECHR¹⁹. The Government decided that abolishing corporal punishment for all pupils was the only effective means of complying with the ruling in *Campbell and Cosans*²⁰. The wider consequence of this decision is the issue of human rights. In supporting the parents’ objections, the European court is supporting the idea that parents have a basic human right to (at least) ensure that their offspring are not educated in a way which is thoroughly offensive to them.

But after the *Campbell and Cosans* case, there was another group of people (principals, teachers and parents) at four Christian schools that similarly used Article 2 Protocol 1 of the ECHR, but this time, to argue for corporal punishment. In the case of *R. v Secretary of State for Education and Employment; ex parte Williamson*²¹ (*R. v Secretary of State for Education*), the protagonists for corporal punishment argued that parents who believe in the teachings of the Bible should be allowed to educate their children in accordance with their “religious and philosophical convictions”. Although section 548(1) of the *Education Act (1996)* specifically prohibits the use of corporal punishment by all teachers in all schools, the parents in this case argued that this statutory provision did not apply, because, having the common law right to discipline their child, they had expressly delegated this right to a teacher. This interpretation, they claimed, was in accord with their “religious and philosophical convictions” and hence safeguarded their freedom of religion as purposed by the ECHR. In a unanimous decision, the House of Lords upheld the ban on corporal punishment in all public and private schools. One of the reasons that came through strongly in the judgment was that religious belief must be consistent with basic standards of human dignity or integrity. Another reason given was that it would be unjustifiable “in terms of the rights and protection of the child to allow some schools to inflict corporal punishment while prohibiting the rest from doing so”²². But whatever arguments or debates that may emanate from this judgment, this case has provided “a powerful precedent against corporal punishment in any form in any school” in England²³.

Corporal Punishment in Canada

Most school districts in Canada disallow the use of physical discipline on students, as it is generally agreed that it can lead to abuse rather than serve as an effective means of dealing with misbehaviour²⁴. Improper physical discipline can lead to an allegation of assault, which is illegal. However, Section 43 of the *Criminal Code of Canada 1985* provides a defence for teachers who do mete out corporal punishment. It states, “Every school teacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.”

While Section 43 gives teachers some leeway in meting out corporal punishment, it is not without challenge. In 2001, in the case of *Canadian Foundation for Children, Youth and the Law v the Attorney General in Right of Canada* (2002)²⁵, the validity of Section 43 was challenged. The issue here did not concern the merits or ill-effects of corporal punishment, but rather it was concerned with whether Section 43 violated the *Canadian Charter of Rights and Freedoms, Constitution Act (1982)* (Charter), in particular, Sections 12 and 15, which prohibit cruel and unusual treatment or punishment and differential treatment on the grounds of age. The case reached the Court of Appeal, which released its decision on 15 January 2002. In summary, the Court of Appeal held that Section 43 did not violate the Charter, because it “simply creates a criminal law defence for certain persons who apply reasonable force to children by way of correction [and] by enacting the section, the state cannot be said to either inflict...physical punishment or be responsible for its infliction”²⁶. As for the argument that Section 43 subjects children to differential treatment on the grounds of age, the Court rejected this argument on the basis that Section 43 is justified under Section 1 of the Charter. Section 1 of the Charter states “The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”. The courts found that since Section 43 defines the limits that must be observed by parents and teachers, it allows them to perform the important role of raising and educating children without unnecessary interference from the state²⁷. For these reasons, section 43 is justifiable. The case was appealed to the Supreme Court of Canada²⁸, and the Supreme Court agreed that section 43 should stand. However, it went on to state that section 43 protection should not be afforded to teachers, as “the pupil-teacher relationship is closer to the master-apprentice relationship” rather than a “parent who typically shares a loving relationship with the child”²⁹.

There does not seem to be agreement on whether corporal punishment should be permitted and on the effects of Section 43. However, if the Supreme Court is right in concluding that teachers should not enjoy immunity for the criminal assault of children “by way of correction”, then one would argue that it is not for the courts to change section 43, but for Parliament to rewrite section 43 to reflect that view³⁰.

Corporal Punishment in Singapore

Article 19 of the United Nations Convention on the Rights of the Child (CRC) reinforces the importance of protecting the physical welfare of children by requiring parties to the CRC to “take all appropriate measures to protect children from violence, injury or abuse, maltreatment or exploitation and to undertake prevention and support programs”. When Singapore acceded to the CRC, it expressly declared that a child’s rights under Article 19, shall be exercised with respect for the authority of parents, schools and other persons who are entrusted with the care of the child, and that Article 19, does not prohibit the judicious application of corporal punishment in the best interest of the child³¹. Nevertheless, schools are given strict guidelines by the Ministry of Education on how and when to administer corporal punishment. Among these guidelines are that: only principals can administer corporal punishment; girls, under no circumstances are to be subjected to it; and this form of punishment can be used only as a last resort³².

Although the United Nations frowns on Singapore for still permitting corporal punishment in schools, the Ministry of Education’s policy and guidelines have, nevertheless, reflected a shift away from the past, where teachers did not need to exercise any constraint in meting out corporal punishment. In a culture where children are expected to respect authority and where corporal punishment is seen as an acceptable form of correction, this shift may be explained in several ways. First, there is a fear of litigation for assault. Schools in Singapore are increasingly encountering more complaints for inappropriate discipline meted out to their children and it will only be a matter of time before complaints will materialise into legal action. Second, children are becoming more and more precious to parents in Singapore because of the declining birth rate. As a result, parents are very protective of their children and there is a high level of mollycoddling at home. In fact, many are looked after by live-in maids and are treated like royalty. The third reason is that, previously, there was much respect for teachers, and parents never interfered with the teaching or management of their children. Now, with parents being more educated and informed about rights, the old ways of instilling discipline are increasingly viewed by parents as outdated.

Jurisprudence of the Courts

From the overview of the trends on corporal punishment, the general position is that “spanking”, “smacking” or “paddling” should not be considered as acceptable forms of discipline. But the courts in most countries have taken a hands-off approach to corporal punishment, because it is often viewed as a time-honoured tradition³³. In the work of Piele³⁴, who traced the historical roots of corporal punishment in American schools:

the punishment of children was but one manifestation of the Puritan view that man was basically weak, sin-ridden, and incapable of truly moral, independent action ...” and children in the colony were viewed as “infinitely more hateful than vipers ...” and need to have the “devil beaten out of them.

Therefore, in the US case of *Ingraham v Wright*, corporal punishment in public schools was considered justifiable as “reasonably necessary for the proper education and discipline of the child.”³⁵ However, due to the numerous cases where children were beaten for virtually any transgressions, including the most trivial ones³⁶, opponents of corporal punishment succeeded in invoking the European Court of Human Rights and several jurisdictions to abolish it³⁷. To date, many other countries have followed that lead, either by policy or by enacting legislation³⁸.

Common law, spanning over a century, has provided many legal principles to limit teachers’ authority (when acting *in loco parentis*) to administer corporal punishment. Mr Justice Phillimore in 1908³⁹, clearly laid down the principles that it is enough for a teacher to say that the punishment which he or she administered was moderate; that it was not driven by any bad motive but was such as is usual within the school; and it was the kind of punishment that a parent of a child might expect the child to receive if the child were to behave badly. This reasoning is invoked in many later cases, which have reiterated that the teacher has the right to administer corporal punishment to students so long as it is done without malice, and to further the child’s educational goals⁴⁰. This standard appears appropriate, but critics have argued that the problem lies in the courts’ interpretation of reasonableness⁴¹, which may be unusually tolerant before a claim of assault or abuse may be found.

With the introduction of compulsory education laws, corporal punishment is arguably justifiable to maintain group discipline, as it teaches students respect for authority, good social skills, and improved moral character⁴². Where teachers have exceeded the limits, the jurisprudence adopted by the courts is that such incidence of abuse is low⁴³; that school officials should be left to their “professional judgment” when correcting pupils and maintaining school order⁴⁴; and that “mistreatment is an aberration”⁴⁵. In some cases, the courts have even held that excessive force occurs only when it “shocks the conscience” and where there is proof that school officials acted with “malice or sadism”⁴⁶. There is also an assumption by the courts that teachers and school officials will be cautious when inflicting unreasonable or excessive corporal punishment on children for fear of potential litigation against them⁴⁷.

The courts, therefore, exercise wide discretion when distinguishing between corporal punishment and physical abuse. The word “reasonableness” is often used and from the analysis of court cases⁴⁸, there are some general factors that courts will look at when deciding whether corporal punishment is lawful or reasonable:

1. The relationship between the parent or teacher and child;
2. The age of the child;
3. The characteristics of the child – age, maturity, sex, size, strength and character;
4. The child’s capacity for reasoning (i.e. ability to understand the cause of the punishment);
5. The method of punishment – type and severity;
6. The nature of the offence;
7. The harm caused to the child – likely and actual effect of the punishment; and
8. The culture and religious beliefs of the child’s family.

Where punishment is administered in a fit of rage, or an inappropriate instrument used, or punishment is dangerous to life and limb (for example, placing a hand on a pupil’s head, then slamming it into the wall, strapping a child for misbehaving, hitting a child with a stick for a continuous and long period of time), then a charge of assault should be laid against the teacher. There is no right to use disproportionate levels of punishment that are unnecessarily degrading or are likely to cause serious or permanent harm⁴⁹. Thus, in a Canadian case, where the teacher threw an exercise book at a child, occasioning actual bodily harm, the court emphasized the importance of reasonable chastisement by stating, “Reasonable chastisement involved a controlled, if not entirely cool response, and the throwing of an exercise book could not fall into that category”⁵⁰.

So Is Corporal Punishment a Proper Form of Discipline?

So is corporal punishment an appropriate form of discipline? Many psychologists and child experts have conducted research into the effects of corporal or physical punishment on a child. A prominent viewpoint of the experts is that the *more* that children receive physical punishment, the more the negative effects of such punishment are manifested in the children⁵¹. In these findings, the frequency of the physical punishment appears to have a bearing on the degree of detriment. The question then arises as to whether it is corporal punishment *per se* that should be banned or whether it is the frequency and the way it is administered that should be regulated.

Of the researchers that support physical discipline methods, one view is that corporal punishment *per se* is not harmful, but rather, parents are deficient in their parenting skills and do not employ corporal punishment correctly. If parents accompany spanking with discussion to resolve conflict with the child, the connection between spanking and aggressiveness is not evident⁵². Another researcher found that light corporal punishment is not only harmless but even beneficial⁵³. In fact, several behavioural studies have shown that light corporal punishment, when administered thoughtfully, will not necessarily cause mental or physical harm to the child; and if harm occurs, it will be minimal and insignificant when compared with the benefits achieved in respect of the child’s long and short term education⁵⁴. The current Position Statement of the American College of Pediatricians is that

parents should not solely rely upon disciplinary spanking to accomplish control of their child’s behavior. Evidence suggests that it can be a useful and necessary part of a successful disciplinary plan. Like any corrective measure, its application requires a proactive rather than reactive approach to produce an optimal outcome.⁵⁵

In research conducted by a developmental psychologist recently⁵⁶, the researcher challenged the assumption that spanked children become more aggressive children. In fact, her study showed that while children under 2 and over 8 should not be spanked, spanking for the right age group led to increased aggression in some children, but reduced aggression in others. The conclusion drawn from these different reactions lies in the children's perception towards spanking – that is: whether spanking was perceived as a violent act, or simply an authoritative act⁵⁷.

In cases where children are punished by inappropriate means, such as having their heads hit against walls, being tied to furniture or immobilized in cloth sacks⁵⁸, and having the arm pricked with a pin⁵⁹, most would agree that these disciplinary methods are contrary to Article 19 of the CRC⁶⁰, in that they offend human dignity and are cruel and degrading. However, if research shows strong indications that mild corporal punishment is effective in educating a child, and that parents have the licence to use corporal punishment judiciously, should it not be allowed in the educational system too?

Sweden was the first country to ban corporal punishment by law, both in school and at home⁶¹. But according to some researchers, a generation of no spanking did not yield the intended results, but instead had quite the opposite effect⁶². Larzelere's research revealed that the annual increase in assaults by minors against minors was 17.9% from 1990-1994, compared with 3.4% from 1984-1989. Surprisingly, or perhaps unsurprisingly to some, the offenders in the 1990s were teenagers who had grown up entirely under the corporal punishment ban⁶³.

In the United Kingdom, corporal punishment has been abolished for over a decade and critics of this now lament the loss of the cane and argue that society has gone "soft on the kids"⁶⁴. A survey of the incidence of violence in the British classroom in 2007 reveals a worrying trend of increased bullying, aggression and violence, displayed especially by girls⁶⁵, and newspaper reports suggests that bullying has reached epidemic proportions. Physical assaults in schools are a regular occurrence⁶⁶. Although there is no conclusive evidence that the abolition of corporal punishment has a direct linkage to increased classroom violence, it may be felt that "teachers' responsibilities continue to increase yet rather less is said of their rights, particularly with regard to dealing with unruly pupils"⁶⁷.

One may argue that the law will generally distinguish between physical restraint and corporal punishment. The purpose of the use of force in the former is not to cause pain, but as a disciplinary sanction imposed to control or manage pupils to avoid injury to them or others, or to avert damage to property. However, although reasonable force is expected in such circumstances, there may not be a legal definition to support such an action, so whether teachers may become liable for assault usually depends on the circumstances of the situation, the age of child, and other factors relevant to the case. In a recent case in Western Australia, a 13-year-old girl threw a garbage bin at her male teacher and repeatedly punched him, while her friend filmed the attack on the mobile phone. The teacher did not retaliate. Although legally allowed to restrain students if they put others in immediate danger, teachers are wary of doing so because "making that sort of choice and decision can be quite complicated ... there will be an investigation ... has the teacher intervened in an appropriate way in the circumstances?"⁶⁸ The sentiment here is that the use of force by the teacher to restrain an aggressive student may be perceived as punishment. Banning corporal punishment is supposed to lead to less aggressive students, but it is questionable whether it works that way. And teachers now see themselves in a dilemma, because their actions, even if reasonable, may be called into question. In some schools, teachers are adamant that the lack of discipline is a major problem.⁶⁹

Another issue that needs to be considered when determining whether corporal punishment is a proper form of discipline is the compatibility between home and school, culture and human rights. Different values nurtured at home, in school and in the community confuse children. If children are taught at home to respect authority, but in school and society are taught individual rights, then, potentially, the different sets of values can lead to disciplinary problems. Comments such as

... our youth will deteriorate because they have no respect for anything or anyone because they have no cultural roots ... children nowadays ... they have no manners and they back-chat ...⁷⁰,

are not uncommon. Therefore, according to some commentators, there should be a benchmark of universal values which all must accept before any particular group can impose their principles and values on all⁷¹. In today's world, that is the epitome of optimism!

So Where Do We Go from Here?

Hamilton (in her book, *What's Happening to Our Boys?*) quotes a media critic - "Your parents are creeps, teachers are nerds and idiots, authority figures are laughable, and nobody can really understand kids except the corporate sponsor."⁷² Another author, Aric Sigman, laments the "spoilt" generation. He says our children are now spoiled in ways that go far beyond materialism, but, they are suffering to a degree we never anticipated: we now have the highest rates of child depression, under-age pregnancy and violent and anti-social behaviour since records began. Yet adults at every level have retreated from authority and in doing so have robbed our children of their basic supporting structures. They are now replaced by children's sense of entitlement, the effects of television and computers, single-parent homes and "blended" families, parental guilt and the compensation culture⁷³.

Many children have lost respect for teachers. For example, in the first term of 2010, high school students in Queensland, Victoria, and Western Australia were suspended for attacking teachers on social networking sites such as Facebook⁷⁴. Is it possible then that children's aggression and antisocial behaviour boils down to the breakdown in family values and incorrect parenting skills, not corporal punishment? In the study, *Unraveling Juvenile Delinquency* by Harvard University sociologists Sheldon and Eleanor Glueck⁷⁵, it was posited that four crucial factors prevent delinquency in young children when they grow up:

1. The father's firm, fair, and consistent discipline;
2. The mother's supervision and companionship during the day;
3. The parents' demonstrated affection for each other and for the children; and
4. The family's cohesiveness – time spent together in activities where all participate.

The discipline referred to in this study includes physical discipline or corporal punishment.⁷⁶ It is argued by human rights supporters that if we do not subject our "naughty" neighbours to physical discipline, then children should similarly be protected from it. However, the flaw in that argument is that parents and teachers do not have responsibilities for their neighbours as they do their children.

If we were really concerned with treating children like adults, we would lobby to force children to live on their own, get jobs, pay taxes, and submit to adult penal and contract laws. But few people do this because children are children for a reason: they need to mature. If they do not learn when they are young that misbehaviour has negative consequences, they tend not to understand when they are older how to deal with legal consequences. So, the issue behind the spanking debate is not whether the child should be treated as an adult. The issue is whether the child should be allowed to mature through the discipline method that suits him best. Each child is unique; some children may need physical discipline, whereas others may not.⁷⁷

The United Nations Convention on the Rights of the Child prohibits "abuse" and "violence"⁷⁸. Corporal punishment need not fall into that category. A school should have the right to exercise authority to correct a child, so long as it is carried out judiciously, by, for example, not punishing in a way that violates a child's dignity, such as in front of the class or the whole school. Allowing corporal punishment as one method of discipline arguably teaches children to learn, to obey, and to respect the authority of others, and hopefully to build their character. It is also consistent with "the right of all students to receive an education uninterrupted by a single, individual, disruptive student"⁷⁹. In other words, the rights of a child should be balanced against the rights of others in the family and in the school.

Non-physical methods of discipline, such as time-outs and verbal rebukes are valuable, but their validity does not necessarily make corporal punishment wrong. For example, it is argued that time-out is a better, non violent method of discipline, but while spanking causes physical pain, time-out arguably causes mental pain⁸⁰.

The problem with corporal punishment, it could be argued, is not corporal punishment *per se* but with how it is administered. If a child understands that corporal punishment is for correction, he or she will arguably benefit. Children understand the moral difference between a playground fight and punishment by legitimate authorities like parents, teachers and judges⁸¹. Banning corporal punishment does not necessarily mean teachers are able to use other productive alternatives to discipline. The key issue here is that the teacher's core job of facilitating learning is often compromised by unacceptable behaviour, but the recourses open to teachers may be strictly limited, and those that are available may have negligible

impact. Of course, the problem may be exacerbated in a context of diminished parental responsibility or ability to control their children.

The anti-corporal punishment rhetoric is less than helpful. Calling smacking “Violent” is like calling timeout “Imprisonment”⁸² and a total ban on corporal punishment may be extreme. Judicious discipline probably makes sense, and the evidence to date suggests that corporal correction may not be a bad thing. Its retention or reintroduction as an effective disciplinary measure might perhaps be seriously considered.

Conclusion

Sue Bradford⁸³ told us that we had to stop treating our children as property. They are people too, with their own minds and their own rights. Illuminating stuff. But the police officer who pulled me over and asked why my child was wandering willy-nilly around the backseat didn’t buy it. I am apparently totally responsible for her well-being and behaviour, but not to be trusted when it comes to making parenting decisions about how to develop her sense of right and wrong.⁸⁴

Teachers are also often placed in situations where they have to enforce discipline, but in the “right” way, that is, the non-physical way. This paper does not advocate the reversal of current policy in relation to corporal punishment, but rather, it argues that the prevailing acquiescent discourse about corporal punishment and issues relating children’s human rights may need to be revisited and possibly challenged. Also, the perception of the child as to whether the punishment is an act of violence or simply an authoritative act plays an important role in a child’s learning. The call for individual rights should be balanced against the need for these individuals to learn respect for others in the community, respect for authority and respect for the law. Whether such respect building requires the facility to mete out corporal correction is a matter for debate, but the fact is that current trends do not appear to be leading to disciplined classrooms that are fit for effective learning. Policy makers may need to examine comprehensive and diverse research perspectives rather than just those that advocate a blanket ban on corporal correction.

In the above overview of corporal punishment in several jurisdictions, Singapore is the only one that allows (both under common law and policy) such punishment to be administered in schools. However, it is strictly regulated and, so far, has been applied infrequently. Nevertheless, it serves an effective purpose and protects the interests of the larger school community. One is not advocating the indiscriminate use of corporal punishment by teachers. Rather, if teachers are expected to act *in loco parentis* when it comes to the safety of their pupils, then perhaps they should similarly be allowed to act *in loco parentis* when disciplining children⁸⁵. This may mean allowing school authorities to use discipline methods that the child best understands – and those could possibly include corporal punishment. The important focus of any revisiting of this issue, though, is not only to provide a disciplined environment in which most children can learn optimally, but also to give teachers the assurance that physical intervention, when carefully conceived and in accordance with institutional policy, cannot lead to misinterpretation and debilitating legal action.

Keywords: discipline; corporal punishment; rights; violence.

Endnotes

- 1 Thefreedictionary.com at <http://legal-dictionary.thefreedictionary.com>.
- 2 See for example “Global Initiative to End All Corporal Punishment of Children” at <http://www.endcorporalpunishment.org/pages/frame.html>, where it is believed that the dividing line between correction of children and excessive violence is artificial.
- 3 (1893) 10 TLR 41 CA. In this case, Williams was burned when another pupil got hold of a bottle of phosphorus, put a match to it and shook it up. The bottle naturally exploded. The bottle of phosphorus was kept with other bottles and equipment, including cricket gear. The room was locked but the pupils had easy access to the key. The court held that the teacher is expected to take care of his students as a careful father would take care of his children. This case was the starting point of the concept of *in loco parentis* (in place of the parents), which has since been used in many jurisdictions. Thus, in the same way, it is argued that teachers have the authority to inflict corporal punishment on students as parents do in the home as a form of discipline.

- 4 (1977) 430 U.S. 651. The plaintiff, Ingraham, was subjected to over 20 paddles while being held over a table in the principal's office for being slow to respond to his teacher's instructions. The paddling was so severe that he required medical treatment and was kept out of school for several days.
- 5 For more commentary of this case, see Fischer, L., Schimmel, D., Stellman, L., & K. Cynthia (2003). *Teachers and the law* (6th ed). Pearson Education Group, Inc.
- 6 *Ingraham v Wright* (1977) 430 U.S. at 680.
- 7 Deana Pollard-Sacks. *State Actors Beating Children: A Call for Judicial Relief* (2009), 42 U.C. Davis L. Rev. 1165.
- 8 (1908) 2 Q.J.P.R. 12 (Sup. Ct.).
- 9 *White v Weller* (1959), Qd.R. 192 (Sup. Ct.).
- 10 Justice R. Atkinson. *Education and the law: Protecting the educational well-being of students* (2002). Keynote paper presented at the Australia and New Zealand Education Law Association 11th Annual Conference: Legal Risk Management Safety Security & Success In Education, Brisbane (2-4 October), 3-17.
- 11 Queensland Government, Department of Education and Training. *Abolition of corporal punishment*. Retrieved 11 May, 2010, from <http://education.qld.gov.au/library/edhistory/topics/corporal/abolition.html>.
- 12 Ian M. Ramsay & Ann R. Shorten (1996). *Education and the law*. Reed International Books Australia Pty Limited trading as Butterworths.
- 13 In New South Wales, section 35 of the *Education Act 1990*; in the Australian Capital Territory, section 7(4) of the *Education Act 2004*; and in Victoria, section 4.3.1(6)(a) of the *Education and Training Reform Act 2006*.
- 14 Greg Stolz (2008, February 15). Gold Coast teacher cleared after slapping student. *Courier Mail, Australia*. Retrieved 15 February, 2008, from <http://www.news.com.au/story/0,23599,23217616-1248,00.html>.
- 15 Schools flouting corporal punishment law (2007, February 13). *Scoop Independent News*. Retrieved 6 February, 2008, from <http://www.scoop.co.nz/stories/PA0702/S00195.htm>.
- 16 Section 59(4) *Crimes Act 1961* - Police have the discretion not to prosecute complaints against a parent of a child or person in the place of a parent of a child in relation to an offence involving the use of force against a child, where the offence is considered to be so inconsequential that there is no public interest in proceeding with a prosecution.
- 17 Section 548 *Education Act 1996*.
- 18 (1982) 4 EHR 293.
- 19 See Paul Diamond (1999). Is corporal punishment contrary to the European Convention of Human Rights? *Education and the Law 11(1)*, 43-52 for more discussion.
- 20 See Neville Harris (2000). Education law: Excluding the child. *Education and the Law 12(1)*, 31-46.
- 21 (2005) UKHL 15.
- 22 *Ibid*, para. 86.
- 23 Jim Jackson & Sally Varnham (2007). *Law for educator: School and university law in Australia*. Lexis Nexis Butterworths: Australia, p. 156.
- 24 Sandra Anderson & Susan Fraser (2002). *Protecting our Students (and their teachers too). A Canadian perspective*. Paper presented at the Australia and New Zealand Education Law Association 11th Annual Conference: Legal Risk Management Safety Security & Success In Education, Brisbane (2-4 October), 183-206.
- 25 *Canadian Foundation for Children, Youth and the Law v. Canada (Attorney General)* (2004) 1 S.C.R. 76, 2004 SCC 4.
- 26 *Ibid*, para. 54.
- 27 *Ibid*, para. 18.
- 28 *Canadian Foundation for Children, Youth and the Law v Canada (Attorney General)* (2004) 1 S.C.R. 76, 2004 SCC 4.
- 29 *Ibid*, para. 125.
- 30 Shortly after the Supreme Court's decision, a bill was introduced to the Senate to eliminate Section 43. After much discussion, the bill was eventually amended to allow parents and caregivers to use force in very specific situations — such as a small smack to the hand to stop a child who is about to do something dangerous or harmful. But routine discipline and the use of spanking as premeditated punishment would not be allowed. However, before the bill could become law, Parliament was dissolved for an election. See discussion on <http://www.cbc.ca/canada/story/2009/07/31/f-spanking-discipline-debate.html>, retrieved 12 May, 2010.
- 31 United Nations Treaty Collection, Retrieved 11 May, 2010, from http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en
- 32 These guidelines are found in the Principal's Handbook provided by the Ministry of Education, Singapore, to all principals.
- 33 Michael Rosen (1994). *The Penguin Book of Childhood*; Murray A. Straus (1994). *Beating the Devil out of Them: Corporal Punishment in American Families*; Ian Gibson (1978). *The English Vice: Beating, Sex and Shame in Victorian England and After*, cited in Marie Parker-Jenkins (2008), *Sparing the Rod: Reflections on the Abolition of Corporal Punishment, and the Increase in Violence in British Classrooms*, *Australia & New Zealand Journal of Law & Education*, 13(1), 7-19.
- 34 Philip K. Piele (1978). *Neither Corporal Punishment Cruel Nor Process Due: The United States Supreme Court's Decision in Ingraham v Wright*, 7 J.L. & Educ. 1, 2-4, cited in Jerry R. Parkinson (1994). *Federal Court Treatment of Corporal Punishment in Public Schools: Jurisprudence that is Literally Shocking to the Conscience*, *South Dakota Law Review* Vol. 39, 276-311.
- 35 (1977) 430 U.S. 651, 657, 670.

- 36 Examples of such cases include speaking in Spanish at recess – *United States v Texas*, 498 F. Supp. 1356, 1373 (E.D. Tex. 1980); failing to turn in a homework assignment – *Crews v. McQueen*, 385 S.E.2d 712, 713 (Ga. Ct. App. 1989); refusal to answer questions put to him – *Sparks v Martin* (1908) 2 Q.J.P.R. 12 (Sup Ct.); being impertinent to the teacher – *White v Weller* (1959) Qd.R.192 (Sup. Ct.); refusal to do a sum at the blackboard – *Hiemstra and Myburgh* (1970) S.A.R.
- 37 See <http://www.endcorporalpunishment.org/pages/hrlaw/judgments.html> for examples of such judgments.
- 38 26 states have actually enacted legislation to protect children from all corporal punishment. See End All Corporal Punishment of Children at http://www.endcorporalpunishment.org/pages/progress/prohib_states.html
- 39 *Mansell v Griffiths* (1908) 1 K.B. 947. In this case, an assistant teacher inflicted corporal punishment on a student even though she was not authorised to do so under the school's regulation. The student filed proceedings for assault.
- 40 See overview of corporal punishment in US, Australia and Canada in earlier pages.
- 41 David Orentlicher, *Spanking and Other Corporal Punishment of Children by Parents: Overvaluing Pain, Undervaluing Children*, 35 Hous. L. Rev. (1998-1999), 147-185, p. 153.
- 42 Position Paper of the Society for Adolescent Medicine, *Corporal Punishment in Schools*, 32 J. Adoles. Health 385 (2003).
- 43 *Ingraham v Wright* (1977) 430 U.S. at 682.
- 44 *Baker v Owen* (1975) 395 F. Supp. 294, *aff'd*, 423 U.S. 907 (1975).
- 45 *Ingraham v Wright* (1977) 430 U.S. at 677.
- 46 *Hall v Tawney* (1980) 621 F.2d 607 (4th Cir) – "... the substantive due process inquiry in school corporal punishment cases must be whether the force applied caused injury so severe, was so disproportionate to the need presented, and was so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience." at 613.
- 47 *Ingraham v Wright* (1977) 430 U.S. at 677.
- 48 See John P. Bourke. (1981). *Bourke's Criminal Law*. Victoria. Sydney: Butterworth's, and Robert van Wichen (July 1999). *The Parental Use of Physical Discipline in New Zealand*. Retrieved 11 August, 2010, from <http://www.rcnzone.com/fnf/a102.htm>.
- 49 *Sansone v Bechtel*, 429 A. 2d 820 (Conn. 1980).
- 50 Justice Nolan in *R. v Taylor*, The Times 28 December 1983, cited in William Harry Giles (1988). *Schools and students. Legal aspects of administration*. The Carswell Co. Ltd., p.51.
- 51 See Sacks, Deana P. (2009). *State Actors Beating Children: A Call for Judicial Relief*, 42 U.C. Davis L. Rev. 1165. Some examples cited are that the more children receive physical punishment, the less likely they are to feel remorse upon hurting others or to empathise with others; the more children are corporally punished, the more they aggressed against others subsequently; the more corporal punishment mothers received as children the greater their current level of anger, which in turn predicted greater use of corporal punishment on their own children. See also Catherine A. Taylor *et. al.* (2010). *Mothers' Spanking of 3-Year-Old children and Subsequent Risk of Children's Aggressive Behaviour*, *Pediatrics*, May 2010; vol 125: pp e1057-e1065 that supports the view that frequent use of corporal punishment on 3 year olds is associated with increased risk for higher aggression when they turn 5.
- 52 See Mary Lou Kelley *et. al.*, *Acceptability of Positive and punitive Discipline Methods: Comparisons Among Abusive, Potentially Abusive, and Nonabusive Parents*, 14 Child Abuse & Neglect 219, 219 (1990), cited in David Orentlicher, *Spanking and Other Corporal Punishment of Children by Parents: Overvaluing Pain, Undervaluing Children*, 35 Hous. L. Rev. (1998-1999), 147-185.
- 53 Robert E. Larzelere, *Presentation. A Review of the Outcomes of Parental Use of Nonabusive or Customary Physical Punishment*, 98 *Pediatrics* 824, 824 (1996).
- 54 See, e.g., Diana Baumrind, *Response* (1996), *A Blanket Injunction Against Disciplinary Use of Spanking Is Not Warranted by the Data*, 98 *Pediatrics* 828, 829; Diana Baumrind, Robert E. Larzelere & Philip A. Cowan (2002), *Ordinary Physical Punishment: Is It Harmful? Comment on Gershoff (2002)*, 128 *Psychol. Bull.* 580, 585; Marjorie Lindner Gunnoe & Carrie Lea Mariner (1997), *Toward a Developmental-Contextual Model of the Effects of Parental Spanking on children's Aggression*, 151 *Archive of Pediatrics & Adolescent Med.* 768, 773-74; Deanna Pollard (2002-2003), *Banning Child Corporal Punishment*, 77 *Tul. L. Rev.* 575, at 627-34 (asserting arguments in support of corporal punishment), cited in Benjamin Shmueli, *Corporal Punishment in the Educational System versus Corporal Punishment by Parents: A Comparative View*. *Law & Contemporary Problems*, Vol. 73, Spring 2010.
- 55 Position statement of the American College of Pediatricians (ACP). Retrieved 20 May, 2010, from <http://www.americancollegeofpediatricians.org/Corporal-Punishment-A-Scientific-Review-of-Its-Use-in-Discipline.html>.
- 56 In this study conducted by Dr Marjorie Gunnoe, over 2500 teenagers were interviewed about spanking. It was found that those who had been spanked between ages 2 and 6 performed better academically, are more optimistic about the future, and displayed the least antisocial behaviour, violence and bouts of depression. Those spanked between ages 7 and 11 exhibited more negative behaviour, but were still successful academically. Those who were spanked beyond age 12 and those who were never physically disciplined performed more poorly in all the areas mentioned above. See Thaddeus M. Baklinski (2010). *Study: Young Children Who are Spanked are Happier and More successful as Teenagers*, Retrieved 14 May, 2010, from <http://www.lifesitenews.com/ldn/2010/jan/10010507.html>

- 57 See Calvin College – Chimes. Professor Challenges Spanking Assumptions. Retrieved 13 May, 2010, from <http://clubs.calvin.edu/chimes/970919/p1.htm>.
- 58 See U.N. Doc. A/61/299, available at <http://daccess-ods.un.org/TMP/4537568.html>, paragraph 56.
- 59 Brooks v School Bd., 569 F. Supp. 1534, 1535 (E.D. Va. 1983), cited in Jerry R. Parkinson (1994). *Federal Court Treatment of Corporal Punishment in Public Schools: Jurisprudence that is Literally Shocking to the Conscience*, South Dakota Law Review Vol. 39, 276-311.
- 60 Article 19(1) of the CRC states “State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”
- 61 Joan E. Durrant (1999). *Evaluating the Success of Sweden’s Corporal Punishment Ban*, 23 Child Abuse & Neglect 435.
- 62 John S. Lyons & Robert E. Larzelere, *Where is Evidence that Non-Abusive Corporal Punishment Increases Aggression?* Presentation at the XXVI International Congress of Psychology, Montreal, (Aug 18, 1996), cited in Jason M. Fuller (2009). *The Science and Statistics Behind Spanking Suggest that Laws Allowing Corporal Punishment Are in the Best Interests of the Child*, 42 Akron L. Rev. (2009), 243-318.
- 63 Robert E. Larzelere (2004), Ph.D., *Sweden’s Smacking Ban More Harm Than Good*, cited in Jason M. Fuller (2009). *The Science and Statistics Behind Spanking Suggest that Laws Allowing Corporal Punishment Are in the Best Interests of the Child*, 42 Akron L. Rev. (2009), 273.
- 64 Marie Parker-Jenkins (2008), *Sparing the Rod: Reflections on the Abolition of Corporal Punishment, and the Increase in Violence in British Classrooms*, Australia & New Zealand Journal of Law & Education, 13(1), 7-19.
- 65 Ibid, p.12.
- 66 Ibid, p.13
- 67 Ibid, p.14.
- 68 State School Teachers Union president, Anne Gisborne, when interviewed. See Nicolas Perpetch. *Teachers Want Alarm Buttons in Classrooms*. The Weekend Australian, May 22-23 2010, The Nation, 3.
- 69 The author’s informal conversations with teachers both in Singapore and Australia.
- 70 Petro du Preez and Cornelia Roux (2010). *Human Rights Values or Cultural Values? Pursuing values to maintain positive discipline in multicultural schools*. South African Journal of Education, Vol. 30, 13-26, 19.
- 71 Bhikhu Parekh (1999). *Non-ethnocentric universalism*: In: T Dunne & NJ Wheeler (eds). *Human Rights in Global Politics*: Cambridge: Cambridge University Press, cited in Petro du Preez and Cornelia Roux (2010). *Human Rights Values or Cultural Values? Pursuing values to maintain positive discipline in multicultural schools*. South African Journal of Education, Vol. 30, 13-26, 24.
- 72 Stephen Lunn, *Violence, sex and the little boys lost*. The Weekend Australian, May 22-23 2010, Inquirer, 3.
- 73 Aric Sigman (2009). *The Spoilt Generation: Why Restoring Authority Will Make Our Children and Society Happier*. Little, Brown Book Group.
- 74 Rosemary Neill (2010). *The Wild Web*. The Weekend Australian Magazine, May 8-9, 2010, 20-26, 26.
- 75 Sheldon Glueck and Eleanor Glueck (1950). *Unraveling Juvenile Delinquency*. Cambridge, MA: Harvard University Press. This work was honoured by three symposia of reviews, which appeared in the Harvard Law Review (1951) the Journal of Criminal Law, Criminology, and Police Science (1951), and Federal Probation (1951).
- 76 Ibid. The research, however, found that where physical discipline is used systematically and regularly to correct or to control aggressive behaviour, it led to more aggression in children.
- 77 Jason M. Fuller (2009). *The Science and Statistics Behind Spanking Suggest that Laws Allowing Corporal Punishment Are in the Best Interests of the Child*, 42 Akron L. Rev. (2009), 243-318, 298.
- 78 See *ibid* 56.
- 79 Lansing K. Reinholz, *A Practical Defense of Corporal Punishment in Schools*. In Irwin A. Hyman & James H. Wise eds. (1979). *Corporal Punishment in American Education. Readings in History, Practice and Alternatives*, 346, cited in Benjamin Shmueli, *Corporal Punishment in the Educational System versus Corporal Punishment by Parents: A Comparative View*. Law & Contemporary Problems, Vol. 73, Spring 2010.
- 80 Jason M. Fuller (2009). *The Science and Statistics Behind Spanking Suggest that Laws Allowing Corporal Punishment Are in the Best Interests of the Child*, 42 Akron L. Rev. (2009), 243-318, 297.
- 81 Ibid, p. 300.
- 82 Ibid, p. 297.
- 83 See section on “Corporal Punishment in New Zealand”.
- 84 Sacha Coburn (2008). *Smack on the Hand Worth Time in Jail*, New Zealand Herald, Feb 26, cited in *Ibid*, p. 268.
- 85 This argument is based on the premise that corporal punishment has not been banned at home.