

CORPORAL PUNISHMENT – ARCHAIC OR REASONABLE DISCIPLINE METHOD?

MUI KIM TEH[†]

DEAKIN UNIVERSITY, VICTORIA, AUSTRALIA

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 Article 3 of the European Convention on Human Rights ('ECHR'), which calls for all to respect a child's right not to be 'subject to torture or to inhumane or degrading treatment', 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 corporal punishment trends in the United States (US), Australia, New Zealand, England, Canada and Singapore, and then looks briefly at the jurisprudence of the courts on this issue. It then discusses the implications for employing or banning corporal punishment as a disciplinary strategy, and in particular whether corporal punishment, if carried out reasonably, could be considered a reasonable form of discipline, ensuring a safe and disciplined environment in which the school community, as a whole, might operate.

I INTRODUCTION

Media coverage and informal conversations with professional educators seem to suggest that student misconduct in schools is becoming an increasing concern. In recent years, reported incidents of bullying and shootings in the USA and Britain show that student misconduct has moved to the level of crime and violence, and not just simple classroom misdemeanours, such as inattentiveness, clowning and talking out of turn. According to Fields,¹ discipline ranks as a major problem for teachers. The types of corrective action available to teachers thus become important.

Corporal punishment is probably the oldest and most common disciplinary method used by societies. In the education context, corporal punishment is any kind of punishment that is inflicted on the body, and that is intended to cause some degree of pain or discomfort, however light.² 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 common law does not prohibit corporal punishment and, in fact, 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.

There is, however, an increasing trend towards banning corporal punishment, with a call to respect a child's right not to be 'subject to torture or to inhumane or degrading treatment or punishment' (Art 3, *European Convention of Human Rights 1950* ('ECHR')). Anti-corporal punishment advocates believe that the dividing line between the physical correction of children

[†]Address for correspondence: Dr Kim Teh, School of Law, Faculty of Business and Law, Deakin University, PO Box 423, Warrnambool, Victoria 3280, Australia. Email: kim.teh@deakin.edu.au

and excessive violence is artificial,⁴ which has led in some quarters to the term ‘corporal punishment’ being equated with words such as violence and brutality.

While advocates of corporal punishment may argue that the punishment administered in schools is generally not degrading, parents who are against it may claim a right to have their children educated in accordance 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. For example, if corporal punishment is banned, a teacher using reasonable force to prevent a student from injuring others or causing damage to property could be held accountable for using inappropriate disciplinary action. Such is the problem for teachers and managers in the contemporary — and sometimes precarious — context of education.

II OVERVIEW OF CORPORAL PUNISHMENT TRENDS

In an effort to find a way forward from this complex array of opinion and speculation, this paper provides an overview of the trends in the US, Australia, New Zealand, England, Canada and Singapore concerning corporal punishment, and then discusses the jurisprudence of the courts, the research, and the implications of intervention into the school’s ability to exercise discipline.

A 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*⁵ (*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 abuse.⁶

In relation to the second issue concerning the student’s right of 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’.⁷ 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 punishment.⁸

B 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*,⁹ 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 excessive.¹⁰

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 prohibited.¹¹ 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 policy.¹²

Corporal punishment in the other states of Australia is regulated at the respective state levels, and there is a noticeable trend against its use.¹³ 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 punishment.¹⁴ It is interesting to note that, where education policy is used to curb such correction, the common law defence of 'reasonable chastisement' is arguably 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').¹⁵ Advocates of corporal punishment may 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.

C Corporal Punishment in New Zealand

Corporal punishment in schools in New Zealand is illegal. Section 139A of the *Education Act 1989* (NZ) 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 disregard the law by continuing to use corporal punishment with the approval of parents.¹⁶ One reason for this is the defence available to parents in s 59 of the *Crimes Act 1961* (NZ), which provides that persons acting *in loco parentis* can justifiably use reasonable force for the purpose of correction. However, as at 1 January 2008, this defence

is no longer available. Under the new s 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 s 59(4) ensures that minor assaults will not easily be brought to the courts.¹⁷

D 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') (UK), which amends the *Education Act 1996* (UK) 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'.¹⁸ 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*¹⁹ ('*Campbell and Cosans*'). The issue in this case was not so much art 3 of the *ECHR*, which reads 'No one shall be subject to torture or to inhumane or degrading treatment or punishment', but art 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 art 2 *Protocol 1* of the *ECHR*.²⁰ The Government decided that abolishing corporal punishment for all pupils was the only effective means of complying with the ruling in *Campbell and Cosans*.²¹ 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 that is 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 art 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*,²² 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 s 548(1) of the *Education Act 1996* (UK) 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 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'.²³ 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 England.²⁴

E *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 misbehaviour.²⁵ Improper physical discipline can lead to an allegation of assault, which is illegal. However, s 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 s 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),²⁶ the validity of s 43 was challenged. The issue here was not about the merits or ill effects of corporal punishment, but rather it was about whether s 43 violated the *Canadian Charter of Rights and Freedoms, Constitution Act (1982)* ('*Charter*'), in particular, ss 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 s 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'.²⁷

As for the argument that s 43 subjects children to differential treatment on the grounds of age, the Court rejected this argument on the basis that s 43 is justified under s 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 s 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 state.²⁸ For these reasons, s 43 is justifiable. The case was appealed to the Supreme Court of Canada,²⁹ and the Supreme Court agreed that s 43 should stand. However, it went on to state that s 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'.³⁰

There does not seem to be agreement on whether corporal punishment should be permitted and on the effects of s 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 s 43, but for Parliament to rewrite s 43 to reflect that view.³¹

F *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 art 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 art 19 does not prohibit the judicious application of corporal punishment in the best interest of the child.³² Nevertheless, schools are given strict guidelines by the Ministry of Education on how and when to administer such punishment. Among these guidelines are: 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 resort.³³

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 restraint in meting out physical 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 inflicted on 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 Singaporean parents 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 anachronistic.

III JURISPRUDENCE OF THE COURTS

From all this, 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 tradition.³⁴ In the work of Piele,³⁵ who traced the historical roots of corporal punishment in American schools:

[t]he 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'.³⁶ However, due to numerous cases where children were beaten for virtually any transgression, including the most trivial ones,³⁷ opponents of corporal punishment succeeded in invoking the European Court of Human Rights and several jurisdictions to abolish it.³⁸ To date, many other countries have followed that lead, either by policy or by enacting legislation.³⁹

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 1908,⁴⁰ 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. Thus, the jurisprudence of the courts in Britain in the early 20th century was that parents, by sending a child to school, authorise

the school-master to administer reasonable punishment for breaking a reasonable school rule,⁴¹ and that such authority is defined to extend beyond the principal to teachers. It is a defence for the teacher to say that ‘the punishment I administered was moderate, dictated by good motives, it was customary of the school, and was similar to the parents’ reasonable expectations for the transgression’.⁴² 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 goals.⁴³ This standard appears appropriate, but critics have argued that the problem lies in the courts’ interpretation of reasonableness,⁴⁴ which may be unusually tolerant before a claim of assault or abuse may be found.

The jurisprudence adopted by the courts in the area of corporal punishment takes on many shades. The Supreme Court in Italy referred to ‘correction of children’ as ‘culturally anachronistic and historically outdated’.⁴⁵ In the US courts, where teachers have exceeded the limits, the jurisprudence adopted is that such incidence of abuse is low;⁴⁶ that school officials should be left to their ‘professional judgment’ when correcting pupils and maintaining school order;⁴⁷ and that ‘mistreatment is an aberration’.⁴⁸ 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’.⁴⁹ 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 them.⁵⁰ However, this assumption is questionable, as it is predicated on the punishment occurring in the presence of witnesses (either fellow teachers or classmates) who are prepared to speak up.

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 harm.⁵¹ Thus, in a Canadian case, where the teacher threw an exercise book at a child, occasioning actual bodily harm, the court emphasised the importance of reasonable chastisement by stating ‘[r]easonable chastisement involved a controlled, if not entirely cool response, and the throwing of an exercise book could not fall into that category’.⁵²

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 character.⁵³ However, it can also be argued that if students are compelled to remain in the school system regardless of how much they dislike studying,⁵⁴ then the use of corporal punishment to control unmotivated and ill-behaved individuals cannot be said to be justifiable.

IV SO IS CORPORAL PUNISHMENT A PROPER 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 is that the *more* children receive physical punishment, the more the negative effects of such punishment.⁵⁵ 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.

In research conducted by a developmental psychologist recently,⁵⁶ the researcher challenged the assumption that spanked children become more aggressive. In fact, her study showed that, while children under two 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 act.⁵⁷

In cases where children are punished by inappropriate means, such as having their heads hit against walls, being tied to furniture or immobilised in cloth sacks, and having the arm pricked with a pin,⁵⁸ most would agree that these disciplinary methods are contrary to art 19 of the *CRC*,⁵⁹ 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 then be allowed during the schooling years?

Sweden was the first country to ban corporal punishment by law, both in school and at home.⁶⁰ But according to some researchers, a generation of no spanking did not yield the intended results, but instead had quite the opposite effect.⁶¹ Larzelere's research revealed that the annual increase in assaults by minors against minors was 17.9 per cent from 1990–1994, compared with 3.4 per cent 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 ban.⁶²

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'.⁶³ A survey of the incidence of violence in the British classroom since the abolition of corporal punishment reveals a worrying trend of increased bullying, aggression and violence, displayed especially by girls,⁶⁴ and newspaper reports suggest that bullying has reached epidemic proportions. Physical assaults in schools are a regular occurrence.⁶⁵ 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'.⁶⁶

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 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 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?'.⁶⁷ 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.⁶⁸

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

are not uncommon.⁶⁹ 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 all.⁷⁰ In today's world, that is the epitome of optimism!

V 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'.⁷¹ 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 culture.⁷²

Many children have indeed 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 Facebook.⁷³ 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.⁷⁴

The CRC prohibits 'abuse' and 'violence'.⁷⁵ One can argue that corporal punishment need not fall into that category. Perhaps 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 may also be consistent with

‘the right of all students to receive an education uninterrupted by a single, individual, disruptive student’.⁷⁶ In other words, the rights of a child should be balanced against the rights of others in the family and in the school.

Some are of the view that 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 pain.⁷⁷

Could it be, then, that the problem with corporal punishment, 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 judges.⁷⁸ 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 the ability of some parents to control their children.

The anti-corporal punishment rhetoric is less than helpful. Calling smacking ‘violent’ is like calling timeout ‘imprisonment’⁷⁹ 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 such a bad thing. Its retention or reintroduction as an effective disciplinary measure might perhaps be seriously considered one day, although this seems unlikely in light of the prevailing discourse amongst the experts. In the minds of some observers, Singapore may have it right, with corporal punishment (not just in the school) playing its part in maintaining a safe and respectful environment. Having said that, the country is not immune to the inexorable move towards protection of rights, and some analysts may argue it is only a matter of time before Singapore relinquishes its stance and follows the path that Australia and others are treading. Whether this is a good thing is a matter for conjecture, because the balance of opinion is not totally on one side of the divide.

VI CONCLUSION

Sue Bradford⁸⁰ 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.⁸¹

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 to 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 serious rather than emotive 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 those that permeate simplistic notions of physical chastisement.

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. 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 the chosen 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 Barry Fields, 'School Discipline: Is There a Crisis in Our Schools?' (2000) 35(1) *Australian Journal of Social Issues* 73.
- 2 Thefreedictionary.com, *Corporal Punishment* (28 October 2011) <<http://legaldictionary.thefreedictionary.com/corporal+punishment>>.
- 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 Global Initiative to End All Corporal Punishment of Children, *Prohibiting Corporal Punishment of Children — A Guide to Legal Reform and Other Measures* (2009) (28 October 2011), 18 <<http://www.endcorporalpunishment.org/pages/pdfs/LegalReformHandbook.pdf>>.
- 5 430 US 651 (1977). 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.
- 6 For more commentary of this case, see Louis Fischer, David Schimmel and Leslie R. Stelman, *Teachers and the Law* (Pearson Education Group Inc, 6th ed, 2003).
- 7 *Ingraham v Wright*, 430 US 651 (1977) 680.
- 8 Deana Pollard-Sack, 'State Actors Beating Children: A Call for Judicial Relief' (2009) 42 *UC Davis Law Review* 1165.
- 9 *Ex parte Martin* (1908) 2 QJPR 12.
- 10 *White v Weller* (1959) QdR 192.
- 11 Justice R Atkinson, 'Education and the Law: Protecting the Educational Well-Being of Students' (Keynote presentation delivered at the Australia and New Zealand Education Law Association 11th Annual Conference on Legal Risk Management Safety Security & Success In Education, Brisbane, 2–4 October 2002), 3–17.

- 12 Queensland Government, Department of Education and Training, *Abolition of Corporal Punishment* (11 May 2010) <<http://education.qld.gov.au/library/edhistory/topics/corporal/abolition.html>>.
- 13 Ian M Ramsay and Ann R Shorten, *Education and the Law* (Reed International Books Australia Pty Limited trading as Butterworths, 1996).
- 14 *Education Act 1990* (NSW) s 35; *Education Act 2004* (ACT) s 7(4); *Education and Training Reform Act 2006* (Vic) s 4.3.1(6)(a).
- 15 Greg Stolz, 'Gold Coast Teacher Cleared After Slapping Student' *Courier Mail* (online), 14 February 2008 <<http://www.couriermail.com.au/news/queensland/law-lets-teacher-slap-student/story-e6freoof-1111115554886>>.
- 16 These are usually Christian schools. See Press Release: Green Party, 'Schools Flouting Corporal Punishment Law', *Scoop Independent News* (online), 13 February 2007 <<http://www.scoop.co.nz/stories/PA0702/S00195.htm>>.
- 17 *Crimes Act 1961* (NZ) s 59(4): 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.
- 18 *Education Act 1996* (UK) c56, s 548.
- 19 (1982) 293 Eur Court HR (ser A).
- 20 For more discussion, see Paul Diamond, 'Is Corporal Punishment Contrary to the European Convention of Human Rights?' (1999) 11(1) *Education and the Law* 43.
- 21 See Neville Harris, 'Education Law: Excluding the child' (2000) 12(1) *Education and the Law* 31.
- 22 [2005] UKHL 15.
- 23 Ibid [86].
- 24 Jim Jackson and Sally Varnham, *Law for Educator: School and University Law in Australia* (Lexis Nexis Butterworths, 2007) 156.
- 25 Sandra Anderson and Susan Fraser, 'Protecting our Students (and Their Teachers Too). A Canadian Perspective' (Paper presented at the Australia and New Zealand Education Law Association 11th Annual Conference on Legal Risk Management Safety Security & Success In Education, Brisbane (2-4 October 2002), 183.
- 26 Canadian Foundation for Children, *Youth and the Law v Canada* (Attorney General) (2004) 1 SCR 76, 2004 SCC 4.
- 27 Ibid.
- 28 Ibid.
- 29 Ibid.
- 30 Ibid.
- 31 Shortly after the Supreme Court's decision, a bill was introduced to the Senate to eliminate s 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 *CBCnews* (online), 12 May 2010 <<http://www.cbc.ca/canada/story/2009/07/31/f-spanking-discipline-debate.html>>.
- 32 *Convention on the Rights of the Child*, acceded to 5 Oct 1995, 1577 UNTS 3 (entered into force 2 September 1990) art 19.
- 33 These guidelines are found in the Principal's Handbook provided by the Ministry of Education, Singapore, to all principals.
- 34 Marie Parker-Jenkins, 'Sparing the Rod: Reflections on the Abolition of Corporal Punishment, and the Increase in Violence in British Classrooms' (2008) 13(1) *Australia & New Zealand Journal of Law & Education* 7.
- 35 Jerry R Parkinson, 'Federal Court Treatment of Corporal Punishment in Public Schools: Jurisprudence that is Literally Shocking to the Conscience' (1994) 39 *South Dakota Law Review* 276, 310.
- 36 430 US 651 (1977) 657.

- 37 Examples of such cases include speaking in Spanish at recess (*United States v Texas*, 498 F Supp 1356, 1373 (ED 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 QJPR. 12 (Sup Ct)); being impertinent to the teacher (*White v Weller* (1959) QdR 192).
- 38 See End All Corporal Punishment of Children for examples of such judgments <<http://www.endcorporalpunishment.org/pages/hrlaw/judgments.html>>.
- 39 26 states have actually enacted legislation to protect children from all corporal punishment. See End All Corporal Punishment of Children <http://www.endcorporalpunishment.org/pages/progress/prohib_states.html>.
- 40 *Mansell v Griffiths* (1908) 1 KB 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.
- 41 *R v Newport (Salop) Justices* (1929) 2 KB 416 (DC) cited in William Harry Giles, *Schools and Students. Legal Aspects of Administration* (The Carswell Co Ltd, 1988) 45.
- 42 Giles, above n 41, quoting *Mansell v Griffin* (1908) 1 KB 947.
- 43 See earlier overview of corporal punishment in US, Australia and Canada.
- 44 David Orentlicher, 'Spanking and Other Corporal Punishment of Children by Parents: Overvaluing Pain, Undervaluing Children' (1998–1999) 35 *Houston Law Review* 153.
- 45 Jason M Fuller, 'The Science and Statistics Behind Spanking Suggest that Laws Allowing Corporal Punishment Are in the Best Interests of the Child' (2008–2009) 42 *Akron Law Review* 243, 246.
- 46 *Ingraham* 682.
- 47 *Baker v Owen*, 395 F Supp. 294, *aff'd*, 423 US 907 (1975).
- 48 *Ingraham* 677.
- 49 *Hall v Tawney*, 621 F2d 607 (4th Cir, 1980) — '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.
- 50 *Ingraham*.
- 51 *Sansone v Bechtel*, 429 A 2d 820 (Conn, 1980).
- 52 Giles, above n 41, 51.
- 53 Position Paper of the Society for Adolescent Medicine, 'Corporal Punishment in Schools' (2003) 32 *Journal of Adolescent Health* 385.
- 54 See Ben Brown, 'Perceptions of Student Misconduct, Perceived Respect for Teachers, and Support for Corporal Punishment among School Teachers in South Korea: An Exploratory Case Study' (2009) 8 *Educational Research for Policy and Practice* 3, 5, where he cited research by Greenberg (1977); Jenkins (1995); Toby (1989, 1995) which showed that forcing disgruntled youths to remain in school led to an increase in discontented students and a corresponding increase in discipline problems.
- 55 Pollard-Sack, above n 8: 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, 'Mothers' Spanking of 3-Year-Old Children and Subsequent Risk of Children's Aggressive Behaviour' (2010) 125 *Pediatrics* e1057, that supports the view that frequent use of corporal punishment on three-year-olds is associated with increased risk for higher aggression when they turn five.
- 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, 'Study: Young Children Who are Spanked are Happier and More successful as Teenagers' *Lifesitenews.com* (online) (5 January 2010) <<http://www.lifesitenews.com/ldn/2010/jan/10010507.html>>.
- 57 See 'Professor Challenges Spanking Assumptions', *Calvin College — Chimes*, 13 May 2010 <<http://clubs.calvin.edu/chimes/970919/p1.htm>>.
- 58 Jerry R Parkinson, 'Federal Court Treatment of Corporal Punishment in Public Schools: Jurisprudence that is Literally Shocking to the Conscience' (1994) 39 *South Dakota Law Review* 276.
- 59 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.'
- 60 Joan E Durrant, 'Evaluating the Success of Sweden's Corporal Punishment Ban' (1999) 23 *Child Abuse & Neglect* 435.
- 61 Fuller, above n 45.
- 62 Ibid 273.
- 63 Parker-Jenkins, above n 34, 8.
- 64 Ibid 13.
- 65 Ibid.
- 66 Ibid 14.
- 67 State School Teachers Union president, Anne Gisborne, when interviewed. See Nicolas Perpitch, 'Teachers Want Alarm Buttons in Classrooms' *The Weekend Australian* (Sydney), 22-23 May 2010.
- 68 The author's informal conversations with teachers both in Singapore and Australia.
- 69 Petro du Preez and Cornelia Roux, 'Human Rights Values or Cultural Values? Pursuing Values to Maintain Positive Discipline in Multicultural Schools' (2010) 30 *South African Journal of Education* 13, 19.
- 70 Ibid 24.
- 71 Stephen Lunn, 'Violence, Sex and the Little Boys Lost', *The Weekend Australian* (Sydney), 22-23 May 2010.
- 72 Aric Sigman, *The Spoilt Generation: Why Restoring Authority Will Make Our Children and Society Happier* (Little, Brown Book Group, 2009).
- 73 Rosemary Neill, 'The Wild Web', *The Weekend Australian Magazine* (Sydney), 8-9 May 2010.
- 74 Fuller, above n 45, 298.
- 75 Article 19(1) *CRC*, above n 59.
- 76 Benjamin Shmueli, 'Corporal Punishment in the Educational System versus Corporal Punishment by Parents: A Comparative View' (2010) 73 *Law & Contemporary Problems* 281, 310, citing Lansing K. Reinholz, 'A Practical Defense of Corporal Punishment in the Schools' in Irwin A. Hyman & James H. Wise (eds), *Corporal Punishment in American Education: Readings in History, Practice and Alternatives* (Temple University Press, 1979) 346.
- 77 Fuller, above n 45, 297.
- 78 Ibid 300.
- 79 Ibid 297.
- 80 See previous discussion 'Corporal Punishment in New Zealand'.
- 81 Fuller, above n 45, 268, quoting Sacha Coburn, 'Smack on the Hand Worth Time in Jail', *New Zealand Herald*, 26 February 2008.