

PHYSICAL PUNISHMENT OF CHILDREN: WHERE ARE WE AT IN NEW ZEALAND?

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Among justifications regularly presented in support of the use physical punishment of children is "*It never did me any harm*". The ISPCAN Congress is about preventing "harm" to children. We know that many children are harmed physically and mentally in the course of physical attacks on their bodies administered as "punishment". Some children suffer death or serious injury inflicted by caregivers who believe that it is acceptable to use violence to "**teach**" children a lesson, "**show**" them who is boss and even what will happen to them if they hit each other. Note the language – **teach** and **show** – these are words of guidance and example – and yet they are used to justify a form of punishment which demonstrates the use of violence.

Most children are not injured in the course of physical punishment but they do experience an attack on their bodily integrity.

Susan Bitensky¹ has coined an appropriate term for the attacks, when they do not qualify as "abuse" because there are no visible injuries. She calls it "*subabuse corporal punishment*" and defines this as "*the currently non-prosecutable use of physical force with the intention of causing the child to experience bodily pain so as to correct, control or punish the child's behaviour*".

Attitudes about physical punishment and children's experience of it play a part in aetiology and manifestations of physical abuse. This in itself is good reason to continue to campaign to change attitudes about physical abuse and to educate parents about other ways of **teaching** and **showing** children how to behave well. Just as important is the fact that as long as we can legally hit children they will not experience the status they deserve in society. Until their status improves further their protection rights will not be fully acknowledged and acted on. Because their protection rights are not fully acknowledged it is regarded as OK to beat them.

Our knowledge of the extent of physical abuse in New Zealand is limited but what we do know is of concern². There were approximately 830,000 children aged 14 years and younger in New Zealand in 1996.

In 1996/97 there were 3901 reported violent or abusive offences against children reported by the police (children under 16). 29 % of these were for assault.

In 1995 there were 194 cases of intentional physical harm resulting in hospitalisation of children 14 years and younger.

In 1994 13 children 14 years and younger were classified as having died as the result deliberately inflicted physical injuries.

¹ Bitensky S H. 1998. *Spare the rod, embrace our humanity: Toward a new legal regime prohibiting corporal punishment in children*. University of Michigan Journal of Law Reform 31:2 (353-474).

² Following figures from Ministry of Health. 1998. *Our Children's Health: Key findings on the health of New Zealand children*. Wellington. Ministry of Health.

These figures represent the tip of the iceberg – many other children will have experienced physical assaults which have led to state intervention in their families' lives (but not to prosecutions) and still more do not come to notice. These are the abused children.

We do not know how many children in New Zealand experience “subabuse corporal punishment”. Since 1993 there has been no research into incidence of regular or occasional physical punishment although there have been some surveys of attitudes. EPOCH New Zealand is a small charitable trust that works to promote positive, non-violent parenting and advocates legal reform. This paper summarises what EPOCH knows about the situation in New Zealand by

- ♦ reviewing research
- ♦ analysing correspondence received by EPOCH New Zealand since January 1997
- ♦ analysing print media items since January 1997
- ♦ presenting the results of a small workplace survey
- ♦ presenting the results of a survey of Members of Parliament
- ♦ reviewing New Zealand policy and legislation.

We conclude there is reason to believe that public attitudes are changing. Many professional groups and individual workers actively promote non-violent parenting as does our major child protection agency the Children, Young Persons and their Families Service. But widespread change is unlikely to come about until a change in our legislation makes the issue an inescapably public one with a very explicit standard.

Before 1993 there had been some public calls for change in regard to physical punishment - in particular from Jane and James Ritchie³. In 1993 a campaign by the Office of the Commissioner for Children to change attitudes about physical punishment received intensive public attention and response on a scale never before experienced here in relation to physical punishment.

In 1963 and 1964 Jane Ritchie studied child rearing patterns in New Zealand families⁴. Only one third of mothers surveyed reported smacking rarely with daily spanking reported as occurring in as many as 11% of families. In 1977 Jane Ritchie asked similar questions of mothers and fathers. 16% of mother reported using physical punishment daily.⁵ In 1981 Jane Ritchie found that 80% of parents reported using physical methods of punishing their pre-school and primary school aged children and over 80% endorsed smacking in certain circumstances. Thrashing was endorsed by only 15% of men and 6% of women.

In 1993 Dr Gabrielle Maxwell, at the Office of the Commissioner for Children, conducted research comprising 1000 telephone interviews to survey attitudes towards the use of physical punishment and incidence of it.⁶ She found that 87.5% of parents still believed that there were certain circumstances where it was “ok” to hit a child.

³ Ritchie J and J. 1997. *The next generation: Child rearing in New Zealand*. New Zealand. Penguin.

⁴ Ritchie J and J. 1970. *Child rearing patterns in New Zealand*. New Zealand. AH and AW Reed.

⁵ Ritchie J and J. 1993. *Violence in the Home*. 2nd edition. New Zealand. Daphne Brasell.

⁶ Maxwell G. 1993. *Physical punishment in the home in New Zealand*. Wellington. Office of the Commissioner for Children.

However the number who believed that thrashing was justified in some circumstances had dropped to 3%. Respondents who were parents at the time were asked about recent behaviour. Reporting on the week before the survey 23% of parents said they had used some physical punishment and 85% had used none.

Since 1993 there have been two limited surveys of parental attitudes towards physical punishment and these asked different questions of participants than earlier surveys making comparisons difficult. A Heylen poll of 1000 randomly selected residents conducted for the magazine the *Listener*⁷ in 1995 found that 49% of those surveyed supported corporal punishment in the home for girls and 54% for boys. Younger participants were more likely to consider physical punishment unacceptable than older people. Men were more likely to support physical punishment than women.

As part of the "Breaking the Cycle" Campaign conducted by the Children, Young Persons and Their Families Service in recent years that Service has advocated use of alternatives to physical punishment and produced relevant publications and parenting videos. A major research organisation monitored the effect of the campaign between June 1995 and June 1996⁸. This survey asked questions about smacking and thrashing. In June 1995 about 70% of those surveyed thought it was OK to smack children in some circumstances and in June 1996 this was reported at about 65%. In June 1996 91% strongly disagreed that it was all right to thrash a child in some circumstances.

While results of these various surveys are inconsistent, overall the results seem to suggest a significant shift in attitudes in New Zealand with at least a third of New Zealanders believing that physical punishment is not acceptable. If this is so there is a shift of about 20% since 1993.

In 1993, following the publicity attached to the Office of the Commissioner for Children's campaign that Office received a considerable volume of correspondence. It was characterized by parents saying they had been hit, or hit their children and that it had done no harm, or writing strongly worded protests against interference in parental rights. More recently a media item published about EPOCH in 1997 gave rise to 91 letters. The greatest proportion of these appeared to be from parents although only 11% clearly identified themselves as parents or grandparents. Twenty-three percent were from organisations or professionals, such as teachers or social work organisations. Seventy percent of the letters were signed by women, 6 percent by men and in 27 percent the gender of the inquirer was unclear. There were no negative or critical letters amongst these – all asked for information about EPOCH, or about alternatives to smacking or expressed support for our work. For example:

I am a 67-year-old grandmother who managed to bring up my own three children without physical punishment. (Kaiapoi)

I would be interested in obtaining a copy...I find myself at my wits end with an extremely cheeky 6-year-old. (Christchurch)

⁷ New Zealand Listener. January 1995. *Does sparing the rod spoil the child*. Results of a Heylen poll.

⁸ Colmar Brunton research. 1996. *Breaking the Cycle Research Monitor*. Report prepared for the Children, Young Persons and Their families Service. Wellington. (Unpublished).

... My daughter and son-in-law are against physical punishment, but I sometimes use it mildly on their son (6) and daughter (2). I would like to be on the same wavelength with them so the children can have a consistent form of discipline. (North Canterbury).

I was really heartened to hear about your work. Living in an area of the country where smacking is endemic and seen as perfectly healthy – otherwise how else can they learn – it is good to be reminded that there is sanity elsewhere. I would be most grateful for 4 copies of your handout (to be put on Kindy and Playcentre notice boards) ... (Temuka)

When the 1993 Commissioner for Children Campaign was launched media interest was extremely high with national television coverage, and every major newspaper in the country ran an editorial and other news items on the issue. There were some great headlines – *Children's Commissioner wants smacking caned*, *Smack under attack*, *Fresh look at child smacking*, and *Spare the rod and protect the child*. While initial news reports concentrated on reporting the Commissioner's views and the results of the survey conducted by his Office they were followed by strongly worded editorials and many letters to papers throughout the country. Some were supportive and some condemnatory and confused. For example

I note with dismay that New Zealand, led by a group of well meaning zealots, is being led down the disastrous track of refusing to discipline children.⁹

Interfering with parents' rights to discipline their children in the manner they chose would lead to a generation of spoiled children.¹⁰

Undeniably the issue attracted media attention. It still does although not with the same intensity. Our collection of newspaper clippings is not comprehensive and content analysis is always a blunt instrument. However analysis of 39 articles from daily and weekly papers from January 1997 to mid-1998 shows trends.

Item	In favour of smacking	Against smacking	Neutral or both sides	Total
News and articles	5	6	6	17
Letters to the editor	7	7	1	15
Columnists, opinion	0	6	1	7
Total	12	19	8	39

⁹ New Zealand Herald, 12 July 1994 (Letter).

¹⁰ Nelson Evening Mail, 22 September 1993 (Letter).

In 1997, a Waikato father of three sons caused a flurry of media interest in physical punishment when he published a parenting video, which included promotion of so-called "safe smacking". It included information on the use of a leather device called the "Uncle Sam Safe Smacker". Newspapers, radio, including talkback, and television all covered this story. Groups promoting positive parenting, including EPOCH, the Children and Young Persons and Their Families Service and advocacy groups all took the opportunity to express their opposition to the promotion and to physical punishment in general.

Corporal punishment of children is illegal in schools and early childhood education services in New Zealand.¹¹ The United Nations Committee on the Rights of the Child¹² has recommended that New Zealand repeal the legislation that gives parents a statutory defence against the crime of assault when they hit their children. As part of the requirements for completion of a diploma in Human Resource Management (Victoria University of Wellington) Mandy Smith surveyed a selection of managers and staff in early childhood education services in the Wellington Area¹³. She asked about their knowledge of international and domestic obligations in regard to the use of physical force in disciplining children in their care.

One hundred staff members completed a questionnaire about their awareness of the United Nations Convention on the Rights of the Child and of the relevant provisions of the Early Childhood Regulations 1990. Results of the survey indicated that knowledge of the existence of the Convention was high (77% knew that New Zealand was a party to the Convention) but understanding or knowledge of the implications of article 19 (interpreted by the UN Committee as inconsistent with the use of physical punishment) was low (19%). Staff were mostly aware of the domestic obligations banning physical punishment in early childhood services (79%). Their knowledge appeared to be informally acquired rather than taught as part of basic induction or ongoing training.

Human resource practices did not maximise the opportunities that exist to encourage the sector to protect children from physical punishment by their caregivers. Parents and caregivers were not routinely advised against using physical discipline despite parents commonly asking staff to use physical punishment with their children.

Clearly one of the most important groups to influence if we are eventually to have a change of legislation in New Zealand is the Members of Parliament. Where do they stand on repeal? Recently EPOCH sent a short survey to all MPs giving brief information about the issue and asking three short questions:

- ♦ Do you personally support the aims of EPOCH?
- ♦ Do you support repeal of section 59 of the Crimes Act 1961
- ♦ Would you like more information on the subject?

¹¹ Education Act 1989 (Amended 1990) (Early Childhood Regulations).

¹² Ministry of Foreign Affairs and Trade and Ministry of Youth Affairs. 1997. *United Nations Convention on the Rights of the Child: Presentation of the initial report of the Government of New Zealand*. Wellington.

¹³ Mandy Smith. 1998. *The physical discipline of children in early childhood services: Obligations and implications for human resource practice*. Unpublished research project. Graduate School of Business and Government Management. Wellington. Victoria University.

The response rate has been very disappointing. One month after being sent the survey there have only been 21 responses from 120 members. One can only speculate about reasons for the lack of response which may, or may not, have anything to do with the issue raised. Of these responses 13 were completed questionnaires and the others were letters of acknowledgement (5) with no comment or supportive letters which included a general statement against the issue of violence but avoided a stand on the question of repeal of section 59(3). Seven respondents were fully supportive, three were supportive of our aims but uncertain about repeal of s 59, two simply asked for more information and one was unsupportive of the aims of EPOCH and unsupportive of repeal of s 59.

Section 59 of the Crimes Act 1961¹⁴ provides parents and caregivers with statutory protection against potential civil and criminal liability should they use force to discipline a child. It does not mean that there has not been an assault when a parent hits a child, it means the assault is justified in the eyes of the law.

The application of section 59 on a case by case basis is complex. The Court must assess:

- ♦ whether the use of force was motivated by desire to correct a child's behaviour
- ♦ whether it was reasonable for the caregiver to have used it for this purpose
- ♦ whether the degree of force was appropriate for the child's age and actions
- ♦ how the punishment fits with current social views.

In a recent judgement Somerville J (*Ausage v Ausage*, 1997, NZFLR) cautioned that "*in determining what is reasonable force care should be taken when considering older decisions of the courts. Social conditions and child rearing practices are not static ...*"¹⁵.

Parents can by no means be certain when they hit a child that the statutory defence would apply in that particular situation.

Amendments to the Education Act 1989 in 1990 prohibited corporal punishment in schools. The passing of the Domestic Violence Act in 1995 opened the way for a child (or someone acting on her behalf) to apply for a protection order in cases of physical abuse or threats of physical abuse. Other major policy initiatives promote explicit anti-violence messages. The campaigns "Not Just a Domestic" (Police), Breaking the Cycle (Children, Young Persons and Their Families Service) and various anti-bullying initiatives send strong messages that violence is unacceptable.

Repeal of section 59 would create no new crime and would be unlikely to lead to more prosecutions but it would send a clear message to parents and caregivers about raising children to be well behaved without using physical force. It would be consistent with other anti-violence messages and parents would be very clear about what the law means.

¹⁴ Section 59 of the Crimes Act 1961 reads "*Domestic discipline*" (1) *Every parent of a child, and subject to sub-section (3) of this section, every person in the place of a parent of a child is justified in using physical force by way of correction towards the child, if the force used is reasonable in the circumstances.*

¹⁵ *Ausage v Ausage*, 1997, NZFLR.

In some places (Scotland and New South Wales, Australia) a gradualist approach to ending physical punishment has been suggested. In such an approach the law is changed so that reasonable force is defined (eg a ban on use of an instrument and a ban on hitting on the face or head). The approach is justified as providing some protection for children, providing parents with clear information and paving the way for future reform. EPOCH does not support this approach which implicitly gives permission for the use of force with children, and for modeling violence and the gradualist approach does not improve children's status.

Many parents fear that if the statutory defence was removed they would be more liable to prosecution than is presently the case. In reality repeal is unlikely to lead to an increase in prosecution, as charges would have to be laid, the case investigated and a decision made to prosecute. If a charge were laid the matter would most likely be dealt with under the Children, Young Persons and Their Families Act 1989 and the intent of this Act is to protect children while supporting and strengthening families rather than to taking punitive action.

In a recent report advocating prohibition of corporal punishment in the United States Susan Bitensky¹⁶ comments that none of the six countries which prohibit corporal punishment¹⁷ has experienced a backlash. Of Austria she says

...."there has been no rush of children reporting their parents to the police for smacking them. State intervention has not increased as a result of the new law...." Instead, the 1989 ban on corporal punishment and concomitant social services network appear to be undermining the social acceptability of such punishment without prosecutorial intervention.

Legal reform is clearly desirable. With or without legal reform there is a place for all individuals and agencies that promote children's protection and other rights and interests to contribute to ending physical punishment. First we must acknowledge that ending physical punishment of children is an integral part of improving children's rights and status and in reducing abuse. Then we can:

- ♦ use non-violent child rearing techniques with our own families and modelling these for neighbours and friends
- ♦ ensure that our organisation or workplace has a policy which encourages parents to learn about and use non-violent discipline methods and forbids the use of physical punishment on the premises
- ♦ teach parents and caregivers about alternatives to physical punishment.
- ♦ speak about ending physical punishment and positive parenting at staff meetings, parent meetings and conferences.
- ♦ place information about ending physical punishment and alternatives to the use of physical force in discipline in staff or parent newsletters.
- ♦ assign responsibility for promoting this topic to an individual staff member or volunteer to keep the topic alive and collect resources for our own and others' use

¹⁶ ¹⁶ Bitensky S H. 1998. *Spare the rod, embrace our humanity: Toward a new legal regime prohibiting corporal punishment in children.* University of Michigan Journal of Law Reform 31:2 (353-474).

¹⁷ Sweden, Finland, Denmark, Norway, Austria and Cyprus.

- ♦ write to local and national newspapers and magazines
- ♦ lobby for legal reform.

In order to **teach** our children how to behave well and **show** them how we want them to behave we must **guide** them, not **beat** them. Attitudes appear to be changing in New Zealand and while publicity and education about positive, non-violent parenting will play a part in promoting further changes, these approaches must be supported by consistent standards in policy and legislation.

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