

Section 59: Crimes Act 1961: The impact of corporal punishment on children and young people

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Section 59 of the Crimes Act 1961, as with all criminal justice legislation, has a particular history rooted in the socio-cultural context of our society. This article firstly considers problems associated with the application of the law to the physical punishment of children, and then traverses issues raised by recent research on the outcomes for children where physical punishment is used. Finally, these two aspects are linked using a socio-legal framework.

Physical punishment of children and New Zealand law

Section 59 of the Crimes Act 1961 states: “Every parent or person in place of a parent of a child is justified in using force by way of correction towards a child if that force is reasonable in the circumstances.” This section of the Act was intended to be used as a defence against a charge of assault; it was not intended as an offence under the Act. This distinction is important because if section 59 was to be repealed, police would have to determine whether or not an assault had occurred when a child is smacked, and it is highly unlikely that when minor smacking occurs in the context of a loving relationship this would result police prosecution.

However, the issue of corporal protection is now under debate as questions are raised about the use of physical punishment as a form of parental discipline and the outcomes of this for children. Proponents calling for the repeal of section 59, suggest there are preferable means of training and disciplining children that do not resort to what amounts to violence. In regard to section 59, there tends to be some confusion as to what is considered to be a reasonable and acceptable form of discipline and what is not.

Prosecutions under section 59 have met with mixed responses from the judiciary. Examples of cases where section 59 has been successfully argued in jury trials include parents prosecuted for hitting their children

with various objects, such as a bamboo stick, a belt, hosepipe, or a piece of wood, or “chaining their child in metal chains to prevent them leaving the house” (Hancock, 2003, p. 1). Respective juries considered these actions to be reasonable and lawful means of disciplining children. (This has been illustrated by a recent case in Timaru.)

However, comparable means of disciplining children by physical punishment have also been found to be unreasonable by the Court of Appeal, the High Court and Family Court Judges. A certain degree of subjectivity filters through in legal determinations. This is problematic for the use of section 59 because it means that different messages will be sent to the public about what constitutes reasonable force. Parents, at the least, stand to perhaps commit acts that are considered unlawful dependent on the interpretation of this section.

The provision is based on a historic common law right in the United Kingdom and adopted in New Zealand which protects parental rights to use reasonable chastisement. The English common law provision is often argued on the basis of the Old Testament, Proverbs 13:24, “spare the rod ...” and the New Testament, Hebrews 12:11, “those who have been disciplined by such punishment shall reap the peaceful reward of a righteous life”.

In New Zealand these precepts have become outdated in relation to section 139(A) of the Education Act 1989, which no longer permits corporal punishment in schools, and Child, Youth and Family policy, which no longer permits foster and residential carers to administer corporal punishment. Clearly, since the Crimes Act 1961, public opinion has moved in some quarters, leading to these

later changes. Current reformists would argue that section 59 remains somewhat of an anachronism and out of kilter with these more recent views.

Corporal punishment and outcomes for children

What has informed these later views? There is quite a body of research and writing on the issue of corporal punishment and its link with adverse outcomes for children and adolescents. Arguably, it is research, the publication of findings and the ensuing discussion of new ideas that helps to change public opinion. It can also, of course, introduce more confusion to the debate.

A review of recent research in the area of the impact of corporal punishment on children and young people yields a complex set of findings. A large body of research offers evidence about emotional and behavioural problems that may develop as a consequence of harsh physical punishment (Strassberg, Dodge, Pettit & Bates, 1994; Straus, Sugarman & Giles-Sims, 1997). There is wide agreement that harsh physical punishment is unacceptable. Children who are spanked (and spanking here is more than a slap on the bottom) exhibit a number of socio-emotional problems. These include: antisocial behaviours, low self-esteem, internalising symptoms (anxiety, withdrawal and depression), and externalising (aggression, disobedience, and impulsiveness) (Gerschoff, 2002; Larzelere, 1996; McLeod & Shanahan, 1993; Strassberg et al., 1994; Turner & Finkelhor, 1996). Alongside the negative outcomes, immediate and short-term compliance alone has been noted as a positive outcome (Gerschoff, 2002), although, in this context, care needs to be taken with the notion of

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compliance as it may not always have a positive outcome for the child (Baumrind, Larzelere & Cowan, 2002).

New Zealand research has also found an association between harsh physical punishment and psychosocial adjustment problems. The Christchurch Health and Development Study, a longitudinal study of a cohort of Christchurch children born in 1977, found that while “the majority of children [77.7%] reported that their parents never or seldom used physical punishment ... 4% of the sample reported overly frequent, harsh, or abusive treatment...” (Fergusson & Lynskey, 1997, p. 627). Outcomes for this latter group included mental health problems, substance abuse, juvenile offending and the risk of violence victimisation. In addition, “evidence suggests that exposure to physical maltreatment in childhood may make relatively small but statistically detectable contributions to risks of violence behaviour, alcohol abuse and anxiety disorders” (p. 629). However, the study also notes that family and social factors, such as disadvantage and adversity, may also contribute to the use of harsh physical punishment.

A more recent study (Gravitas Research and Strategy, 2005) found that 51% of all parents and 21% of caregivers used physical punishment, albeit relatively infrequently and mostly when other forms of discipline had been tried: “Physical discipline is commonly used because parents and caregivers consider it to be a required and/or justified response to the child’s behaviour” (p. 4). This approach was also acknowledged by children who, while they highlighted the negative consequences of being smacked, also accepted “it as a parental right or fact of life” (Dobbs cited in Smith, Gollop, Taylor & Marshall, 2004, p. 28).

Defining reasonable force

Of course, as we know from the current debate, what constitutes “harsh” physical punishment is questionable. Section 59 allows reasonable force and the New Zealand case law examples referred to earlier show a divergence of opinion about what this might mean. Those who oppose the reform of section 59 wish to protect parents’ ability to

discipline children through minor smacking and restraint. In a media statement in 2004, Steve Maharey, Minister of Social Development, argued that repealing section 59 would not alter this ability. Perhaps these responses have led to confusion in the current debate about what reform might mean.

If we take the stance that minor smacking on a child’s bottom is acceptable, then Larzelere’s 1996 review of research on nonabusive spanking shows that there should still be some concern about how effective even this form of discipline is. In his review of 35 studies that examined the effects of nonabusive spanking on children by parents, “Thirty-four per cent of the studies found negative effects on children, 26% found positive effects, and 40% showed no net positive or negative effect. Nonabusive spanking appears to be more effective or have neutral effect on children younger than 13 compared to teenagers. Grounding appears to be more effective than spanking in older children. Spanking appears to be most effective when done sparingly, non-violently, and within the context of a healthy parent child relationship.” Larzelere points out that much of the research on corporal punishment is based on harsh forms of physical punishment which, in his view, should be unacceptable.

As with much research in this area, including the New Zealand longitudinal study, Larzelere’s review refers to a range of factors associated with outcomes for children not simply the use of corporal punishment. As an example of these additional factors, Eamon (2001) and others have found that depressed mothers spank their children more frequently and experience higher levels of marital conflict, which, in turn, may be directly related to their use of physical punishment. Younger, more educated mothers spank their children less often.

Research informing public opinion

While there are problems in applying research, for example, where researchers may focus on their own particular theoretical perspective and will, therefore, consider some factors more than others or will ignore some entirely, there is no doubt that research can influence public opinion. Usually, unless findings are world-shakingly obvious, research can bring about changes to so-called “expert” opinion in the first instance and public opinion in the second instance.

In Aotearoa New Zealand, for example, it would seem that based on their understanding of its impact, the judiciary and other professionals on the whole tend not to support the use of section 59, whereas juries made up of lay people still condone its use. Perhaps it has been the influence of research on key individuals in decision-making positions within government and associated organisations that has led to the reform of the Education Act and Child, Youth and Family policy. Clearly, there remains a division between wider public opinion and those who are calling for repeal of section 59.

There are those in the reformist camp who take a socio-legal approach to this issue and argue that European countries that have long since abandoned corporal punishment of children have fewer child homicides as the result of abuse. A recent study (Doolan, 2004) examining child homicides, found that New Zealand had among the lowest child homicide rates in the years 1971-75, ninth out of the OECD countries. At that time, New Zealand was also ranked at a similar level in socio-economic terms. Of course, section 59 was also in effect then, as was corporal punishment in schools. However, New Zealand is now ranked 25th out of 27 OECD countries in relation to child homicide, and our economic ranking has also declined significantly. This may suggest that there are other influences operating in the area of violence towards children that are worthy of further research. Doolan’s research suggests that socio-economic issues may impact on child death rates and, therefore, that in order

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to address violence directed towards children, we need to take a more systemic, multi-faceted view of the problem.

On the other hand, as many individuals and organisations (including Barnardos) argue this is more a moral question that research will not entirely resolve. Ultimately, perhaps the issue is whether it is acceptable to physically discipline children; on the other hand, the moral question is whether physical punishment of any kind should be condoned or supported in any shape or form. Historically, we have moved away from physical punishment of adults because we decided it was unacceptable. It is ironic that many think it is still acceptable to discipline children in this way. The Ministry of Justice report (Carswell, 2001) on public attitudes towards physical discipline of children found that 75% of respondents thought it was acceptable to physically punish 6- to 10-year-old children and over half thought it was acceptable to physically punish 2- to 5-year-old children.

Conclusion

There is a significant gap between the prevailing message from research, which suggests harsh physical punishment has a negative outcome for children, and public opinion, which argues that physical punishment, when reasonable, is an acceptable means of disciplining children. The legal and policy contexts are confusing in New Zealand. Legal reform is not likely to be achieved without a shift in public opinion, nor will it necessarily alter behaviour. Official and public clarity is needed when it comes to understanding the impact of reform.

Much of the research suggests that families need to be resourced and supported in a raft of areas before we can expect a change in attitudes and behaviours that have been the custom and practice for many years. In other words, whatever strategy is adopted, a multi-systemic approach is needed to ensure that all aspects of child discipline are addressed within the context of family dynamics and socioeconomic factors.

References

- Baumrind, D., Larzelere, R. E., & Cowan, P. A. (2002). Ordinary physical punishment: Is it harmful? Comment on Gershoff [Electronic version]. *Psychological Bulletin*, 128(4), 580-589.
- Carswell, S. (2001). *Survey on public attitudes towards the physical discipline of children*. Wellington: Ministry of Justice.
- Dietz, T. L. (2000). Disciplining children: Characteristics associated with the use of corporal punishment. *Child Abuse & Neglect*, 24(12), 1529-1542.
- Doolan, M. (2004). Child homicide: An examination of incidence in New Zealand 1991-2000. *Te Awatea Review*, 2(1), 7-10.
- Eamon, M. K. (2001). Antecedents and socioemotional consequences of physical punishment on children in two-parent families. *Child Abuse & Neglect*, 25(6), 787-802.
- Fergusson, D. M., & Lynskey, M. T. (1997). Physical punishment/maltreatment during childhood and adjustment in young adulthood. *Child Abuse & Neglect*, 21(7), 617-630.
- Gershoff, E. T. (2002). Corporal punishment by parents and associated child behaviours and experiences: A meta-analytic and theoretical review [Electronic version]. *Psychological Bulletin*, 128(4), 539-579.
- Gravitas Research and Strategy. (2005). *Strategies with kids: Information for parents (SKIP) research report*. Wellington: Ministry of Social Development.
- Hancock, J. (2003). *Case summaries: Parental corporal punishment of children in New Zealand. For UN Committee on the Rights of the Child (CRC/C/93/Add.4)*. Auckland: Action for Children and Youth Aotearoa. Retrieved from <http://www.acya.org.nz/>
- Larzelere, R. E. (1996). A review of the outcomes of parental use of nonabusive or customary physical punishment. *Paediatrics*, 98(4), 824-829.
- McLeod, J. D., & Shanahan, M. J. (1993). Poverty, parenting and children's mental health [Electronic version]. *American Sociological Review*, 58(3), 351-
- Smith, A., Gollop, M. M., Taylor, N. J., & Marshall, K. A. (2004). *The discipline and guidance of children: A summary of research*. Dunedin: Children's Issues Centre, University of Otago, and the Office of the Children's Commissioner.
- Strassberg, Z., Dodge, K. A., Pettit, G. S., & Bates, E. (1994). Spanking in the home and children's subsequent aggression toward kindergarten peers. *Development & Psychopathology*, 6(3), 445-461.
- Straus, M. A., Sugarman, D. B., & Giles-Sims, J. (1997). Spanking by parents and subsequent antisocial behavior of children. *Archives of Pediatrics & Adolescent Medicine*, 151(8), 761-767.
- Turner, H. A., & Finkelhor, D. (1996). Corporal punishment as a stressor among youth [Electronic version]. *Journal of Marriage and the Family*, 58(1), 155-

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Families must be able to raise their children in a safe and secure environment. To do this they must have good parenting skills and the support of the community in which they live.

Kaye Crowther, Plunket New Zealand President, 2005