

(This paper was presented at *Children's Rights: National and International perspectives*. Children's Issues Centre Conference, Otago University July 1999. It is to be published in the conference proceedings in early 2000).

Abstract

Children's rights to safety and physical integrity: An examination of messages that influence attitudes about physical punishment of children.

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The United Nations Convention on the Rights of the Child promotes children's rights to personal integrity and physical safety (Article 3 and Article 19). The United Nations Committee on the Rights of the Child has consistently found physical punishment of children to be inconsistent with the Convention's provisions. There are many reasons supporting the need for change in attitudes about physical punishment and there is a range of ways in which attitudes might be changed.

One way in which attitudes are influenced is through the messages implied or stated in the decisions and advice made public by respected public figures and by institutions. This paper examines messages about violence towards children implicitly and explicitly given by:

- ♦ Parliament (a review of legislation progressively limiting physical punishment)
- ♦ the legal system (a review of judicial decisions up to the present)
- ♦ human rights bodies (national and international)
- ♦ parent educators (a review of advice given in parenting texts over the last 30 years)
- ♦ public awareness campaigns.

We draw conclusions about the nature and effect of the messages identified.

CHILDREN'S RIGHTS TO SAFETY AND PHYSICAL INTEGRITY: AN EXAMINATION OF MESSAGES THAT INFLUENCE ATTITUDES ABOUT PHYSICAL PUNISHMENT

Robert Ludbrook and Beth Wood

Introduction

To hit or not to hit? That is a question on which most New Zealanders have strong views. For some parents the power to hit their children is seen not just as a parental right but as a parental duty. Others see hitting children as an unacceptable form of family violence at a time when all forms of family violence are seen as destructive to families and children. This paper looks at some of the messages being given to parents by our lawmakers, our courts, international human rights bodies and parent educators.

Support for physical punishment as a method of discipline has, especially over the last fifteen years, been diminishing. The law has progressively limited the situations in which adults can legitimately hit children. The courts are favouring an increasingly restrictive interpretation of what constitutes 'reasonable' corporal punishment. Human Rights bodies in New Zealand and internationally have been sending signals that our current law is out of step with fundamental human rights principles. Parent educators, while expressing a range of views on corporal punishment, are more inclined to express doubts as to its effectiveness and opposition to it as a means of discipline. Recent public awareness campaigns have stressed the dangers of family violence and have urged parents to use alternatives to smacking their children.

Where are we?

While there has been some change in attitudes towards physical punishment of children over the years in New Zealand surveys still indicate that more than half the population approve of smacking as a disciplinary measure (Wood, 1998). There is no political will to change our present law. A poll of Members of Parliament last year brought little response and minuscule support for repeal of s59 of the Crimes Act 1961 (Wood, 1998). Lack of support for repeal of s59 may reflect a misunderstanding of the effects of repeal rather than a true indication of level of support for changing attitudes towards physical punishment.

Messages influence attitudes

In giving thought to how we might further change attitudes in New Zealand it has been useful to think about what some of the forces that influence society might be. We believe that influential public

messages are important. What messages have society been receiving from experts, prominent public figures and institutions about violence towards children in general and about the use of physical punishment in particular?

In this paper we examine the messages given by changes in legislation over the last 100 years, by recent decisions in the Courts, by international human rights bodies, by parent advisors and educators since the 1950s and in a recent public awareness campaigns. There are other potential sources of influential messages that we don't review in this paper. These include messages from:

- ♦ church and community leaders
- ♦ the policies of public and private institutions which care for children and
- ♦ professional personnel in a position to influence parents, that is early childhood workers, teachers, social workers, medical and nursing staff, lawyers and particularly the academic staff who train these personnel.

The United Nations Convention on the Rights of the Child

The United Nations Convention on the Rights of the Child promotes children's rights to personal integrity and physical safety. Relevant articles include; Article 3 – the best interest clause, Article 12 – children's rights to express their views on matters that effect them and Article 19 – children's rights to protection from abuse. The United Nations Committee on the Rights of the Child has consistently found physical punishment of children to be inconsistent with the Convention's provisions. Among recommendations made by the Committee in their response to New Zealand's first Country Report was that s59 of the Crimes Act 1961 is repealed.

Messages from Parliament

The law gives important messages to people about acceptable and unacceptable behaviour. Unlike other messages the messages the law gives can be enforced by the state. People who break the law may be punished or penalised by the courts. The law is also an important symbol in that it enshrines principles agreed on by Parliament. Laws are passed by our democratically elected representatives and according can be said to represent the will of the people.

New Zealand law (and British law upon which it was modelled) has always adhered to the general principle that interpersonal physical violence is unacceptable and to be discouraged. The Crimes Act and Summary Offences Act define more than 80 criminal offences for various forms of interpersonal violence. These attract a range of penalties from a fine (for a non-injurious assault) to a lengthy prison term (for assaults causing serious injury or death). Our law has also characterised interpersonal violence as a civil wrong allowing the injured person to sue the perpetrator for damages or to obtain a protection order restraining further attacks.

The proscription of physical violence has never been absolute. There have always been exceptions. Until the 1930s New Zealand courts could order flogging or whipping of criminal offenders. Until 1941 a man could be flogged with a cat of nine tails and until 1936 a boy could be given up to 25 strokes with a rod. Physical punishment was permitted in prisons, in the armed services and in the merchant navy.

A long-standing exception to the law prohibiting physical violence allows adults in a position of responsibility towards children to use physical force against a child to correct the child's behaviour provided the force used is reasonable in the circumstances. This now appears in s59 Crimes Act 1961 but can be traced back to seventeenth century British law and even further back to Roman law. This exception can be raised as a defence to a criminal prosecution and to a civil claim for damages for assault. It also applies when courts are deciding whether a child is in need of care and protection or should be safeguarded by a protection order under domestic violence laws.

In the last fifteen years we have seen the very wide ambit of the 'reasonable correction', defence progressively narrowed:

- In 1985 the Child Care Regulations corporal punishment was banned in all New Zealand child care centres.
- In 1986 new Regulations prohibited the use of force as a means of punishment of residents in residential centres administered by the Children, Young Persons and their Families Agency.

- In 1989 new child protection laws allow the state to intervene when any child is likely to suffer physical or emotional harm or is ill treated or abused.
- In 1991 an amendment to the Education Act abolished corporal punishment in all New Zealand schools.
- In 1998 the Domestic Violence Act gave children a new right to apply for a protection order where they have suffered or have been threatened with physical, sexual or psychological violence.

The law has long given the message that interpersonal violence is wrong and will be punished by the courts and will give the victim the right to claim damages against the aggressor. But the messages the law gives have been mixed messages. Hitting people is wrong but parents and other people charged with the care of children can hit children as an acceptable form of punishment. Many commentators have pointed out the strange anomaly that the only group against whom physical violence is authorised are the smallest and most vulnerable people in society.

The opportunity to give children the same protection from violence as adults was not taken when the Children, Young Persons and their Families Act 1989 and the Domestic Violence Act 1998 were passed. The earlier anomaly has become an absurdity. Child protection laws preserve the right of parents to hit their children. Family violence laws intended to 'provide greater protection from family violence' deny children the protection afforded to adult family members.

Messages from the Courts

The task of deciding whether any corporal punishment is reasonable and whether it is intended to correct the child's behaviour has fallen on the courts. The courts are bound to apply the law. The limited role that the courts have is to decide on any particular set of facts whether parental punishment is reasonable (For useful commentaries on the New Zealand see J. Caldwell, *Parental Punishment* (1989)).

Criminal cases

Until recently all New Zealand reported cases on corporal punishment arose out of criminal prosecutions. *R v Drake* ((1902) 22 NZLR 478) decided in 1902 involved a mother who killed her daughter and unsuccessfully sought to rely on the reasonable correction defence. The Court held that in deciding the reasonableness of the punishment it was necessary to look at the age and health of the child and the nature of the misbehaviour that the parent was seeking to correct. The use of force was unlawful where the motive was not the correction of the child but spite, rage, fury, ill will or revenge by the parent. The Court in *Hanson v Cole* ([1921] NZLR 316) held that, in determining reasonableness, considerable allowance should be made for the actions of a parent who judged physical punishment was necessary. The parent should get the benefit of any doubt. In *Lourey v Barlow* ([1921] NZLR 316) a railway inspector caught a child skylarking and cuffed him and pulled him by the ear. It was held he was not a 'person in place of a parent' and could not rely on the reasonable chastisement defence.

In *Erick v Police* (Heron J 7/3/85 Auckland High Court 1734/84) a father hit his six-year-old son with a strap across the back on at least ten occasions. In defending a charge of assault, he argued that such punishment was culturally acceptable practice among the Niuean community. The judge rejected the defence finding that the degree of force used was unreasonable. He did accept that cultural factors could be considered when looking at the misdeed for which the child was being punished. The facts in *R v Accused* ([1994] DCR 883) were bizarre. A man, apparently a family friend and religious adviser, punished two boys with approval of their mothers. He required them to undress and put on tight fitting shorts. He then handcuffed and bound them and administered up to six strokes with a cane. When the children started to cry he hugged them and said he was sorry. The prosecution claimed that his motive was self-gratification but the jury accepted that his motive was to correct the children's behaviour. They nevertheless convicted him holding that the degree of force used was unreasonable. He appealed seeking a discharge without conviction, but this was rejected (*R v Johansen* 25/9/95 CA 220/95).

The manager of a crèche in *R v Hende* ([1996] 1 NZLR 153 (CA)) was convicted of various criminal offences on the basis of evidence that she had punished pre-school children by putting pepper in their mouths, given them a stupefying substance and had smacked them. On appeal, the convictions on two of the charges were overturned on technical grounds and the manager was discharged without conviction on the smacking charge.

Civil cases

Since the Domestic Violence Act 1995 came into force, there have been a number of decisions in which the acceptability of corporal punishment has been an issue. Anyone, including a child, can apply for a protection order against a family member if they have been subjected to physical, sexual or psychological abuse. But the Family Courts have accepted that the Domestic Violence Act must be read subject to s59 Crimes Act that permits parents and carers to use reasonable force by way of correction. The Family Courts have been faced with the conundrum that hitting children is not physical abuse if it is reasonable chastisement. Unlike criminal cases the focus of the Family Court matters is the welfare of the child and the decisions show a diminishing acceptance of physical punishment.

- In *B v H* (1996)(15 FRNZ 275) the Judge held that kicking a ten-year-old boy around the bottom and the knee amounted to physical abuse.
- In *S v B* (1996) (15 FRNZ 286, [1997] NZFLR 312) the conduct of a father who slapped a 14-year-old on his legs and cheek was held not to be physical abuse.
- In *Arvidson v Croft* (1996) NZFLR 741) a male carer who hit a child with jug cord was held not to be able to rely on the reasonable correction provision in s59.
- In *Ausage v Ausage* ([1997] NZFLR 72 also reported as *A v A [protection order]* 17 FRNZ 13) the 'child' was aged 16 or 17 and was working full time when the alleged abuse occurred. Her Samoan father pulled her out of bed in the early hours of the morning and punched her in the face and kicked her on the legs when he believed she had stolen some money (which she denied). Later he hit her with a very heavy blow to the face causing cuts and swelling when she resisted handing over her wage packet. A protection order was granted on the grounds of physical abuse, the judge commenting that it would be rare for the courts to accept that physical punishment of an older teenager was reasonable.
- In *Y v Y* (Auckland High Court 27/2/98 Baragwanath J) a High Court judge cautioned that, 'To smack a child by way of moderate discipline as a warning against courting danger would no doubt be accepted by a court as justified by s59 but its use for the purposes of discipline requires the greatest care'. He referred to overseas authorities to the effect that using a stick or implement to smack a young woman approaching teenage or a younger child would be very difficult to justify.

Modern judges seem to have lowered the threshold of what corporal punishment can be considered reasonable. While it is not always easy to reconcile the New Zealand decisions, there is obvious movement to restrict the situations in which corporal punishment will be reasonable. The Family Court has become unwilling to accept the reasonableness of anything other than a light slap as a means of punishing a young child. The use of a stick, strap or flex to punish a child is far less likely to be seen as reasonable. Kicking, punching or directing blows at a child's face are likely to be seen as unreasonable. Physical punishment administered to an older teenager will rarely be tolerated.

From the point of view of parents the rules about punishing children are now ill defined and uncertain. The consequences for a parent or carer of exceeding the bounds of 'reasonable correction' can be serious.

The parent who uses physical punishment may be:

- Liable to criminal prosecution and conviction for assault or ill treatment.
- Sued for exemplary damages for assault and battery.
- Forced to leave the family home or face removal of a child on the grounds that the child is in need of protection.
- Restrained from contact with the child by means of a protection order.
- Seriously disadvantaged in Family Court proceedings over custody of or access.

At the same time as the law has progressively narrowed the categories of children who can be subjected to corporal punishment, the courts appear to be narrowing the nature and degree of punishment that is considered 'reasonable'.

Messages from international law and New Zealand Human Rights bodies.

A number of United Nations charters of rights proclaim as a universal human right that no person shall be subjected to cruel, inhuman or degrading treatment or punishment' (Art 5 Universal Declaration of Human Rights (1948), Art 9 Declaration of the Rights of the Child (1959), Art 9 International Covenant of Civil and Political Rights (1966)). But can the hitting of children with a strap or cane be described as 'cruel' or 'degrading'? Because these international instruments include no mechanism for interpretation or adjudication of the general principles it is not possible to give any authoritative answer. In 1982 the New Zealand Human Rights Commission in its report on a 1979 complaint on treatment of residents in Auckland Social Welfare Homes referred to evidence of boys receiving severe beatings and strappings and expressed the opinion that this raised serious and substantial questions regarding New Zealand's compliance with the UN Covenant of Civil and Political Rights. This finding led to the banning of corporal punishment in all Social Welfare Homes. All three of New Zealand's Commissioners for Children have condemned corporal punishment.

The United Nations Convention on the Rights of the Child (1989) contains more specific rights and protections for children. While there is no adjudication or enforcement mechanism the Convention requires that ratifying countries report at regular intervals to the UN Committee on the Rights of the Child on their implementation of the principles of the Convention. The UN Committee has observed on numerous occasions that corporal punishment of children breaches various Articles of the Convention. In its comments on New Zealand's report in January 1997 the Committee recommended that the New Zealand government review s59 and effectively ban all forms of physical punishment. The government has taken no action on this recommendation.

Most European countries are signatories to a European Convention on Human Rights, Unlike United Nations Conventions, the European Convention has a mechanism by which individuals can take cases to the European Commission and the European Court of Human Rights. In a landmark decision of the European Court in 1998 (*A v United Kingdom*) the United Kingdom was ordered to pay \$30,000 compensation and costs to a boy who had been repeatedly caned by his stepfather. The Court found that English law and, in particular, the reasonable correction exemption (in virtually identical terms to our s59), failed to provide the boy with reasonable protection from 'inhuman or degrading punishment'.

The message from international bodies is unequivocally that all physical punishment of children is unacceptable. New Zealand has been found to be in breach of the UN Convention on the Rights of the Child and will have to explain its default when it files its second report due next year.

Messages from parent educators

Recently one of the authors of this paper examined 45 texts written between 1950 and 1997. Most of these were 'how to' books giving advice to parents on the matter of caring for and disciplining children. One was an older child development text, which contained a section on discipline. Twenty-six of these were published in the United States of America, nine in Great Britain, five in Australia and five in New Zealand.

The books were selected by examining the entire range of appropriate texts available in the National Library in Wellington, consulting friends' bookshelves, taking a sample from a local library and examining what was available on a shelf in a bookshop. A full list of the books examined is appended to our paper.

Two of these books were written before the 1970s, six between 1970 and 1980, 19 in the 80s and 18 since 1990. Eight of the books were written by medical personnel that is, paediatricians or psychiatrists, twenty eight by psychologists or psychotherapists, and the remainder were in other professions or did not state their profession – some books had more than one author.

Fifty-six percent of the books, more than half, expressed a clear opinion that physical punishment was not advisable or useful. For example Thomas Gordon says, *Physical punishment actually teaches youngsters to use violence themselves, both inside and outside the family. It serves as a vivid learning experience, inculcating in its victims that the use of force is sanctioned in relationships with people* (Gordon, 1989). Jane Bluestein argues, *Using parenting skills like modelling, communication, positivity, encouragement, negotiation, acknowledgement, supportiveness, boundary setting and follow through –along with having healthy, nondestructive outlets for your anger and rage – can help you achieve your goals and get what you want without hitting your child* (Bluestein, 1997).

A number of others, 31%, did not specifically address physical punishment but significantly in half of these authors expressed caution about the value of any form punishment as an effective way of shaping a child's behaviour. Runyon says, *There is a significant difference between punishment and discipline. To understand the difference parents should know that 'discipline' meant 'to teach'. Discipline should not be reserved for the times a child is misbehaving. Punishment, not discipline, makes the child feel guilty* (Runyon, 1992). (The author here is linking guilt with low self-esteem).

Only seven (13%) of the 45 books examined supported any use of physical punishment. Even of these, four expressed the view that physical punishment should be used in a limited way and with caution. Benjamin Spock a 1957 edition of his much-used manual says, *Is physical punishment necessary? The only sensible answer is that a great majority of good parents feel that they have to punish once in a while...Before we go any further with the subject of punishment, we ought to realise that it is never the main element in discipline – it is only a vigorous additional reminder that the parent feels strongly about what he says* (Spock, 1957).

Christopher Green, the 'toddler tamer' popular with many modern parent supports the use of spanking only after some dangerous, life-threatening act, or to defuse the rapidly escalating, no-win confrontation. He goes on to say, *Having mentioned two situations in which smacking might be considered, it must be emphasised that smacking does more harm than good in every other instance. There is no doubt that, used as the main form of discipline, smacking is negative and emotionally degrading, as well as being an extremely ineffective form of control* (Green, 1984).

Illingworth, in 1972 writes, *In the third year, mild physical punishment may be needed, but only rarely...No smacking should ever hurt, it is never necessary to hurt a child. It is not the smack which hurts: it is the parent's disapproval.* He thankfully disagrees with the recommendations of an American psychiatrist he quotes as saying, *A properly administered spanking consists of turning the child over one's knee and holding his head down by firm pressure on the back of the neck. With the free hand the parent administers ten hard blows with a hairbrush or similar instrument, to the bare buttocks of the child...The buttocks are admirably designed for character building purposes* (Illingworth, 1972).

Three pro-spankers identified in this survey are convinced of the value of hitting for religious reasons. However James Dobson places limits on the use of hitting. In 1978 he limited spanking as reserved, *for use in response to wilful defiance, whenever it occurs* (Dobson, 1989). More recently, in 1985, Zig Zigler, quoting Dobson and Billy Graham as authorities answers the question *Is physical discipline (spanking) necessary?* in the affirmative. *As a rule of thumb, when your child is 'wilfully disobedient' toward you, that's when physical action is necessary...A little heat on the bottom should instantly communicate what you mean* (Ziglar, 1989).

Philip Greven explores the rationale for religious attitudes supporting physical punishment in '*Spare the Child*' (Greven, 1991). He sees punishment embedded in most Christian theology. The threat of future and eternal punishment, hell, is said to motivate surrender to the will of God. Breaking the will of children's is seen as the central task of parents. Another rationale for physical punishment is that God has willed it.

Gerven's book is rich with quotes from parenting manuals. Two examples are of historical interest:

An anonymous writer in "The Mother's Magazine" in 1841 says, *I have sometimes thought that parents of the present day were too indolent or too feeble to exercise family government. But I am sure that if half the breath spent in repeating commands or coaxing obedience, or reasoning about the propriety of the thing required, were used in the application of the rod according to divine appointment, until submission and a prompt compliance with a command once given were gained, there would be a great saving of time, of strength, and (of) broken-hearted parents.*

James Dobson (1940), one hundred years later says, *The child may be more strong willed than the parent, and they both know it. If he can outlast the temporary onslaught, he has won a major battle, eliminating punishment as a tool in the parent's repertoire. Even though Mom spansks him, he wins the battle by defying her again. The solution to this situation is obvious: outlast him; win, even if it takes repeated measure.*

Other evaluations of parenting manuals

Judy Cashmore and Nicola de Haas in their discussion paper on physical punishment of children written in Australia in 1994 say, *By contrast with writers of the previous century, few twentieth century child care authors are silent on the subject of physical or corporal punishment...A minority are in favour of physical punishment, and increasing majority are opposed to any form of violence inflicted on children* (Cashmore, 1994).

Murray Strauss too refers to the question of expert parenting advice on the subject. He quotes a speech by Carsons given in 1988 entitled, 'Advice in child rearing manuals', which looked at 35 of the most widely read manuals of that time, and found that 35% said nothing about physical punishment, 30% encouraged it and 35% discouraged it (Strauss, 1994).

Of the parenting manuals surveyed for this paper which were written in the 80s and 90s, 59% are clearly against physical punishment of any sort and many others supported child rearing methods which did not emphasise punishment as tool or technique in any way. Why then do so many parents persist in using it? One study reported confusion, complexity and contradiction when talking to parents about why they used physical punishment. While some saw it as their duty and necessary to make their children behave, others were influenced by their own experience and most by a need to relieve their stress and anger (Gough, 1997).

Messages from public awareness campaigns

Over the last few years a number of public awareness campaigns have focused on reducing violence affecting children. Their messages have been unequivocal – in sum *violence damages children*. For example the Police and others have done much to increase awareness about the extent of school violence, bullying, that we have in New Zealand and to encourage polices that address this. In 1993 the Office of the Commissioner for Children began a campaign promoting not only a change in attitude but also a change in the law in regard to physical punishment. This led to vigorous media debate. It was followed by the release of widely used posters and pamphlets promoting attitude change and alternatives to hitting. Domestic violence and community violence are topics addressed by Safer Community Councils. In 1997 the Crime Prevention Unit of the Department of the Prime Minister and Cabinet and the Family Violence Unit of the Social Policy Agency of the Department of Social Welfare collaborated to develop an education resource kit for Safer Community Councils called *Community Action to Prevent Family Violence* (Lambourne, 1997). This kit clearly discourages the use of physical punishment, provides alternatives and quotes the Commissioner for Children recommendation that there be a review of s59 of the Crimes Act 1961.

In 1995, the then Children, Young Persons and their Families Service, began a campaign called "Breaking the Cycle" – in their own words it is a campaign targeted at families to encourage them to break the cycle of inter-generational abuse (Colmar Brunton, 1996). It has had television, radio, and print components and has included several phases aimed at different aspects of child abuse. Their 1998 component was directly aimed at promoting alternatives to physical punishment. A media release entitled, 'Let's beat smacking, hands down', stated, *We want all parents to look at alternatives to smacking, as we believe it is an undesirable way to discipline children in this day and age*. It went on to say that smacking has a number of unintended negative consequences. Stickers, a booklet and videos on alternatives to physical punishment were made widely available. There were television advertisements. The message was very clear.

These initiatives have given very explicit and public messages to New Zealand that are contradictory to the messages given in s59 of the Crimes Act.

Section 59 Crimes Act 1961

Dr Ian Hassall, New Zealand's first Commissioner for Children, has written:

Violence towards children is cowardly and is not justifiable in terms of any demonstrable corrective effect. It teaches that power confers the right to inflict pain, a lesson that is likely to perpetuate violence. Nevertheless our law permits it through s59 Crimes Act 1961. The terms used in the Act cloak the violence in righteous respectability. Section 59 says that a parent or person in place of a parent is "justified in using force by way of correction if the force is reasonable".

None of the highlighted words are appropriate and together they represent a view of parenthood that is bleak and inept. Responsible trainers of animals, dogs for example, say that physical attack is not

justified, is not corrective of unwanted behaviour and is not reasonable. In addition it is against the law (Commissioner for Children, 1994).

The value of changing the law has been demonstrated in Sweden, the first country in the world to ban physical punishment, in 1979. A very recent analysis of the effects of this ban was recently published in the journal 'Child Abuse and Neglect' (Durrant, 1999). The author, Joan Durrant, evaluated data from official Swedish sources on: public support for corporal punishment, reporting of child physical assault, child abuse mortality, prosecution rates, and intervention by the social authorities. Her findings are: public support for corporal punishment has declined, identification of children at risk has increased, child abuse mortality is rare, prosecution rates have remained steady, and social service intervention has become increasingly supportive and preventive.

Conclusion

It would be possible to leave the law as it stands in the anticipation that support for corporal punishment will slowly wither away so that s59 Crimes Act will in time become a virtual irrelevance. Judicial whippings and floggings had fallen into disuse well before the law was changed removing the power of the courts to order them.

We would argue that the quickest and most effective way to convey the message that corporal punishment of children is no longer acceptable is to repeal s59. The law, as it stands, gives a licence to parents and carers to hit children. This is contrary to the messages coming from the sources outlined above which tell us that corporal punishment is not an effective means of discipline, that it breaches universal principles of human rights and exposes New Zealand to mounting criticism from the United Nations Committee on the Rights of the Child.

But there is another reason why the current law is unsatisfactory. Parents are receiving mixed messages from the law. Section 59 gives them the message that they can hit their children, yet if they do so they may find themselves facing removal of the children from their care under the Children, Young Persons and their Families Act, having severe restrictions imposed on their relationship with their children through a protection order under the Domestic Violence Act or being placed at a significant disadvantage if the courts come to make decisions about custody or access.

Section 59 can be a trap for parents - lulling them into a belief that hitting children is a parental right, without warning them that the exercise of that right might do irreparable damage to their relationship with their children.

Parents deserve a clear and unambiguous message. Hitting is not OK. Corporal punishment is a form of family violence. Children deserve no lesser protection than adults.

The fall and fall of corporal punishment

1867 Offences Against the Person Act made provision for boys under 16 convicted of certain offences against the person to be whipped as a punishment.

1893 Criminal Code Act extended flogging or whipping as a punishment for under 16s for 30 crimes against the person. People over 16 could be flogged for 11 of these. Flogging was administered with a cat of nine tails or whipping with a rod.

1935 The Cadogan Report (UK) urged the repeal of laws allowing the birching of young people considering that corporal punishment was not a suitable or effective method of punishment.

1935 The last judicial flogging in New Zealand.

1941 Crimes Amendment Act abolished the right to whip boys.

1948 Corporal punishment as a penal measure finally abandoned in Britain but continued in adult prisons and approved schools.

1959 The United Nations Declaration on the Rights of the Child stated that children should enjoy special protection including special legal safeguards and shall be protected from all forms of cruelty.

1960 The Barry Report (UK) unanimously opposed the reintroduction of corporal punishment finding no evidence that it was an effective deterrent.

1961 Crimes Act gives statutory confirmation of the common law principle that parents, carers and schoolteachers can use physical punishment to correct the Behaviour of children.

1968 Justice Department in *Crime in New Zealand* concluded that corporal punishment was objectionable because it was ineffective as a deterrent, degrading and unsuitable as a means of punishment of juveniles.

1976 The International Covenant on Civil and Political Rights stated that no one shall be subjected to cruel, inhuman or degrading treatment or punishment.

1978 The European Court of Human Rights in *Tyrer v UK* held that a judicial punishment of 3 strokes of the birch given to a 15 year old under Isle of Man law was 'degrading punishment' and breached the European Convention on Human Rights.

1979 Sweden was the first country in the world to prohibit all corporal punishment of children. This lead has been followed by Finland, Denmark, Norway, Austria, Cyprus, Latvia and Croatia 1982.

1982 Penal Policy Review of the Department of Justice found that the reintroduction of corporal punishment would damage New Zealand's international reputation and was incompatible with the shift in penal policy from retribution to reformation.

1982 Human Rights Commission concluded that the use of physical punishment in Social Welfare institutions raised serious doubts as to New Zealand's compliance with the UN Covenant on Civil and Political Rights.

1985 Child Care Centre Regulations r21(b) removed from 1 April 1985 the right to use corporal punishment in respect of any child in a Child Care Centre.

1990 Education Amendment Act 1990 bans corporal punishment in all state and private schools and in early childhood centres from 23 July 1990.

1991 Department of Social Welfare Policy on Punishment for Departmental foster parents and Family Home caregivers stresses that the use of corporal punishment is an unacceptable practice.

1993 New Zealand ratifies United Nations Convention on the Rights of the Child thus agreeing to take legislative and administrative measures to protect children from all forms of physical violence, abuse or maltreatment and from cruel, inhuman or degrading punishment.

1996 Domestic Violence Act 1995 allows children to apply for a protection order against a parent, a family member or anyone with whom they ordinarily share a household where they have suffered physical, sexual or psychological abuse.

1996 The Family Court decides that Domestic Violence Act is subject to parental power to use force by way of correction of children in the Crimes Act.

1997 United Committee on the Rights of the Child expresses concern over s59 Crimes Act and recommends that New Zealand reviews its legislation with regard to corporal punishment of children within the family in order to effectively ban all forms of physical violence or abuse.

1998 The European Human Rights Court in *A v UK* found that the caning of a child by his stepfather amounted to an inhuman or degrading punishment and ordered the United Kingdom government to pay ten thousand pounds compensation.

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