

The rise and fall of S.59 of the Crimes Act

A presentation by Beth Wood and Ian Hassall at LT2, Rutherford House, Wellington. Hosted by the Health Services Research Centre, Victoria University of Wellington.

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Part 1: The road to change

Beth Wood

A few years ago I would not have thought it possible that in 2007 I would be speaking about section 59 after it had been repealed – it often seemed as if that struggle to have the law changed would go on forever. It still seems a little miraculous that the law has changed and perhaps there were some small miracles in this.

It was no miracle that Sue Bradford put a bill for repeal into the ballot – she had had a conviction for a long time that changing the law on physical punishment was critical to achieving better outcomes for New Zealand children. But it was a miracle, or good luck at least, that her bill was drawn.

It seemed like a miracle that Sue's bill survived the 1st reading but I guess, at that time, with an election looming it made sense for Labour to leave the door open and graciously refer to the opportunity for public consultation that the select committee process would provide.

As you know the bill was modified at the select committee stage to ensure Labour support for its passage but it still seems something of a miracle that Labour continued to support the bill throughout its passage, possibly with some internal disagreement. I believe leadership of Helen Clark and a number of strongly committed Members of Parliament are to thank for this

This presentation is going to be divided into three parts – I will begin with something about the wider factors, that in some way contributed to reform being a possibility. Ian will take a look at factors influencing the views of the public and to finish I will talk briefly about “where to from here?”

As part of another exercise I have developed a very extensive timeline of events that were part of the road to repeal of section 59. It is too long to share with you in its entirety today. What it did for me was illustrate the wide range of influences that helped shift some attitudes and give the movement for change momentum – and it also illustrated just how many people had made a contribution over time.

I am only going to share some highlights of this with you today under headings as a way of illustrating some of the powerful forces that influenced change.

In 1961 the new Crimes Act included a section (section 59) that confirmed the common law principle, recognised in many English-speaking jurisdictions throughout the world, that parents, care-givers and school teachers could use force to correct the behaviour of children.

It took a further 46 years to have this provision repealed. On May 16th 2007 the New Zealand Parliament voted overwhelmingly to pass the Crimes (Substituted Section 59) Amendment Bill, which overturns the statutory defence contained in section 59 and specifically bans the use of force for the purposes of correction of children.

International influences

There is no doubt that the movement for change in this country gained some of its initial and ongoing impetus from international influences.

In 1979: Sweden became the first country in the world to introduce legislation specifically banning the use of corporal punishment. Sweden had repealed its statutory defence in 1957. Since 1979 eighteen other countries have legislated to ban corporal punishment¹. New Zealand makes the total 19 at this time.

The UN Convention on the Rights of the Child

1989: The *United Nations Convention on the Rights of the Child* was adopted by the United Nations General Assembly².

1993: The *United Nations Convention on the Rights of the Child* was ratified by New Zealand. The UN Committee on the Rights of the Child has consistently regarded the legitimisation of corporal punishment as being in contravention of the Convention. The Committee twice recommended that New Zealand make physical punishment illegal (in 1997 and in 2003). In the early 1990s the Government's investigations into what could be done about section 59 were motivated by the Committee's recommendations. I believe this had some influence on Government policy.

Child advocates

Child advocates led the movement for change in New Zealand – beginning in 1978 when Jane and James Ritchie, psychologists from Waikato, made a submission to Parliamentary Select Committee on Violent Offending, recommending repeal of section 59. The Ritchies continued to advocate for repeal over the years for example:

In 1981 in the book *Spare the Rod*³ Jane and James Ritchie gave a comprehensive critique of corporal punishment of children and argued a strong case for legal reform.

1989: The New Zealand government appointed the first Commissioner for Children. Dr Ian Hassall (and all successive Commissioners) advocated for the repeal of section 59.

In 1997: EPOCH New Zealand was established as a charitable trust with one of its aims being the repeal of section 59 of the Crimes Act. EPOCH's most effective function was the development and maintenance of a network of organisation publicly committed to repeal of section 59.

Later other major child advocacy organisation put their weight behind the cause –Barnardos, Plunket, Unicef, Save the Children, the Institute of Public Policy at the Auckland University of Technology and many others

2005: Save the Children New Zealand published the report *Insights; Children and young people speak out about family discipline* by Terry Dobbs⁴. This covered research into the views of children on family discipline and includes their views on physical punishment.

2006: As part of support for Sue Bradford's bill a group of child advocacy agencies started meeting in Wellington to co-ordinate the campaign. A similar group was established in

¹ <http://www.endcorporalpunishment.org>

² United Nations (1992) *The United Nations Convention on the Rights of the Child: He Hui Whakatau I te Mana o te Tamaiti a te Whakakotahitanga o nga Whenua o te Ao*. Wellington: Office of the Commissioner for Children/ UNICEF.

³ Ritchie J and J. (1981) *Spare the Rod*. Sydney. Allen and Unwin.

⁴ Dobbs T (2005). *Insights: Children and young people speak out about family discipline*. Wellington. Save the Children New Zealand.

Auckland. Among other things the group in Wellington worked to engage visible public support including celebrities and church leaders, co-ordinated lobbying and implemented a media strategy.

Family violence and child abuse

For some time there has been a great deal of publicity about the deaths of children from violence. There has also been publicity about violence to women. Outrage and alarm has grown over the years. I believe this played a significant place in increasing support for repeal of section 59 despite protests from the opposition that a change in the law would not reduce child abuse.

In 2000 an article in North and South magazine, entitled *Disciplined to Death*⁵, told the horrific story of a 4-year-old who died as a result of physical discipline. The author, Deborah Coddington, advocated for repeal of section 59.

In 2003 the violent beating and death of a child about the same time as the release of the UN Committee's recommendation and the publication of the UNICEF Innocenti report (showing New Zealand's poor international rating) provoked unprecedented media attention and debate about physical discipline and section 59⁶.

Court Cases where section 59 was used as a defence

Over the years a relatively small number of cases involving the use of the section 59 have attracted attention and stirred discussion. The most recent of these were in 2005 when two significant assault cases drew attention to section 59. In one, the father was not acquitted despite invoking section 59 as a defence when charged with hitting a child on the buttocks causing bruising. In the other, the mother was acquitted of assault when she invoked section 59 in her defence during a prosecution that followed assaults on her adolescent son with a cane and a riding crop⁷.

New Zealand law and policy

Over time there has been a trend against the use of physical discipline.

In 1990 the Education Amendment Act was passed prohibiting corporal punishment in all state and private schools. In 1991 the Department of Social Welfare adopted a policy that stated the use of corporal punishment was unacceptable in foster homes.

In 2000 as a result of recommendations from the UN Committee on the Rights of the Child, the New Zealand Cabinet directed officials to report on how other countries address the issue of compliance with the UN Convention on the Rights of the Child with regard to physical punishment⁸. Between 2000 and 2003 there was ongoing policy work led by the ministries of Justice, Social Development and Youth Affairs.

A series of Cabinet papers and decisions followed.

2003: The Government announced \$10million of funding for public education on alternatives to physical discipline. This becomes the SKIP initiative —Strategies with Kids: Information for Parents (a positive parenting campaign), which was launched in 2004 as an ongoing,

⁵ Coddington D (2000). *Disciplined to Death*. North and South Magazine. February 2000.

⁶ Wood B and Davies E. (2004) *Changing Attitudes about Physical Punishment of Children in Aotearoa: One component of primary prevention of child abuse*. Unpublished presentation made at ISPCAN Conference in Brisbane Australia, September 2004.

⁷ EPOCH New Zealand Occasional Newsletter. No 23. July 2004

⁸ CAB (00) M 32/7 (Obtained under the Official Information Act).

comprehensive, Government funded, community-based initiative aimed at raising awareness of, and encouraging the use of, alternatives to physical discipline⁹.)

2003: The Government announced that a decision on section 59 would be postponed until the public education campaign has been implemented and reviewed¹⁰. Sue Bradford's bill intervened before the Government had to make a decision.

Research

There is increasing international evidence that the use of physical punishment contributes to poor outcomes for children.

2004: The Office of the Children's Commissioner and the Children's Issues Centre published the report *The Discipline and Guidance of Children*¹¹. This comprehensive review of research into physical discipline received much publicity.

2004: The Children's Issues Centre held a conference in Wellington called *Stop it - it Hurts: Research and Perspectives on the Physical Punishment of Children*. The conference focused on various aspects of ending physical punishment and included a Maori and a Pacific perspective.

Although support for change was growing steadily and was visible at the time the law changed there was considerable public opposition to change – making it more of a miracle that the vast majority of Parliament supported the bill at its final reading.

Part Two: Public attitudes Punishment

Ian Hassall

We are a punishment-oriented society. When we are angry or fearful we want to punish someone. The present series of marches against ill-treatment of children in New Zealand is instructive. Many of the marchers and the media people who give them prominence are good-hearted New Zealanders without axes to grind. But they are mostly ill-informed. What have they reached for as a solution? Better ways of catching people and punishing them more severely. They haven't sought information or understanding. At least that is what the media are reporting. I doubt that those who speak in the media see the inconsistency of their position of aiming to reduce violence and advocating it at the same time.

Ironically, the popular public framing of people like me who do not see greater surveillance and more severe punishment as the solution is as impractical people whose feet are not on the ground, people who hide in bureaucracies or academic institutions and are not in touch with the real world of good honest New Zealanders.

I have to confess to not being a good honest Kiwi. There is something deficient in my make up. I have never understood the concept of punishment. I understand, retaliation, vengeance, dominance, pain as a natural consequence of error, the excitement of the hunt, blood lust and the simple pleasure to be had from someone else's discomfort. Punishment, though seems to me to be an idea with no roots in natural human behaviour unless it should be in the desire to dress up these others in the cloak of respectability and judicial omnipotence. Perhaps the concept serves a purpose in putting some of our more violent urges into a controllable frame,

⁹ <http://www.familyservices.govt.nz/info-for-families/skip/>

¹⁰ Maharey Notes Issues 88. 16.05.93 www.beehive.govt.nz/newsletter

¹¹ Children's Issues Centre and Office of the Children's Commissioner. (2004) *The Discipline and Guidance of Children: A Summary of Research*. Wellington. Office of the Children's Commissioner.

but it is as well to understand its essential hypocrisy and to know that it has no standing in its own right.

Striking your child

On the face of it, striking your child is neither rational nor culturally sound.

It is not rational because this is a person whom you love and with whom you wish with all your heart to establish and maintain a loving relationship. Inflicting pain is not a rational means of achieving that.

It is not culturally sound because it is a gross form of bullying. It is a strong part of our cultural ethos that we despise bullies, that is, people who assault and intimidate those smaller and weaker than themselves. In the Christian tradition we respect and protect children. No-one can imagine Jesus striking a child.

Physical punishment

Nevertheless, physical punishment has long been regarded by most New Zealand parents as a normal part of child-rearing. James and Jane Ritchie, modern pioneers of research into child-rearing practices in New Zealand, interviewed 151 mothers in 1963 and 1964 and concluded¹²

Methods of control are the key to the mother-child relationship and it is here that the New Zealand pattern is sharply defined. Control by smacking is its chief characteristic and for many mothers virtually the only control consistently employed. They have thrown away some of the most potent reward techniques; praise is thought by many to be inappropriate; tangible rewards are castigated as "bribery"; holding up other children as positive and negative models is thought to be an antisocial technique; very few families use a credit-point reward system; most think isolation of the child cruel (or find it impossible to achieve); many regard reasoning as a waste of time. What is left for them to use? Only punishment, threat of punishment, and occasional praise.

Jane and James Ritchie's body of research recorded a society in which violence toward children was commonplace and in which authoritarian attitudes ruled.¹³ They believed New Zealand shared this orientation with the other so-called Anglo nations, Britain, the U.S.A., Canada and Australia. These nations believe, to a greater degree than many others, in the effectiveness of punishment in dealing with transgression. They have high rates of imprisonment of adult offenders as well as legally sanctioned physical punishment by parents.¹⁴

In such societies physical punishment of children is held to have a salutary effect and there is social pressure to administer it.

*The objective of all this is thought to be the development of 'character'. A person who lacks 'character' has been 'spoilt'. 'Spoiling' results when parents are indulgent, give way to the wishes of the child, have not taught their children patience, consideration for others, respect for elders, respect for property, to be seen and not heard.*¹⁵

¹² Ritchie, Jane, Ritchie, James. (1970) *Child rearing patterns in New Zealand*. Dunedin?: A.H. & A.W. Reed. p.157

¹³ Ritchie, J., Ritchie, J. (1981) *Spare the Rod*. Sydney: George Allen & Unwin.

¹⁴ Ibid

¹⁵ Ibid p10

Physical punishment of NZ children (1963 / 64)

The sample was sixty-seven percent Pakeha (of European or non-Maori descent) and thirty-three percent Maori.

Where does this behaviour come from?

If striking children is not rational or culturally sound and is not supported as a means of correction where does it come from? Some of the human factors supporting anti-repeal arguments were; custom, social pressure, fear of loss of control and a sense of duty. These were reflected in the contributions to the public debate by opponents of Sue Bradford's bill.

Attitudinal foundations of opposition

National, communal and family custom are powerful forces. The strength of family custom was examined in a survey of 449 Seattle parents. There was a significant tendency for parents to approve of the same type of physical and emotional punishment as they experienced as children. Other factors, race, income and education did not have a statistically significant association with the type of punishment meeting parental approval.

Little Polly Flinders ...

This rhyme and others like it may not have been intended seriously or they may have been considered only a mild warning but they stand as an expression of an attitude toward children that supported physical punishment.

Social pressure to conform

A potent support for a summary approach to discipline of children is the fear of being shown up by children's behaviour, that we will appear weak and foolish by being unable to control them. This social pressure, whether real or imagined, implies permission for decisive control measures including force and intimidation if alternatives are unknown or unclear.

The supermarket tantrum has been frequently cited during the public debate as a representative tableau. The mother feels the disapproval of the surrounding shoppers. She is tired and distressed and strikes the screaming child. The public have expressed both approval and disapproval. It is a popular image and perhaps it is a sign of the maturing of the debate that it has become the subject of a television advertisement in which the mother throws herself to the floor in a tantrum.

Fear of inadequacy

There is acknowledged uncertainty in their role among New Zealand parents and a hunger for mastery of parenthood. Websites, helplines, magazines and television programmes that provide advice on parenthood are popular. There are shelves of books giving advice to parents in every generalist bookshop.

The parental role presents such a range of opportunities and challenges that no reasonable parent would claim perfection. Many parents are willing to acknowledge this and have come to an acceptance of their limitations. This idea is acknowledged in the concept of 'good enough parenting'. Even so, people still feel inadequate and guilty, that they are not good enough parents and they perversely strike out at their children.

Resentment at being told what to do

Many parents have expressed resentment of the criticism of their behaviour as parents that is implied by the demand for law change to end physical punishment. They have particularly resented being told what to do by 'experts' who they see as not sharing their values or life

experience and pursuing an agenda which is foreign to them. This view has special resonance in New Zealand where people claiming to be experts are regarded with suspicion and scorn.

Fear of intrusion into and exposure of family behaviour

Many New Zealanders feared intrusion into what they saw as their private realm of home and family. The vocal opponents of change sought to escalate this fear with talk of 'home invasion' and 'nanny state'.

Desire for control

Related to the phenomenon of social pressure for immediate control of children is the fear that adult authority and standing will be undermined by real or imagined challenges from children. It is a common saying that the young people today are out of control or need more discipline.

A macho attitude toward children and child-rearing

There is a common fear, particularly among fathers that children will grow up 'soft' if they are not subjected to pain and treated roughly.

Religious doctrine

Break their wills betimes...

The evangelical movement, beginning in the nineteenth century has contributed to the punishment orientation of English society and its diaspora.

Children are not little bundles of innocence

A modern expression of the same idea is to be found on the website of an evangelical Christian group that has been prominent in the debate surrounding Sue Bradford's bill.

Fear of children going astray

Another motive for resistance to change is the feeling of duty to raise well-behaved children who conform to models of proper behaviour. Associated with this is the demand for respect, a word whose meaning for some is strongly associated with fear.

Latterly, in response to scares by organised opposition

Fear of criminal proceedings

Opponents of Sue Bradford's bill sought to gather support by proposing that 'ordinary parents' would become criminals if it were passed and there would be unjust prosecutions. This view is a restatement of the view that physical punishment of children is normal.

Denial of the popular will

Toward the end of the period of public debate there were almost daily unscientific, electronically conducted opinion polls. Together with some earlier scientific surveys they found a majority opposing change. There was much talk then of democracy being denied because of this majority. The response to survey questions has, of course depended on how they are posed. They are commonly framed as 'just parent versus naughty child'. The Justice Ministry survey of 2001 was an example. If they are framed more from a 'parental choice of disciplinary measures' perspective, as the UMR Insight survey of 2005 did, a different result is achieved.

There have been voices raised against the physical punishment of children over the years. Its futility, injustice and brutality have been recognized and the prevailing view of its normalcy challenged.

The New Zealand writer Katherine Mansfield is such a voice. In her story, 'Sixpence', written around 1921 she evokes the feelings of betrayal, helplessness and regret of a father who is coerced into administering physical punishment to his son.¹⁶

There is some evidence for a gradual change in public opinion in New Zealand. Successive surveys of parental attitudes and practice in relation to child discipline begun by the Ritchies showed a steady reduction in the number of people who admit to believing that there are certain circumstances when it is all right to 'thrash' or 'beat' a child, from 11% in 1981¹⁷ to 3% in 1993.¹⁸ At the same time the proportion of the population believing there are certain circumstances when it is all right to smack a child has remained steady at around 80%. What has been behind these changes?

Attitudinal foundations of support for the bill

- Simple compassion toward children, a desire not to see them suffer pain or humiliation
- Anger at publicized cases of abuse
- Doubt about hitting's legitimacy based on the knowledge that it was frequently an expression of parental upset rather than for 'correction'.
- Recognition that it was not an effective way of getting children to do what was wanted of them
- A realisation that at least some of the public support for hitting had been engineered by minority interest groups with their own agenda
- A view of children as citizens with the right to freedom from physical attack.
- A belief in non-violent solutions to interpersonal disputes
- Shame at abuse cases and NZ statistics. Pride in NZ.
- Reaction against the opposition campaign

How can we help to consolidate this year's step away from our largely mindless fixation on punishment?

What can we do?

We can:

- Recognize and expose attempts to return to the status quo before the law change
- Broaden understanding and acceptance of child behaviour and children's culture and foster interest in it.
- Raise children's status by including them as respected participants in societal processes.
- Name, shame and eliminate denigrating language.
- Use and make fashionable the language of love and approval.
- Bolster legitimate parental authority.

Conclusion

Ours is a punishment-oriented society. But punishment has no rational basis. The widespread physical punishment of children in New Zealand and other English-speaking countries is a

¹⁶ Mansfield, K. (2006). *The collected stories of Katherine Mansfield*. Ware, Herts, England: Wordsworth Editions.

¹⁷ Ritchie J. (1981) Boys will be boys: New Zealanders' approval of violence. A paper presented at the Women's Studies Association Conference. Wellington.

¹⁸ Maxwell, G. (1993) *Physical punishment in the home in New Zealand*. Wellington: Office of the Commissioner for Children.

bad habit which has been supported, without reason, by law, religion and tradition. It has its origins in the human psyche, in this case in the desire for control and dominance and in fear of inadequacy. Like all bad habits, it will be difficult to eradicate, but progress has been made in that respect. Removal of legal permission to strike children in May 2007 was a giant step forward.

We have not yet arrived at the happy state where we can say with pride, 'We do not hit children in New Zealand'. But we can say, 'Our law does not permit children to be hit' and that is more than any of the other countries of the English-speaking world can say.

Part 3: What now?

Beth Wood

Many advocates for repeal of section 59 had as their ultimate long term goal New Zealand becoming a place where everyone knows that it is not right to physically strike a child. They saw repeal of section 59 as a part of achieving this goal over time and at the same time achieving the immediate goal of increased respect for children's rights and equal status for children in the eyes of the law regarding assault.

Sue Bradford's original bill had been for simple repeal but along the way it was modified to ensure sufficient support in Parliament to secure its successful passage. In the process of one re-drafting (at the Select Committee stage) an additional provision went further than either Sue Bradford or advocates had hoped for – the Bill included not only repeal of section 59 but also a specific ban on the use of force for correction. But other provisions under the heading "control" were introduced. These were aimed at reducing parental anxiety about risk of prosecution for restraint actions but perhaps introduced some ambiguity about the type of force that could be used for the purpose of controlling a child in certain circumstances. We have yet to see if any court interprets the new law as allowing reasonable force, in the form of smacking or hitting, to be used in a control situation. One might say that any hitting amounts to punishment or correction – that hitting need never be part of control or restraint.

The public are likely to be unclear about what the new law means, if they know about it at all. One interpretation publicised in the media recently appeared to have the law allowing for a smack to keep a child out of trouble¹⁹.

Advocates for change believe people who work with families and families themselves will be curious about the new law and what it might mean in practice. They should have information about the new law. At the time of writing two groups outside central Government – the Office of the Children's Commissioner and Barnardos New Zealand have developed information sheets on the new law – and these are circulating but not as widely as would have been possible with a co-ordinated Government funded campaign.

Advocates who believe that repeal of section 59 and the specific ban on physical force for correction could hasten social change in regard to violence to children believe that a public campaign is needed. They also believe that parents will want to know about how to guide their children without hitting them and that positive parenting initiatives must be sustained and expanded over the years.

There are provisions in the new law to review its impact in two years – these provisions were introduced largely to calm public anxiety about risk of trivial prosecutions by reassuring the public that if there is a spate of unjustified prosecutions the new law could be revisited.

¹⁹ Rebecca Papprell. 2007 *Boy's 111 "parent assault" call unfounded*. Eastern Courier. www.stuff.co.nz/auckland/4150344a22395.html 26th August 2007. (Retrieved 31st August 2001).

Likewise provisions exist under the law to provide reassurance to parents who fear prosecution by explicitly referring to Police discretion in regard to prosecution. Police have developed and publicised additional specific guidelines on the application of the new law once again aimed at protecting parents from unhelpful prosecution in cases of trivial assaults.

What about guidance and information for children about the new law – don't children have a right under the United Nations Convention on the Rights of the Child to information about matters that affect them? This is a challenge? Surely this can be done in a way that does not give rise to a series of unwarranted complaints to the police but rather explains to children their human and legal rights and gives guidance about where to go for help.

Not only does the application and interpretation of the new law need monitoring but so too should its impact on adult behaviour be monitored. Most countries that have banned physical punishment do not appear to have monitored the impact of the new law. Sweden's law change has been monitored and appears to have contributed to significant change in attitude and behaviour. In Germany the law is new (2000) but early assessment of its impact has shown positive indications²⁰.

It would be naïve to believe that the new law in itself will achieve all we want in terms making a positive impact on attitudes and behaviour but I believe that it will help and that, we should be exploring what opportunities the new law makes for enhancing social change.

²⁰ Bussmann, KD. (2004). Evaluating the Subtle Impact of a Ban on Corporal Punishment of Children in Germany. *Child Abuse Review* Vol 13: 292-311.