Spare the Rod, Save the Child: Reviewing Corporal Punishment Through the Lens of Domestic Violence

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INTRODUCTION

When I was a little girl and my mother thought I required discipline, she would pull my face down across her lap and give me a series of stinging slaps of her hand on my bare buttocks while I cried .... I would be in tears and clutching my bottom for a minute or so, but it didn't really hurt much after that .... She never left a bruise when she “lovingly spanked” me. The permanent marks were inside, not outside ... if she told me to do the dishes and I didn't do them very well and got spanked for it you can bet those dishes were unusually spotless for the next couple of days .... My mother got an obedient daughter and cleaner dishes and I got a lifelong mess inside me.¹

Countless adults across the United States were raised in this kind of scenario and subsequently choose to raise their own children using the application of corporal punishment.² But consider a similar scenario in which a man chooses to discipline his partner:

For the [first] time he hit me right across the face because I said I was leaving him .... He acted like it was nothing and I knew it was wrong but I did as I was told .... The hitting became beatings almost every day. Even though I was pregnant, he did not

² See infra pt. II (discussing the definition of “corporal punishment”).
care. He said, "If you were a good girl I wouldn't have to
discipline you so much." I hated hearing that. Be a good girl .... 3

Ironically, the violent behavior in the second scenario is clearly
illegal, 4 whereas the physical punishment in the first scenario remains
permissible under existing law in the United States. 5 One hundred
twenty-five years ago; Maryland passed the first state law making it
illegal for a man to strike his wife to correct undesirable behavior. 6
Since then, state legislatures and the federal government have made
tremendous progress in passing laws to protect women 7 from abusive
partners. 8 Consequently, logic demands that if it is illegal to use
physical discipline, however slight, against one's spouse, it should
likewise be illegal to use corporal punishment against one's child for
the same reasons.

Part I of this Note explores the history of domestic violence law
and the reasons why our legal system now denies a man the right to
physically punish his wife. Part II applies the reasoning behind
domestic violence laws to the issue of corporal punishment. Part III
discusses corporal punishment from an international human rights
perspective and the effects of anti-corporal punishment laws in other
countries in order to predict the potential effect that such legislation
may have if passed in the United States.


Comprehensive Overview of Cases and Sources 1, 2 (Austin & Winfield Publishers
1996) ("The official policy is now almost universally the condemnation of domestic
violence. This can be found in criminal, tort, and family law . . . .").

5. Restatement (Second) of Torts § 147(1) (1965) ("[A] parent is privileged to
apply such reasonable force or to impose such reasonable confinement upon his child
as he reasonably believes to be necessary for its proper control, training, or
education").

6. Barbara J. Hart, Battering and Family Therapy: A Feminist Perspective, in
Domestic Violence Law: A Comprehensive Overview of Cases and Sources, supra n. 4,
at 37.

7. See Callie Marie Rennison, Ph.D., Intimate Partner Violence 1993-2001 1 (U.S.
violence is not limited to male aggressors and female victims but for the purposes of
this note, domestic violence, domestic abuse, and spousal abuse will refer only to
physical violence perpetrated by men against women).

8. See Hart, supra n. 6, at 39-44; Robert E. Oliphant & Nancy Ver Steegh, Family
PART I: HISTORY OF DOMESTIC VIOLENCE LEGISLATION

A. HISTORIC VIEWS AND COURT DECISIONS THROUGH THE 19TH CENTURY

Until the twentieth century, the use of domestic violence to control one's wife was widely approved across the globe.9

When you see your wife commit an offense, don't rush at her with insults and violent blows. Scold her sharply, bully, and terrify her. And if this doesn't work... take up a stick and beat her soundly, for it is better to punish the body and correct the soul than to damage the soul and spare the body.10

In fact, early Roman law allowed a husband the explicit right (and sometimes made it his duty) to physically chastise his wife.11 Similarly, British common law espoused the rule of thumb, whereby a husband could beat his wife with a stick no larger than the thickness of his own thumb.12

This rule was subsequently adopted in the United States and supported for several reasons.13 First, a husband had a duty to make his wife behave herself; thus, beating was allowed, should it be necessary, to correct unruly behavior.14 Second, it was more desirable for a husband to deal with his wife's alleged misbehavior in the privacy of their own home rather than bringing her to court to address the issue, which could potentially result in public scandal.15 Last, "there was a long line of decisions giving the husband privilege and immunity to inflict chastisement."16 For example, the first case on the matter was decided by the Supreme Court of Mississippi in 1824.17 In Bradley v. State, the question before the court was whether a husband could be

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10. Lemon, supra n. 4, at 1.
11. See Berry, supra n. 9, at 19; Biems Stedman, Right of Husband to Chastise Wife Lemon 3 Va. L. Reg. 30 (1917) in Lemon, supra n. 4, at 30.
13. See id.
14. See id.
15. Id.
16. Id.; see also, State v. Fulton, 63 S.E. 145, 149 (N.C. 1908) (Clark, C.J., dissenting).
17. Bradley v. State, 1 Miss. 156, 156 (1824).
found guilty of committing an assault and battery upon his wife.\textsuperscript{18} Citing the rule of thumb, the court held that a husband had the right to chastise his wife moderately in cases of great emergency without subjecting himself to "vexatious prosecution for assault and battery, resulting in the mutual discredit and shame of all parties concerned."\textsuperscript{19}

Similarly, in 1864 the Supreme Court of North Carolina held that

[a] husband ... is required to govern his household, and for that purpose the law permits him to use towards his wife such a degree of force as is necessary to control an unruly temper and make her behave herself; and unless some permanent injury be inflicted, or there be an excess of violence ..., the law will not invade the domestic forum or go behind the curtain.\textsuperscript{20}

Thus, while some courts made progress in resolving that a husband could not use excessive violence against his wife, they were still unwilling to ban physical chastisement altogether. The primary reasons against an outright ban were related to notions of domestic privacy, a husband's duty to "govern" his home,\textsuperscript{21} and the belief that one's wife was one's property.\textsuperscript{22}

In contrast to Bradley, the court in State v. Oliver confusingly held that "the husband has no right to chastise his wife, under any circumstances," although "[i]f no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive."\textsuperscript{23} This decision seems to take away from a husband the right to physically discipline his wife, but at the same time refuses to make it illegal.

Finally, in 1882, Maryland passed the first law making it a crime for a husband to strike or beat his wife.\textsuperscript{24} This law marked a significant step toward protecting women from abuse; however, men

\textsuperscript{18} Id.
\textsuperscript{19} Id. (holding further that should the chastisement be excessive, a husband could be found guilty of assault and battery, even against his wife).
\textsuperscript{20} State v. Black, 60 N.C. 262, 262 (N.C. 1864); See also State v. Rhodes, 61 N.C. 453, 454-456 (N.C. 1868) (holding that the court would not punish a husband for exercising his right to moderately chastise his wife, even if she had not provoked him).
\textsuperscript{21} See Bradley, 1 Miss. at 156; Rhodes, 61 N.C. at 453; Black, 60 N.C. at 262.
\textsuperscript{22} Berry, supra n. 9, at 20-21.
\textsuperscript{23} 70 N.C. at 60 (emphasis added).
\textsuperscript{24} Hart, supra n. 6, at 37.
continued to use violence against their wives without facing serious repercussions.\textsuperscript{25}

Although the legal system was slowly beginning to recognize the fallacy of the arguments in favor of allowing men to hit their wives, the general public opinion was lagging even further behind.\textsuperscript{26} In fact, "few people actually saw violence in the home as a problem."\textsuperscript{27} There were several important reasons for this reluctance. First, the idea that a man’s wife was his property was still pervasive.\textsuperscript{28} Under that view, a woman virtually lost her personhood after marrying, such that she and her husband "became legally one person — the husband."\textsuperscript{29} In effect, if a person ceased to exist in the legal sense, then she no longer had any rights that needed protection.\textsuperscript{30} Second, the legal principle of spousal immunity still persisted in most jurisdictions, whereby a person was prohibited from suing his or her spouse.\textsuperscript{31} Strangely enough, the philosophy behind this principle was to preserve peace within the family.\textsuperscript{32} Finally, the argument that the government should refrain from invading the privacy of the home and dictating the manner in which a husband may relate to his wife continued to prove an obstacle to the effective application of domestic violence laws.\textsuperscript{33} These views in effect stunted the progress of the criminal justice system well into the twentieth century by focusing the purpose of domestic violence laws on limiting the amount of force a husband could use to chastise his wife rather than outlawing such force altogether.\textsuperscript{34}

\begin{itemize}
\item \textsuperscript{25} Id.
\item \textsuperscript{26} Berry, supra n. 9, at 21.
\item \textsuperscript{27} Id.
\item \textsuperscript{28} Id.
\item \textsuperscript{29} Id. at 22.
\item \textsuperscript{30} Id.
\item \textsuperscript{31} Id.
\item \textsuperscript{32} Id. ("As late as 1962, the California Supreme Court threw out a woman’s assault case against her husband on the theory that to allow the case to proceed ‘would destroy the peace and harmony of the home and thus be contrary to the policy of law’.").
\item \textsuperscript{33} Id. at 141.
\item \textsuperscript{34} Id. at 23.
\end{itemize}
B. SOCIAL CHANGE AND OUTLAWING DOMESTIC VIOLENCE IN THE 20TH CENTURY

During the 1970s, attitudes toward domestic violence began to change with the emergence of several grassroots movements and support groups that sought to bring the problem of domestic violence to the attention of the public.35 “The women’s liberation movement of the late-60’s birthed women’s support centers and telephone crisis lines. Battered women quickly responded, identified their plight and sought assistance . . . . Advocates, lawyers and legislators began to look for legal solutions based in the experience of battered women . . . .”36

As more victims of domestic violence sought help, the special needs of these victims became evident.37 In terms of immediate safety, victims of domestic violence clearly required safe shelters as an alternative to staying at home and facing the possibility of continued abuse.38 In the long run, however, “victims needed a way to remove the abuser from the home, establish child custody and support, and keep the abuser from contacting them.”39 As a result of the growing public awareness of the specific problems facing these victims, domestic violence legislation was consequently drafted to meet their particular needs.40

Today, nearly all states have passed some form of domestic abuse legislation,41 and every state has a law granting prospective civil relief to the victims of domestic abuse.42 Domestic violence statutes now include civil protection orders, arrest statutes (allowing police to arrest without a warrant and without having witnessed the violence), custody statutes (requiring courts to consider domestic violence as a factor in determining custody and visitation), victims’ rights statutes,43 and federal legislation, such as the Violence Against Women Act of

35. Id.; see Hart, supra n. 6 at 37.
36. Hart, supra n. 6. at 37.
37. Oliphant & Ver Steegh, supra n. 8, at 366.
38. Id.
39. Id.
40. Id.
41. Berry, supra n. 9, at 157-158 (“These laws are patterned after the traditional assault and battery laws, which make striking or threatening a person a crime”).
42. Oliphant & Ver Steegh, supra n. 8, at 366.
43. Hart, supra n. 6, at 41-44.
1994.44

The number of legal protections now afforded to victims of domestic violence is undeniable evidence that the majority of Americans find it unacceptable for a man to hit or beat his wife for the purpose of controlling or modifying her behavior.45 For many years, a man was effectively able to argue that he had both a right and a duty to physically chastise his wife, that his wife was his property, and that the government should not interfere in the privacy of the home.46 However, the tide of social and legal opinion slowly but successfully shifted in strong disfavor of such arguments.47 In essence, Americans decided that adult women were worthy of protection from all forms of physical harm.48 Unfortunately, the majority of Americans have not decided that children are worthy of the same protection.49

PART II. CORPORAL PUNISHMENT IN AMERICA

"Corporal punishment is the use of physical force with the intention of causing a child to experience pain, but not injury, for the purpose of correction or control of the child's behavior."50 In this definition of corporal punishment, the phrase "but not injury" is used to distinguish corporal punishment from child abuse.51 The forms of corporal punishment most often used are "spanking, slapping, grabbing or shoving . . ., and hitting with certain objects such as a hair brush, belt, or paddle."52 The prevalence of corporal punishment in the United States is contested, but many studies agree that the majority (and sometimes the vast majority) of parents use some form of corporal punishment as a child-rearing tool.53

44. Pub. L. No. 103-322, § 40001, 108 Stat. 1796 (codified as amended in scattered sections of 18 and 42 U.S.C.); Berry, supra n. 9, at 184; Oliphant & Ver Steegh supra n. 8, at 375.
45. See supra nn. 41-44.
46. See supra pt. I.A.
47. See supra pt. I.A and pt. I.B.
49. See infra pt. II.
51. Id. at 4-5.
52. Id. at 5.
53. Murray A. Straus & Michael Donnelly, Theoretical Approaches to Corporal Punishment, in Corporal Punishment of Children in Theoretical Perspective 4
Most of the arguments enlisted in the defense of corporal punishment are virtually the same as the arguments made by those who favored the right of a man to physically chastise his wife. However, most parents today see a difference between corporal punishment of children and spousal chastisement, a viewpoint which is reflected by the legality of the former and the illegality of the latter. But consider this hypothetical situation:

If your adult neighbor engages in offensive or even infuriating behavior, you would probably not swat him or her. If that neighbor has less than average adult physical or mental abilities, you would probably be even less likely to use physical force as a dispute resolution technique. And, if you love that neighbor as if he or she were a family member, hitting that neighbor would seem inconceivable. Now imagine that the offender is your child — typically, a person of less than average adult abilities and a person you love as a family member. Would you hit your child?

For the most part, this scenario seems to eliminate the supposed differences between corporal punishment and hitting an adult. In other words, if a parent believes that she should spank her child for misbehaving because she loves the child and wants the child to learn how to behave properly, then the same parent should have no qualms

(Michael Donnelly & Murray A. Straus eds., Yale University Press 2005) ("Close to 100 percent of parents use corporal punishment on toddlers. Just over half of all American children are still being hit by their parents in adolescence, and for about a quarter hitting continues until they physically leave the family home."); Child Trends Databank, Attitudes Toward Spanking, http://www.childtrends databank.org/indicators /51AttitudesTowardsSpanking.cfm (last visited Mar. 24, 2008) ("In 2004, 79 percent of 18 to 24 year old females agreed that a child sometimes needs a 'good hard spanking' compared with 61 percent of 45 to 65 year old females... Research suggests that about 94 percent of parents of children ages three to four in the United States report having spanked their children in the previous year."); Rebecca R.S. Socolar & Ruth E.K. Stein, Spanking Infants and Toddlers: Maternal Belief and Practice, 95 Pediatrics 105, 105-111 (Jan. 1995), http://pediatrics.aappublications.org/cgi/content/abstract/95/1/105 ("Nineteen percent of the mothers believed that there are times when it is appropriate to spank a child less than 1 year old, and [seventy-four percent] believed this about children 1 to 3 years old").

54. See infra pt. II.A.
56. Id. at 435.
57. See id.
about swatting the misbehaving neighbor with less than average abilities whom she cares about dearly. Nevertheless, while most people would not hit the mentally challenged, beloved neighbor from the example, most parents in America do subscribe to the belief that corporal punishment should remain legal. The following section will explore some of the primary claims defending the corporal punishment of children.

A. ARGUMENTS MADE BY THOSE WHO SUPPORT CORPORAL PUNISHMENT

1. Corporal punishment is an effective method of correcting children's behavior

   The first and most obvious reason that most Americans use corporal punishment is to teach obedience, respect for authority, and to correct behavior, much like a man chastising his wife for the same purposes. Also included within this reasoning is the belief that corporal punishment is effective at stopping undesirable behavior — in other words, it works. Columbia University researcher Elizabeth Thompson Gershoff analyzed the results from eighty-eight different studies which focused on the effects of corporal punishment on children. Gershoff's analysis found that the one positive result of corporal punishment is that it does indeed achieve the desired effect — "[c]orporal punishment was associated with only one desirable behavior, namely, increased immediate compliance." Parents who merely want a certain behavior to stop are likely to achieve that short-term goal by using corporal punishment.

   However, corporal punishment carries with it many grave

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58. See id.
59. See supra n. 53 and infra pt. II.A.
61. See supra pt. I.A.
64. See Id. at 544.
65. See id.
consequences. Gershoff’s study found conclusively that the use of corporal punishment with children is directly associated with the following results:

- decreased moral internalization, increased child aggression,
- increased child delinquent and antisocial behavior, decreased quality of relationship between parent and child, decreased child mental health, increased risk of being a victim of physical abuse,
- increased adult aggression, increased adult criminal and antisocial behavior, decreased adult mental health, and increased risk of abusing one’s own child or spouse.

Additionally, children who have been raised with corporal punishment are more likely to experience depression, suicidal thoughts, alienation, and reduced income as an adult. 68

Nonetheless, despite the research that showed a clear correlation between corporal punishment and harmful consequences, many researchers were not yet persuaded that there was a causal relationship between the two. 69 Consequently, researchers conducted several additional longitudinal studies that controlled for other possible causes, besides corporal punishment, that could have resulted in the harmful effects in the previous studies. 70 Most importantly, these new studies marked each child’s level of aggression and antisocial behavior at the beginning of the studies in order to determine whether that level changed through the use or absence of corporal punishment. 71 The long-term results were clear — “[researchers] found that, regardless of the level of antisocial behavior at the outset, the use of corporal punishment caused an increase in the level of antisocial behavior.” 72 In addition, “children who were spanked were more likely to be

66. Id. at 544.
67. Id.
68. See generally Straus & Donnelly, supra n. 50, at 4, 10 (discussing the negative consequences that result directly from the use of corporal punishment).
69. Deana Pollard, Banning Child Corporal Punishment, 77 Tul. L. Rev. 575, 598-601 (2003) (due to the fact that many of the previous studies had not controlled for several different factors, researchers were still faced with the “chicken or the egg” problem, namely, whether behaviors such as child aggression caused spanking or vice versa); Id. at 598.
70. Id. at 601.
71. Id. at 603-604.
72. Id.
oppositional, hyperactive, and aggressive."  

Taken together, these studies provide ample evidence that using corporal punishment is not effective at improving children's behavior in the long run, and it actually creates more problems in the future.

There are several reasons why the negative effects of corporal punishment should be sufficient to support a ban on all forms of corporal punishment. First, compare the effects of corporal punishment to these long term effects faced by victims of domestic violence: anxiety, chronic depression, chronic pain, death, dissociative states, drug and alcohol dependence, eating disorders, emotional "over-reactions" to stimuli, health problems, malnutrition, panic attacks, poverty, repeated self-injury, strained family relationships, and suicide attempts. Clearly, there is significant overlap in the negative effects faced by children raised with corporal punishment and those faced by victims of domestic violence. Subsequently, if the effects of domestic violence were deemed serious enough to support the complete prohibition on the use of spousal chastisement under the law, then a similar conclusion should be reached to protect children from so many of the exact same harmful effects.

In view of the fact that corporal punishment is associated with several extremely negative effects, the fact that there are other means of correcting children that are equally as effective and avoid those risks is just one more reason why the use of corporal punishment is wholly unnecessary. Studies have shown that non-corporal punishment combined with reasoning is just as effective as corporal punishment. Specifically, alternatives to corporal punishment include, but are not

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73. Id. at 606 (These studies also confirmed that being subjected to corporal punishment as a child directly increases the likelihood of unlawfully assaulting others in the future, including abusing one's children, as well as one's spouse.); Id. at 607-09.
74. See supra nn. 66-73.
75. See infra nn. 76-84, 88-93.
77. See generally Gershoff, supra n. 63, at 544; Strauss, supra n. 50, at 4; Newton, supra n. 76.
78. Oliphant & Ver Steegh, supra n. 8, at 366.
79. See generally Gershoff, supra n. 63, at 544; Straus, supra n. 50, at 4.
80. See generally Pollard, supra n. 69, at 627.
81. Straus & Donnelly, supra n. 50, at 150.
limited to:

[D]eprivation of privileges; reasoning; time-out; grounding; negotiation and compromise; redirecting young children’s attention from their unacceptable conduct; asking children to come up with a fitting [non-violent] punishment; physical restraint of young children about to engage in rash activity; and letting the child suffer the logical consequences, within reason, of his or her naughtiness. Positive reinforcement of good conduct, such as praise, signs of special attention and affection, or rewards, avoids punishment altogether even as it fosters obedience. 82

Furthermore, consider that many men who might otherwise choose to hit their wives when they are displeased with some kind of behavior are now required by law to find other methods of communication and problem-solving. 83 If the law demands that adults work out their differences without resorting to violence, 84 then surely parents can also find other, equally effective means of both communicating displeasure to their children and disciplining poor behavior without risking the terrible long term effects that can plague children after being subjected to corporal punishment. 85

Of course, many adults will argue that they were spanked as children and have not suffered any of the harmful consequences that these studies associate with corporal punishment. 86 For example,

[I]f someone says “I was spanked and I’m OK, I don’t hit my wife,” on average, that’s probably a correct statement. That doesn’t mean that spanking is OK, it just means they were part of the lucky 75 percent who were not affected, rather than the 25 percent who were. 87

84. See supra Part I.B. (discussing domestic violence in the twentieth century).
85. See generally Gershoff, supra n. 63, at 544; Straus & Donnelly, supra n. 50, at 4.
86. See generally Straus & Donnelly, supra n. 50, at 150.
Even if one considers that there are many scientific studies that fall on both sides of the corporal punishment issue, 88 "[i]f there is a reasonable chance that corporal punishment will harm some children, although we cannot forecast which ones, and if there are alternative effective means of educating children, why would we ever want to imperil our progeny by using this form of punishment?" 89 In other words, it would seem that parents should prefer to be safe, rather than sorry, when it comes to the well-being of their children.

Consider the analogous situation of pharmaceutical drugs posing serious harmful side effects. 90 When the U.S. Food and Drug Administration (FDA) found "strong but inconclusive evidence" that the anti-cholesterol drug Baycol may have dangerous side effects, the agency approved the withdrawal of Baycol from the market, particularly in view of the fact that there were other anti-cholesterol medications that were equally effective but free from the risk of dangerous side effects. 91

A similar analogy applies to the moderate use of cocaine. 92 Consider this argument:

[A] healthy, physically active nonsmoker who engages in occasional mild cocaine use is probably not going to be harmed by it . . . . However, we as a society recognize that the practical reality is that people who use cocaine often do not use it in moderation, but use it in such a way that is harmful . . . . Thus, we ban it . . . because of its propensity to cause addiction and other harms. Similarly, even if some corporal punishment is found not to harm children, we know that it is a precursor for child abuse and many other individual and social ills. The fact that a practice or product may not necessarily cause harm to each user is insufficient to warrant encouraging use of the practice . . . when we know that its use will inevitably harm many other citizens. 93

7 (Dec. 3, 2007).
88. Bitensky, Corporal Punishment, supra n. 82, at 8.
89. Id. at 9.
90. Id.
91. Id.
92. Pollard, supra n. 69, at 628.
93. Id. (Indeed, the most recent studies have found that even extremely moderate use of spanking is still associated with causing harm to children, although to a lesser
Therefore, even though many adults may claim that their experience with being spanked did not result in any long-term harmful consequences, that argument does not stand up to the logic of banning corporal punishment in order to protect all children from the risk of dangerous, long-lasting effects.\textsuperscript{94}

Consequently, just as the antiquated argument that men should physically chastise their wives to correct behavior was overcome in the interest of protecting women,\textsuperscript{95} so should the argument be discarded that corporal punishment properly corrects the behavior of children.

2. Parents have the right to raise their children as they choose, free from government intervention.

Another argument in support of corporal punishment, virtually identical to the argument proposed to support spousal chastisement, is that the government must not interfere in the privacy of the household, namely, the parents’ right to raise their children as they choose.\textsuperscript{96} For example, in response to an article regarding California Assemblywoman Sally Lieber’s proposed bill that would ban the use of corporal punishment on children under the age of three,\textsuperscript{97} one reader commented, “[t]he government should get out of the parenting business. The parent decides what is right for their children.”\textsuperscript{98} Similarly, another reader stated, “[s]uch governmental intrusion is disgusting and flies in the face of what America stands for.”\textsuperscript{99} These comments clearly illustrate the attitude that a ban on corporal punishment would amount to an unjustifiable intervention into the extent than the more frequent use of corporal punishment (which, unfortunately, is the norm)); \textit{Id.} at 628-29.

\textsuperscript{94} \textit{Id.}

\textsuperscript{95} \textit{See supra} Parts I.A. and I.B. (discussing the history of and the current trends in domestic violence legislation).

\textsuperscript{96} Straus & Donnelly, \textit{supra} n. 50, at 182.


Parents certainly have a great deal of authority when it comes to how they raise their children. In fact, "we defer to parents on matters of child rearing as long as the parental decisions are not clearly unreasonable." As such, the different disciplinary methods that parents choose are acceptable as long as they are not obviously harmful to children. However, the discussion about parental authority only considers the situation from one perspective - the parent's. The discussion from the child's perspective is quite different - "[i]nstead of viewing the right at stake as the right of parents to discipline their children as they see fit, we could view the right at stake as the right of children to be free of unwanted touchings.

Some might argue that "the child's perspective is less appropriate for corporal punishment than the parent's perspective, because children typically enjoy fewer rights and privileges than adults." For example, unlike adults, children do not have the right to vote or the right to drive. The reason behind limiting children's rights is usually that they are not mature enough to exercise those rights on their own. But this justification for limiting the rights belonging to children does not translate to the child's right to be free from bodily harm or pain:

[T]he child's immaturity, vulnerability, and lack of power all suggest the need for greater protection than for adults. It is precisely because children often cannot understand why they are being hit, because they are susceptible to serious injury, and because they cannot protect themselves that we should be especially reluctant to tolerate [corporal punishment] of

100. See Straus & Donnelly, supra n. 50, at 182.
102. Id.
103. Id. (for evidence indicating that corporal punishment is indeed harmful, see supra part II.A.).
104. Orentlicher, supra n. 101, at 170.
105. Id.
106. Id. at 171.
107. Id.
108. Id.
children.  

So while the law sometimes treats adults and children differently for good reasons, those reasons fail to justify the difference in legislation between hitting a child and hitting an adult.  

Furthermore, when parents raise the argument that the government should not interfere in the privacy of the household, it is important to note that American law does not treat the family as a domain for the unfettered exercise of parental power. On the contrary, the parent-child relationship is already subject to a certain amount of regulation as an ordinary, unremarkable incidence of living in a society that prides itself on respect for all individuals, adults and children.

Government regulation of the family is a very real aspect of American life. In fact, there are several specific examples of government policies directed at preserving the welfare of children, regardless of parental opinion. For instance, some state laws require parents to provide state-approved education for their children and to have their children vaccinated. In addition, the government has enacted laws aimed at protecting children from the “potentially harmful effects of drugs and other products” when there was a much weaker causal link between the drugs and their possible harms than that found between corporal punishment and its potential negative consequences.

Moreover, American courts have made decisions in the name of protecting children from certain harms when the evidence of such harms is either incredibly inadequate or lacking altogether, in stark

109. Id. at 172.
110. See id.
111. Bitensky, Spare the Rod, supra n. 55, at 472.
112. Id. at 466-67.
113. Id. at 467.
115. Pollard, supra n. 69, at 623-24, 657 n. 323. (“Indeed, warning labels regarding use during pregnancy are prevalent when there is no scientific information regarding the product or drug’s impact when used during pregnancy.”).
116. Id. at 647-54 (finding also the existence of sexual abuse).
contrast to the wealth of evidence regarding the negative effects of corporal punishment.  

For example, the Appeals Court of Massachusetts in *John D. v. Department of Social Services* found neglect where two children witnessed the domestic violence perpetrated by their stepfather against their mother.  

In making this decision, the court relied on two law review articles concerning the impact that domestic violence can have on childhood development.  

However, the articles were based largely on government studies and surveys that seriously lacked any scientific proof of causation between witnessing domestic violence and subsequent emotional harm to children.  

In marked contrast, despite the extensive scientific research directly showing that  

[C]orporal punishment can cause emotional injury, there are no reported cases where emotional injury has been found in the absence of a finding of physical abuse, verbal abuse, sexual abuse, or abuse through witnessing domestic violence. Courts apparently assume that . . . corporal punishment per se cannot give rise to emotional injury.

In other words, where courts easily find emotional harm in cases in which there is little or no scientific research documenting that harm, courts are very resistant to finding emotional harm resulting from corporal punishment, despite the available research showing that undeniable connection.  

The government is making the policy decision to intervene in the family in the interest of protecting children on the basis of weaker evidence of harm rather than on stronger evidence of harm that shows a clear causal relationship between corporal punishment and its subsequent negative effects.

Perhaps a different way to characterize the argument about intrusion into the family is that the concepts of government “intervention” and “nonintervention” are virtually meaningless in

117. See supra pt. II.A.1. (discussing negative effects of corporal punishment).

118. 51 Mass. App. at 132-133.

119. *Id.* (citing *Custody of Vaughn*, 422 Mass. 590, 599 (Mass. 1996)).

120. Pollard, *supra* n. 69, at 653.

121. *Id.* at 648.

122. *Id.*

123. See *id.*
University of California Professor of Law Frances Olsen explains that governmental choices are not a matter of intervention or nonintervention—they are simply choices about policy. For example, Olsen explains

If a child runs away from her parents to go live with her aunt, would nonintervention require the [government] to grant or to deny the parents' request for legal assistance to reclaim their child? Because complete agreement on family roles does not exist, and because these roles undergo change over time, the state cannot be said simply to ratify preexisting family roles. The state is continuously affecting the family by influencing the distribution of power among individuals.

One could argue that by allowing the child to remain with her aunt, the government is intervening in the family by making the decision not to maintain the family unit. From the opposite perspective, the government is practicing nonintervention by deciding not to act. This example demonstrates that government decisions can be cast as both intervention and nonintervention, when in reality they are actually just choices based on policy considerations.

Consequently, based upon the fact that the government does make policy decisions that affect the way parents interact with their children, the argument that banning corporal punishment is an unwarranted intrusion into the family loses its significance. Indeed, if the government is willing to make policy decisions to protect the emotional health of children in some cases where the evidence of harm is scarce, then it should likewise make the policy decision to protect all children from the potentially grave emotional consequences of

125. Id. at 837 ("[I]t is nonsense to talk about whether the state does or does not intervene in the family. Neither 'intervention' nor 'nonintervention' is an accurate description of any particular set of policies, and the terms obscure rather than clarify the policy choices that society makes.").
126. Id. at 842.
127. See id. at 843.
128. See supra nn. 113-123 (discussing government policies directed at preserving the welfare of children).
129. See Bitensky, Spare the Rod, supra n. 55, at 465-67.
130. See Pollard, supra n. 69, at 647-54; see also supra nn. 117-21.
corporal punishment that have been thoroughly documented through extensive scientific investigation. 131

Consider the policy decisions made nearly 40 years ago in favor of protecting women from domestic violence. 132 The issue here is exactly the same. Legislation against both domestic violence and corporal punishment can be considered government intervention into the privacy of the family, 133 but the policy decision is virtually identical – that both women and children are worthy of state protection when their well-being is at risk, even in the household setting. 134 In the spousal chastisement discussion, it finally became clear that the laws against domestic violence were both necessary and legitimate due to the clearly evident harms that victims were suffering, whether the policy constituted government intervention or not. 135 Bearing in mind the host of negative effects that corporal punishment has on many children, 136 it is obvious that a change in government policy is necessary to protect each child in America.

B. DRAWING THE PARALLELS BETWEEN DOMESTIC VIOLENCE AND CORPORAL PUNISHMENT

Without a doubt, there are several compelling similarities surrounding the issues of domestic violence and corporal punishment. 137 Beliefs about a man's right and duty to correct his wife's behavior 138 are mirrored by the belief that parents have the right to corporally punish their children for the same purpose, including the conviction that corporal punishment is an effective method of discipline. 139 The claim that the government should not intervene in the relationship between a man and his wife with regard to spousal chastisement 140 is identical to the argument that parents give today to

131. See supra pt. II.A.1.
133. Berry, supra n. 9, at 141; see generally supra nn. 97-98.
134. See Hart, supra n. 6 at 36-39; Bitensky, Spare the Rod, supra n. 55, at 465-67.
135. See supra pt. I.B.
136. See generally supra nn. 66-74.
137. See supra pt. II.A.
139. See supra pt. II.A.1.
140. Straus & Donnelly, supra n. 50, at 4.
defend their right to physically chastise their minor children.\textsuperscript{141}

In spite of these arguments, women won the right to be free from the physical and emotional harms that result from domestic violence.\textsuperscript{142} The legal and social shift away from allowing spousal chastisement occurred in response to the efforts of the women’s liberation movement, when women who were victims of domestic violence began to speak out about the abuses they suffered in their homes.\textsuperscript{143} The public’s growing awareness and understanding of the problem created the momentum necessary for state legislatures to make the final steps toward outlawing domestic violence entirely.\textsuperscript{144}

On the contrary, children are essentially unable to give voice to the harms that result from corporal punishment.\textsuperscript{145} The fact that the negative effects of spanking may not materialize until the child is older means that both parents and children will not realize the harm caused by corporal punishment until the damage is already done.\textsuperscript{146} Additionally, children are largely dependent on their parents, so they can hardly be expected to challenge their parents’ authority.\textsuperscript{147} Perhaps the most significant reason that parents continue to corporally punish their children is the simple fact that they are not aware of the seriously harmful effects that it has on many children.\textsuperscript{148} For these reasons, the government must be the voice for America’s children and craft a policy that will protect children from the harms of corporal punishment. Examining the legislation of other countries that have banned corporal punishment entirely will provide a foundation from which American legislators can create their own policy.\textsuperscript{149}

\textsuperscript{141} Straus & Donnelly, supra n. 50, at 182 (noting that a law forbidding parents to hit children will lead to unwarranted government intervention in the family.).
\textsuperscript{142} See supra pt. I.B. (discussing domestic violence and social change in the twentieth century).
\textsuperscript{143} Id.
\textsuperscript{144} Id.
\textsuperscript{145} See infra n. 146.
\textsuperscript{146} Pollard, supra n. 69, at 629 (“Long-term consequences such as anxiety disorder or depression may not surface until the child is well into puberty or adulthood, by which time the parent (and child) cannot see the link between spanking and the subsequent harms.”).
\textsuperscript{147} Olsen, supra n. 124, at 847-52.
\textsuperscript{148} Pollard, supra n. 69, at 627-628.
\textsuperscript{149} See infra pt. III (discussing international perspectives on corporal punishment).
PART III. CORPORAL PUNISHMENT IN THE INTERNATIONAL PERSPECTIVE

As of January 2008, twenty-four countries have prohibited all corporal punishment of children in all settings, including the home.\(^{150}\) In addition, nearly two dozen other countries have either committed to a full prohibition in the near future or are currently in the process of making legal reforms that would further restrict the use of corporal punishment.\(^{151}\) Most importantly, none of the enacting countries has repealed its statutory prohibition or experienced a backlash even though the prohibition has governed tens of millions of parents and children. Indeed, family life, parental authority, and the rule of law have continued to flourish in these countries.\(^{152}\)

Perhaps the best example to consider is that of Sweden, a country that has prohibited corporal punishment of children since 1979.\(^{153}\) The use of corporal punishment in Sweden was widely accepted by the general public before the ban took effect.\(^{154}\) Nonetheless, the Swedish government, after learning about the harmful effects of corporal punishment, made the policy decision to protect the well-being of Sweden’s children and passed the ban with a vote of 259 to 6.\(^{155}\) The amendment Sweden added to the Parenthood and Guardianship Code reads:

Children are entitled to care, security and a good upbringing. Children are to be treated with respect for their person and individuality and may not be subjected to corporal punishment or any other humiliating treatment.\(^{156}\)

\(^{150}\) Global Initiative to End All Corporal Punishment of Children, *Global Progress Towards Prohibiting All Corporal Punishment* (Jan. 2008) 1-2, http://www.Endcorporalpunishment.org/pages/pdfs/charts/CharC-Global.pdf (last updated Jun 2007). The countries prohibiting all corporal punishment are Austria, Bulgaria, Chile, Croatia, Cyprus, Denmark, Finland, Germany, Greece, Hungary, Iceland, Israel, Latvia, Netherlands, New Zealand, Norway, Portugal, Romania, Spain, Sweden, Ukraine, Uruguay, Venezuela, and Italy. *Id.*

\(^{151}\) *Id.* at 2-4.

\(^{152}\) Bitensky, *Corporal Punishment, supra* n. 81, at 153.

\(^{153}\) Bitensky, *Spare the Rod, supra* n. 55, at 362.

\(^{154}\) *Id.*

\(^{155}\) *Id.* at 363.

\(^{156}\) Pollard, *supra* n. 69, at 588 (compare with Finland’s Child Custody and Right
The ban does not include criminal sanctions for parents or guardians who violate the law.\textsuperscript{157} Instead, "[t]he purpose of the new law was to reduce acts of violence against children, and it included a parental support program. The goal of the law was to alter public attitudes, not to criminalize parents."\textsuperscript{158} In pursuit of these goals, the Swedish government made extensive efforts to inform the public about the ban,\textsuperscript{159} while at the same time disseminating information to parents about the harms associated with spanking and other forms of corporal punishment.\textsuperscript{160} The messages also included specific advice about alternative non-violent methods of discipline and how parents could use them.\textsuperscript{161}

Learning from the Swedish example is most significant because the ban has been in effect for almost thirty years.\textsuperscript{162} "Contrary to some expectations, Swedish prosecutors have not hauled hordes of parents into court at the behest of children alleging illegal corporal punishment."\textsuperscript{163} In fact, there have been very few prosecutions under the law.\textsuperscript{164} Rather than relying on the deterrent effect of prosecution, the Swedish government can trace the success of the ban to the educational campaign and support services offered to families to deal with intra-family conflict.\textsuperscript{165}

Sweden's law prohibiting all corporal punishment has indeed accomplished the desired results.\textsuperscript{166} One comprehensive study has

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of Access Decree: "[a] child shall be brought up in the spirit of understanding, security and love. He shall not be subdued, corporally punished or otherwise humiliated. His growth towards independence, responsibility and adulthood shall be encouraged [and] supported").

\textsuperscript{157} Bitensky, \textit{Spare the Rod}, \textit{supra} n. 55, at 363-64. (although parents in violation could technically be held liable for assault under Sweden's penal code, prosecutors almost always elect not to prosecute, thereby strengthening the law's focus on deterrence through awareness and education rather than prosecution).

\textsuperscript{158} Pollard, \textit{supra} n. 69, at 588.

\textsuperscript{159} Id. (the awareness campaign included pamphlets that were sent to families, notices printed on milk cartons for two months, and television advertisements).

\textsuperscript{160} Id.

\textsuperscript{161} Id.

\textsuperscript{162} Bitensky, \textit{Spare the Rod}, \textit{supra} n. 55, at 366.

\textsuperscript{163} Id.

\textsuperscript{164} Id.

\textsuperscript{165} Id.

\textsuperscript{166} Joan E. Durrant, \textit{A Generation Without Smacking: The Impact of Sweden's Ban on Physical Punishment}, \url{http://www.endcorporalpunishment.org/pages/pdfs/Generation}
shown a marked decrease in the number of Swedish adults who support corporal punishment — only eleven percent supported corporal punishment in 1999, down from fifty-three percent in 1965. In addition, “[n]o Swedish child died as a result of physical abuse in the 1980s. Four have been killed since — between 1990 and 1996 — but only one at the hands of a parent.” There has been no increase in either the number of parents being prosecuted for minor assaults on children or the number of instances where children had to be removed from the home due to state intervention. In fact, the number of children being removed from the home decreased by twenty-six percent between 1982 and 1999. Lastly, in contrast to the concern that without corporal punishment children will lack discipline and self-control, the results of the study show the opposite, as reflected by marked decreases in the number of children using drugs, alcohol, and assaulting others. These results show clearly that not only can parents discipline effectively without using corporal punishment, but also that these changes may produce healthier, more well-adjusted children and families that are better able to remain intact.

Lastly, it is worth noting that corporal punishment has also become an issue in the area of international human rights. The United Nations Committee on the Rights of the Child has declared:

In the framework of its mandate, the Committee has paid particular attention to the child's right to physical integrity. In the same spirit, it has stressed that corporal punishment of children is incompatible with the [Convention on the Rights of the Child] and has often proposed a revision of existing legislation, as well as the development of awareness and education campaigns, to prevent child abuse and the physical punishment of children.

While the United States has yet to become a party to the Convention of

167. Id. at 9.
168. Id. at 6.
169. Id.
170. Id.
171. Id.
172. See id.
173. See Bitensky, supra n. 55, at 389.
174. Id. at 392.
the Child, 175 this convention may add some further pressure on the
government to consider the increasingly negative global perspective on
corporal punishment of children. 176 If anything, the government must
consider the grave danger that children in America face—"[m]ore than
2,000 children die each year at the hands of their parents, while
approximately 18,000 are permanently disabled, and another 142,000
are seriously injured as a result of excessive 'discipline'." 177 Many of
these situations occur as a result of parental behavior that begins with
legal corporal punishment and escalates into abuse. 178 Many of these
children could be saved if corporal punishment were banned in the first
place. 179 Lawmakers in the United States have a duty to protect these
children. Americans can follow the global trend of protecting all
children by giving parents a reason to use non-violent forms of
discipline—by banning corporal punishment.

CONCLUSION

This country has come a long way to recognize that a man has no
right to beat his wife for the purpose of intimidating or controlling her,
that violence in the marital relationship is not to be tolerated. 180
However, the majority of Americans still cling to their right to use
violence against their own young children for the same purposes. 181 If
arguments about a man's right to run his household as he saw fit were
overcome in order to protect women, those same arguments should be
overcome in order to protect children, who are far more in need of
protection from harm than adult women. 182 Furthermore, the

175. Id. at 390; see also Office of the United Nations High Commissioner for Human
/bodies/ratification/I 1.html (last accessed Mar. 24, 2008) (showing that the United
States and Somalia are the only countries that have not adopted the Convention).

176. See generally supra nn. 148-50 (It is also significant to note that customary
international law is binding as federal common law in the United States. The Paquete
Habana, 175 U.S. 677, 700 (1900). Thus, if a prohibition on all corporal punishment
of children comes to be considered customary international law, then the United States
will be in violation of that law if corporal punishment remains legal); See id.

177. Pollard, supra n. 69, at 583.
178. See id.
179. See id.
180. See supra pt. I.
181. See supra pt. II.
undeniable fact that twenty-four other countries have passed laws banning spanking altogether and still manage to successfully raise respectful, morally sound children\textsuperscript{183} should be evidence enough for legislators that such laws can in fact work and should be passed in this country. Americans pride themselves on their global concern for the human rights of all, and it is time to recognize the right of children in America to be free from all forms of physical and emotional harm.

\footnotesize{183. See supra nn. 148-50.}