

FOREWORD

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Corporal punishment has been practiced by parents since ancient times in virtually every culture. Over time there have also been sporadic efforts to rationalize or reject its use and to describe its proper boundaries. What is new in this historical context is the concentrated multidisciplinary and international attention being paid to the subject in the current period.

This attention was largely sparked by the adoption in 1989 of the United Nations Convention on the Rights of the Child, which states in part that

States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.¹

The same document describes parents' rights as including the responsibility to protect and guide their children's rights:

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.²

Hotly debated is whether all forms of corporal punishment should constitute prohibited physical violence or a protected right of the parent. Social and political scientists, academic and clinical pediatricians, legal academics and lawyers, and lay advocates have engaged in a rigorous study of, and a vigorous debate about, the contours and merits of the practice. Some nations around the world and jurisdictions within the United States have considered, and in some instances adopted, substantial legal restrictions on corporal punishment. These legal moves are themselves the product of scientific evidence and rights-based arguments suggesting that children are, at least in some circumstances, more likely to be harmed than helped by corporal punishment. This volume is

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1. U.N. Doc. A/RES/44/25, Part I, Art. 4 (Nov. 20, 1989).

2. *Id.*, Part I, Art. 5.

designed to provide both a thorough description of this modern international and multidisciplinary landscape and the basis for the next generation of approaches to the study of and lawmaking about corporal punishment. We are privileged in this regard to have as coauthors the most highly regarded scholars in their respective areas of expertise.

The volume begins with a set of articles by social scientists on the state of the scientific evidence about corporal punishment. Murray A. Straus's article, *Prevalence, Societal Causes, and Trends in Corporal Punishment by Parents in World Perspective*,³ sets the stage for this examination by summarizing the current state of knowledge regarding the nature and incidence of the practice, both domestically and internationally. Elizabeth Thompson Gershoff follows with her article entitled *More Harm than Good: A Summary of Scientific Research on the Intended and Unintended Effects of Corporal Punishment on Children*,⁴ in which she presents one of two prominent views of the data on the short- and long-term developmental effects of corporal punishment; that is, that even moderate corporal punishment can have important developmental effects that mitigate against its use. From this premise she argues that corporal punishment ought to be banned as a matter of international human-rights law. A different, equally prominent reading of the data on short- and long-term developmental effects is presented in Robert E. Larzelere and Diana Baumrind's article, *Are Spanking Injunctions Scientifically Supported?*⁵ Larzelere and Baumrind are well known in science and law as proponents of mild corporal punishment, or spanking; that is, they argue that spanking ought to remain lawful because children's reactions are context-dependent and largely nonproblematic, and because the practice is effective as a disciplinary tool. This first part of the volume concludes with an article by Jennifer E. Lansford on *The Special Problem of Cultural Differences in Effects of Corporal Punishment*.⁶ Lansford's pioneering work on this issue has revealed both the important extent to which cultural norms are dispositive of how children react to mild to moderate corporal punishment and how universally detrimental harsher forms of corporal punishment are, regardless of normativity.

The volume proceeds with two pieces designed to integrate this social-science evidence into discussions about legal reforms of the American regulatory scheme. Doriane Coleman, Kenneth Dodge, and Sarah Campbell consider *Where and How to Draw the Line Between Reasonable Corporal*

3. Murray A. Straus, *Prevalence, Societal Causes, and Trends in Corporal Punishment by Parents in World Perspective*, 73 LAW & CONTEMP. PROBS. 1 (Spring 2010).

4. Elizabeth T. Gershoff, *More Harm than Good: A Summary of Scientific Research on the Intended and Unintended Effects of Corporal Punishment on Children*, 73 LAW & CONTEMP. PROBS. 31 (Spring 2010).

5. Robert Larzelere & Diana Baumrind, *Are Spanking Injunctions Scientifically Supported?*, 73 LAW & CONTEMP. PROBS. 57 (Spring 2010).

6. Jennifer E. Lansford, *The Special Problem of Cultural Differences in Effects of Corporal Punishment*, 73 LAW & CONTEMP. PROBS. 89 (Spring 2010).

Punishment and Abuse.⁷ This article from law and child psychology provides a thorough description of relevant state laws, judicial decisions, and child-protective-services practices and argues that relevant regulation ought to be revised to the extent necessary to reflect an appropriate balance between parental-autonomy rights and the social-science evidence on the effects of corporal punishment on children's short- and long-term developmental wellbeing. A student note by Kristin Cope entitled *The Age of Discipline: The Relevance of Age to the Reasonableness of Corporal Punishment*⁸ focuses on this same balance as it relates to political efforts to restrict the use of physical discipline when the children involved are under the age of three and in adolescence. Privileging parental autonomy and adopting the view of the social-science literature propounded by Larzelere and Baumrind, Cope argues against restraining all parents' use of corporal punishment in these age groups simply because a few will abuse the privilege.

The rights of parents, children, and cultural groups as these relate to corporal punishment are the focus of the next part of the volume. James Dwyer's article, *Parental Entitlement and Corporal Punishment*,⁹ compares American claims about the parental right to use corporal punishment to claims about parental rights in other contexts—for example, in education and medical care—and concludes that the former are generally less emphatic than the latter. A specialist in legal theory, particularly as it pertains to parental autonomy and children's rights, Dwyer argues that normative arguments about the morality and legality of corporal punishment should, in any event, be made from the perspective of children's rights instead. This focus away from parents' rights and toward children's rights is repeated in Michael Freeman's article *Upholding the Dignity and Best Interests of Children: International Law and the Corporal Punishment of Children*.¹⁰ Freeman, a world-renowned British academic, describes the international human-rights law that applies to discussions of corporal punishment and argues from that law that children have the right to be free from the use of this disciplinary tool. Political scientist and legal scholar Alison Dundes Renteln complicates this argument from international human-rights law by forcing discussion also of the family's cultural rights in her article *Corporal Punishment and the Cultural Defense*.¹¹ Renteln, a specialist in cultural practices and collisions, argues that when corporal punishment is culturally normative and its effects are *de minimis*, the international human right to

7. Doriane Coleman, Kenneth Dodge & Sarah Campbell, *Where and How to Draw the Line Between Reasonable Corporal Punishment and Abuse*, 73 LAW & CONTEMP. PROBS. 107 (Spring 2010).

8. Kristin Cope Collins, *The Age of Discipline: The Relevance of Age to the Reasonableness of Corporal Punishment*, 73 LAW & CONTEMP. PROBS. 167 (Spring 2010).

9. James G. Dwyer, *Parental Entitlement and Corporal Punishment*, 73 LAW & CONTEMP. PROBS. 189 (Spring 2010).

10. Michael D.A. Freeman, *Upholding the Dignity and Best Interests of Children: International Law and the Corporal Punishment of Children*, 73 LAW & CONTEMP. PROBS. 211 (Spring 2010).

11. Alison Dundes Renteln, *Corporal Punishment and the Cultural Defense*, 73 LAW & CONTEMP. PROBS. 253 (Spring 2010).

culture ought to protect parents from intrusions in the family designed to protect the child.

The volume concludes with two articles focusing on corporal punishment by those said to be acting *in loco parentis*. Israeli comparative-law scholar Benjamin Shmueli's article, *Corporal Punishment in the Educational System Versus Corporal Punishment by Parents: A Comparative View*,¹² examines the world's legal systems—including both secular and religiously based systems—and their treatment of the parental and educational rights to use corporal punishment as a disciplinary tool. Shmueli's article is both descriptive—elucidating similarities and differences among those systems in how they treat corporal punishment in the home and at school—and normative—arguing that when human rights and dignity are the basis for proscribing corporal punishment in the schools, these values ought to do the same work for children in the home. Finally, Courtney Mitchell's student note, *Corporal Punishment in the Public Schools: An Analysis of Federal Constitutional Claims*,¹³ focuses domestically on the courts' treatment of constitutional challenges to particularly egregious instances of physical discipline in the schools. Mitchell argues that although plaintiffs ought to continue to pursue the possibility of due-process claims in such cases, the Fourth Amendment's reasonableness standard provides a new and potentially better avenue for success.

The subject of corporal punishment by parents is multifaceted and provocative. This volume is by no means comprehensive in these respects. Nevertheless, its contents describe the most current empirical knowledge and reflect the most important research and strands of argument from the disciplines at the core of this work. We hope it will be a useful resource for those studying and developing the subject and, where appropriate, a catalyst for associated legal reforms.

The volume's strength lies both in its individual contributions and in its integration: the pieces stand alone, but they also work as an interrelated whole. We are grateful to its authors for lending their considerable reputations and talents to this special design and to the faculty and student staff of Law & Contemporary Problems for their dedication and hard work in its realization. It has been a privilege for us, the special editors, to work with all of you.

12. Benjamin Shmueli, *Corporal Punishment in the Educational System Versus Corporal Punishment by Parents: A Comparative View*, 73 LAW & CONTEMP. PROBS. 281 (Spring 2010).

13. Courtney Mitchell, *Corporal Punishment in the Public Schools: An Analysis of Federal Constitutional Claims*, 73 LAW & CONTEMP. PROBS. 321 (Spring 2010).