

Chapter 6

The Legal Basis for School Corporal Punishment

Corporal punishment has been documented as a part of the education of children around the world as far back as ancient Greece (Pate and Gould 2012). In the U.S., corporal punishment has been a part of how both families and schools discipline children since this country's colonial days (Hyman 1990). Corporal punishment of children was brought to the U.S. by colonists from England, where there was a long history of using corporal punishment (often called "flogging") to discipline children, students, prisoners, and military personnel (Scott 1959).

Support for and use of corporal punishment in the U.S. has long been tied to religious beliefs, particularly those of conservative Protestant affiliations, with adherents of corporal punishment using the Bible as justification for beating children in homes and schools as a form of discipline (Greven 1990). This connection between religious beliefs and the corporal punishment of children continues to the present day, with Conservative Protestants much more likely to believe in and use corporal punishment than parents of other religious traditions (Gershoff et al. 1999).

Despite its long tradition, corporal punishment (in the form of whipping, caning, flogging, lashing, paddling, etc.) has been outlawed as a method of disciplining adult prisoners and military personnel (Block 1997). Although corporal punishment had not been used in the penal system since 1952, a key 1968 federal court decision (written by future Supreme Court Justice Harry Blackmun) effectively outlawed corporal punishment in prisons. The Eighth Circuit Court of Appeals ruled that the Arkansas practice of whipping prisoners "offends the contemporary concepts of decency and human dignity and precepts of civilization which we profess to possess" (*Jackson v. Bishop* 1968, at 571). Based on this decision, a prison guard who strikes a prisoner, even if done with the intent of correcting a misbehavior, can be prosecuted under state laws prohibiting physical assault or battery, in the same way that any adult who strikes another adult can be prosecuted. As will be discussed more below, the Supreme Court decided nine years later that while the Eighth Amendment protected prisoners from corporal punishment, that protection was not extended to schoolchildren (*Ingraham v. Wright* 1977).

Adults who hit animals can also be prosecuted under state laws designed to prevent and prosecute animal cruelty. It is against the law in all states to beat an animal, particularly to beat so hard or long as to sustain an injury, and in most states

Table 6.1 Prohibitions of corporal punishment in five child educational, care, or supervisory settings across all 50 states and the district of Columbia

State	Schools	Child care centers	Foster care	Juvenile detention facilities	Residential care
Alabama		X	X	X	X
Alaska	X	X	X	X	X
Arizona		X	X		X
Arkansas		X	X		X ^a
California	X	X	X	X	X
Colorado		X	X	X	X
Connecticut	X	X	X		X
Delaware	X	X	X		X
Florida		X	X	X	X
Georgia		X	X	X	X
Hawaii	X	X	X		
Idaho			X	X	X
Illinois	X	X	X	X	X
Indiana		X	X		
Iowa ^b	X	X	X	X	X
Kansas		X	X	X	X
Kentucky		X	X	X	X
Louisiana		X ^c	X	X	X ^c
Maine	X	X	X	X	X
Maryland	X	X	X		X
Massachusetts	X	X	X		X
Michigan	X	X	X		X
Minnesota	X	X	X	X	X
Mississippi		X	X		X ^d
Missouri		X	X	X	X
Montana	X	X	X	X	X
Nebraska	X	X	X	X	X
Nevada	X	X	X		X
New Hampshire	X	X	X		X
New Jersey ^b	X	X	X	X	X
New Mexico	X	X	X		X
New York	X	X	X	X	X
North Carolina		X ^c	X	X	X
North Dakota	X	X	X		X
Ohio	X	X	X	X	X
Oklahoma		X	X	X	X
Oregon	X	X	X	X	X

(continued)

Table 6.1 (continued)

State	Schools	Child care centers	Foster care	Juvenile detention facilities	Residential care
Pennsylvania	X	X	X	X	X
Rhode Island	X	X	X		X
South Carolina			X	X	X
South Dakota	X	X	X		
Tennessee		X	X	X	X
Texas		X	X	X	X
Utah	X	X	X	X	X
Vermont	X	X	X		X
Virginia	X	X	X	X	
Washington	X	X	X		X
West Virginia	X	X	X	X	X
Wisconsin	X	X	X	X	X
Wyoming		X	X		X
Total	31	48	50	31	46

^a Corporal punishment is allowed in private group homes/institutions

^b Prohibits physical punishment in both public and private schools; all other school prohibitions apply to public schools only

^c Corporal punishment allowed in centers that do not receive state or federal funding

^d Corporal punishment only prohibited in licensed facilities

^e Permitted in religious-sponsored centers with parent permission

Note Sources for data are Bitensky (2006) and Center for Effective Discipline (2012)

doing so is a felony offense (Otto 2005). In but one example, Indiana prohibits corporal punishment of vertebrate animals under its anti-animal cruelty statute, even while it permits corporal punishment of children in schools (Frank 2013).

Children are the only subgroup of people in the U.S. against whom corporal punishment is legally permitted. All states allow parents to hit their children in the name of discipline if the hitting is considered to be “reasonable” corporal punishment (Gershoff and Bitensky 2007). All states also prohibit parents from beating their children for a length of time or with such severity that the child suffers injuries (Child Welfare Information Gateway 2011). Yet as noted above, child welfare laws do not apply to teachers and school personnel as they are not the official caregivers of students (Child Welfare Information Gateway 2013). It is also the case that they are administering corporal punishment in the name of the state and thus are often judged to be immune from prosecution (Pedersen 1998).

States have largely banned corporal punishment from public institutions that serve children, with schools and juvenile detention facilities the only institutions where corporal punishment is allowed in a third or more of the states. As summarized in Table 6.1, corporal punishment is banned from child care centers in 48 states, from foster care settings in all 50 states, from juvenile detention facilities in 31 states, and from residential care settings in 46 states (Center for Effective

Discipline 2012). All states that allow corporal punishment in schools have banned the practice from two or more other public institutions that serve children. Indeed, twelve (63 %) of the states that allow corporal punishment in schools have banned it from the four other care settings summarized in Table 6.1 (Alabama, Colorado, Florida, Georgia, Kansas, Kentucky, Louisiana, Missouri, North Carolina, Oklahoma, Tennessee, and Texas).

Why do many states continue to permit the corporal punishment of children while they are in schools when at the same time they prohibit the practice in other settings? The answer is that states rely on a legal interpretation from over 200 years ago and on a Supreme Court decision from nearly 40 years ago as their license to permit school corporal punishment.

6.1 In Loco Parentis

The right of school personnel to discipline children while they are under their supervision is derived from an interpretation of English law dating back to the 18th century. In his compilation of English law, William Blackstone in 1770 noted that teachers were held to be authority figures who stand in loco parentis, or “in place of the parent,” and thus given the legal right to discipline students in their care (Conte 2000). Since that time, in loco parentis has been interpreted to include the right to use corporal punishment.

Influenced by beliefs about religion and about the supposed intractable nature of children, U.S. educators over the last few centuries have gone beyond asserting their right to use corporal punishment to believing it to be their duty. At an 1874 national conference of educators, a statement on the theory of education referred to the role of schools as “substitutes” for parents with an obligation to teach discipline, corporal punishment specifically:

In order to compensate for lack of family-nurture, the school is obliged to lay more stress upon discipline and...in its phase of substitute for the family, use corrective punishment which...is mostly corporal punishment. (Calhoun 1969, p. 297).

In this interpretation, educators are not just standing in for parents when disciplining students at school but are indeed redressing the deficiencies of parents whom educators believe to be insufficiently strict disciplinarians at home.

Not all teachers are comfortable administering corporal punishment under the authority of in loco parentis. In a 2000 survey of 60 in-service teachers’ attitudes about in loco parentis, only 6.7 % reported that they would “feel comfortable responding as would a parent by utilizing corporal punishment” (Conte 2000, p. 198). Their discomfort seemed specific to corporal punishment, as 70 % stated they were willing to use detention and 88 % were willing to use removal of privileges. Thus, these teachers were comfortable “standing in the place” of the parent when punishments were non-physical but not comfortable when they involved hitting children as a means of punishment.

Schools' in loco parentis authority has been challenged when it comes to the administration of corporal punishment. A federal court in 1972 ruled that a school could not administer corporal punishment over the stated objections of a parent (Glaser v. Marietta 1972). However, in a similar case a few years later in which a child was subject to corporal punishment despite the fact that his mother had prohibited school personnel from doing so because she was opposed to the practice, a federal district court ruled, with its ruling upheld by the U.S. Supreme Court, that,

we cannot allow the wishes of a parent to restrict school officials' discretion in deciding the methods to be used in accomplishing the not just legitimate but essential purpose of maintaining discipline (*Baker v. Owen* 1975, at 301).

In this ruling, the wishes of the school personnel and their obligation to maintain student discipline were held above the wishes of the parent.

Since the *Baker* decision, many school districts in paddling states and sometimes entire states themselves (e.g., Texas: *An Act Relating to Corporal Punishment in Public Schools* 2011) have instituted regulations or laws that allow parents to revoke the school personnel's right to use corporal punishment on their children. Such laws allow parents to "opt out" of corporal punishment, but because not all parents will be aware of this option or how to exercise it, opt out policies are not as strong as "opt in" policies that require parents to provide written permission for schools to administer corporal punishment. Unfortunately, even when parents have explicitly prohibited corporal punishment of their children, their wishes are not always respected, as happened in the *Baker* case.

Although the practice of corporal punishment and the in loco parentis right of teachers to administer it to students both came to the U.S. from England, school corporal punishment is no longer legal in the U.K. Indeed, it was banned from all public schools in 1987 and from all private schools over the subsequent 10 years. In contrast, the federal judiciary in the U.S. has upheld the right of educators to use corporal punishment.

6.2 The Supreme Court's *Ingraham v. Wright* Decision

Corporal punishment of public school children in the U.S. is currently permitted under a 1977 decision by the Supreme Court known as *Ingraham v. Wright*. In this case, two students at a Florida junior high school were hit by their school principal with a wooden paddle that was two feet long, a half inch thick, and four inches wide; one boy was hit with the paddle more than 20 times and suffered a hematoma that required medical attention, while the other boy was hit on his arms and was unable to use one of his arms for a week (*Ingraham v. Wright* 1977). The plaintiffs argued that this excessive corporal punishment violated their protection against "cruel and unusual punishments" as provided in the Eighth Amendment to the Constitution and right to procedural due process under the Fourteenth Amendment.

There are two types of due process guaranteed in the Constitution. The first is substantive due process which refers to the justification for the government's deprivation of life liberty, or property and addresses the question of whether there is sufficient need for this deprivation (Chemerinsky 2006). Procedural due process refers to the procedures by which the government imposes a punishment, such as having a hearing or providing advance notice before the punishment is imposed (Chemerinsky 2006). In the case of *Ingraham*, the Court refused to consider whether school corporal punishment constituted a violation of substantive due process and only considered issues of procedural due process.

In its decision, the Court ruled that the Eighth Amendment only applied to prisoners being held against their will and not to students in public school, and that there was no violation of the Due Process Clause as paddling students "has long been an accepted method of promoting good behavior" (*Ingraham v. Wright* 1977, at line 659). The Court acknowledged that the public and professionals were divided in their opinions of corporal punishment but because only 2 states had banned it (New Jersey and Massachusetts), the Court argued, "we can discern no trend toward its elimination" (*Ingraham v. Wright* 1977, at line 661). This landmark decision shaped public education in the U.S. and continues to provide the legal permission to use corporal punishment in schools nearly four decades later (Zirkel 2002).

6.3 State Laws

The *Ingraham* decision allowed states to be the arbiters of whether corporal punishment should be permitted in schools, and 19 state legislatures have decided to continue to allow corporal punishment. State laws permitting school corporal punishment give school personnel explicit authority to administer it to students at their discretion. The law in Georgia is typical; it states:

An area, county, or independent board of education may, upon the adoption of written policies, authorize any principal or teacher employed by the board to administer, in the exercise of his sound discretion, corporal punishment on any pupil or pupils placed under his supervision in order to maintain proper control and discipline. (Georgia Code Sect. 20-2-731, 2013).

This section goes on to specify that the corporal punishment must not be "excessive or unduly severe" nor "a first line of punishment." It must be administered in the presence of a principal or assistant principal and to a child whose parents have not filed a statement from a doctor that corporal punishment would be harmful to the child's "mental or emotional stability." Most state laws provide a combination of a license to use corporal punishment on students with a caution that it must be "reasonable" and not excessive in nature.

It is instructive once again to contrast corporal punishment in schools with corporal punishment in penal institutions. Just as corporal punishment has been

banned from all adult prisons (Jackson v. Bishop 1968), corporal punishment has been banned from juvenile detention facilities in most states through a combination of federal circuit court decisions and federal regulations (Murphy et al. 2010). It is thus the case that, in 19 states, children have more protection against physical assault in juvenile detention than they do in public schools.

Over the years, some states have used a variety of policy mechanisms to regulate school corporal punishment, including state statutes that explicitly permit the practice as well as laws that prohibit “unreasonable” or “malicious” or “injurious” corporal punishment under civil tort or criminal liability (Lines 1978; Paquet 1982). While all states allowed school corporal punishment at some point, 31 states and the District of Columbia have since banned it through state laws or regulations. New Jersey was the first state to do so in 1867, followed 104 years later by Massachusetts (Center for Effective Discipline 2014).

6.4 Summary

School corporal punishment has a long history in the U.S. It is legally permitted under the 1977 *Ingraham v. Wright* decision by the Supreme Court that the practice does not violate the Constitution’s prohibition against cruel and unusual punishment, although a circuit court had decided corporal punishment did meet this standard for prisoners in 1968, effectively banning corporal punishment from prisons. State legislatures decide the legality of school corporal punishment, with 31 states deciding to ban the practice. School personnel exercise their right to use corporal punishment under their *in loco parentis* authority to act in the stead of parents while children are in school.

The legal statutes relevant to school corporal punishment summarized in this chapter, taken together, constitute a contradiction in how states treat corporal punishment. States bestow on school personnel the right to discipline children as if they were the parents of those children under the legal principle of *in loco parentis*; however, states do not treat these same school personnel as caregivers under laws regarding physical maltreatment. This double standard pits states’ education systems against their child welfare systems, and for now the education system is winning. It would seem time for the state legislatures or the courts to resolve this double standard so as to best protect children.

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