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Child Abuse & Neglect



Defining reasonable force: Does it advance child protection?☆

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ABSTRACT

Fifty-two countries have abolished all physical punishment of children, yet Canada has retained its criminal defense to 'reasonable' corrective force. In 2004, Canada's Supreme Court attempted to set limits on punitive acts that can be considered reasonable under the law. In the present study, we examined the validity of these limits. If the court's limits provide adequate protection to children, most substantiated child maltreatment cases should exceed those limits. We operationalized each limit and applied it to a provincially representative sample of substantiated child physical maltreatment cases. We found that the majority of substantiated physical abuse cases fell *within* each of the court's limits. In more than one in four substantiated physical abuse cases, not even one of the court's limits was exceeded. The best predictor of whether a report was substantiated was whether spanking was typical in the child's home. The findings suggest that abolition of physical punishment would provide greater protection to children than attempts to set limits on its use.

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1. Introduction

Research findings are increasingly clear that 'mild' or 'customary' physical punishment, often referred to as 'spanking' or 'smacking,' places children at risk for more severe violence. Gil (1970) was the first to document that the most common type of physical abuse is carried out by a caregiver with disciplinary intent. When parents engage in physical punishment, they usually do not intend to harm the child. But the belief that they have a right to physically punish the child, and that such behavior is justified, is common among perpetrators of substantiated physical abuse (Dietrich, Berkowitz, Kadushin, & McGloin, 1990). A large Quebec study found that children who were slapped and spanked were 7 times more likely to be severely assaulted (e.g., punched or kicked) by their parents than those who were not slapped or spanked (Clément, Bouchard, Jetté, & Laferrrière, 2000). The first cycle of the Canadian Incidence Study of Reported Child Abuse and Neglect (CIS-1998; Trocmé et al., 2001) revealed that 75% of substantiated child physical abuse occurred during episodes of physical punishment, a finding replicated in the second cycle of the study (CIS-2003; Trocmé et al., 2005). In a US study, infants in their first year of life who had been spanked by their parents in the previous month were more than twice as likely to suffer an injury requiring medical attention than infants who had not been spanked (Crandall, Chiu, & Sheehan, 2006). Another US study found that every time children are spanked, their odds of experiencing severe violence (e.g., kicking, punching, burning) increase by 3%; if they are hit with objects, the odds increase by 9% (Zolotor, Theodore, Chang, Berkoff, & Runyan, 2008).

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A recent meta-analysis of 75 studies focused exclusively on ‘spanking’ (Gershoff & Grogan-Kaylor, 2016) identified eight studies examining the relationship between being spanked and being ‘physically abused,’ all of which found that spanking increased abuse risk (effect size=0.64). This study also found that spanking is consistently associated with negative child outcomes including aggression, antisocial behavior, externalizing and internalizing behavior problems, negative relationships with parents, lower moral internalization, and slower cognitive development (Gershoff & Grogan-Kaylor, 2016). Moreover, the relationships between spanking and these negative outcomes were similar in magnitude to those found between more severe physical abuse and the same child outcomes (Gershoff & Grogan-Kaylor, 2016). This growing body of literature suggests that the putative dichotomy between physical punishment and physical abuse is a false one.

While these research findings have been accumulating, the legitimacy of ‘customary’ physical punishment has increasingly been questioned on the basis of human rights standards. The *Convention on the Rights of the Child* (CRC; UN General Assembly, 1989), now ratified by all countries except the US, obligates governments to protect children from “all forms of violence” (Article 19). The Committee on the Rights of the Child, which monitors countries’ compliance with the CRC, has clarified that “all forms of violence” includes physical punishment, no matter how light. On the basis of research findings and increasing global recognition of children’s human rights, 52 countries to date have legally abolished all physical punishment of children; 54 more have committed to doing so (www.endcorporalpunishment.org).

Other countries, however, still retain their legal defenses to the use of corrective force against children. Canada is one of these. Section 43 of Canada’s *Criminal Code* (1985) states: “Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable under the circumstances.” Canada had an opportunity to repeal Section 43 a number of years ago, when the law was challenged in the courts. It was argued that Section 43 violates three guarantees under the *Canadian Charter of Rights and Freedoms* (the Charter; 1982): security of the person, protection from cruel or unusual punishment, and non-discrimination on the basis of age. It was also argued that Section 43 violates the articles of the CRC that obligate governments to make decisions in the best interests of children, protect children from all forms of violence, and ensure that school discipline respects children’s dignity, as well as the article that obligates parents to act in children’s best interests.

The challenge was initiated in the Ontario Superior Court, which recognized in its ruling “the growing body of evidence that even mild forms of corporal punishment do no good and may cause harm” (para. 132) and that no expert witness on either side of the case recommended physical punishment – yet the Court ruled that Section 43 does not violate the Charter or the CRC (*Canadian Foundation for Children, Youth and the Law v. Canada [Attorney General]*, 2000). This decision was upheld by the Ontario Court of Appeal (*Canadian Foundation for Children, Youth and the Law v. Canada [Attorney General]*, 2002). The case was eventually heard by the Supreme Court of Canada which ruled in 2004 that Section 43 would stand (*Canadian Foundation for Children, Youth and the Law v. Canada [Attorney General]*, 2004; for analyses of this decision, see Carter, 2005; Durrant, 2007; Grover, 2003; McGillivray & Durrant, 2006; Turner, 2002; Watkinson, 2006). Therefore, Section 43 remains the law in Canada today.

1.1. The Supreme Court of Canada’s definition of ‘Reasonable force’

Section 43 is not a child protection law. It is found in the part of the *Criminal Code* containing laws that serve the “protection of persons in authority” (*Criminal Code*, 1985, p. 54). Its purpose is to ensure that certain adults are protected from prosecution when they use force that is “reasonable under the circumstances.” Over the decades, it has been used successfully as a defense to acts including hitting that caused bruising and welts, and hitting with sticks, belts and rulers (McGillivray & Durrant, 2012). The Supreme Court recognized that Section 43 was overly broad as a defense, so in an effort to better protect children while still protecting the adults who use corrective force against them, the court set out seven criteria that would define ‘reasonable’ force. As of 2004, force used against a child should only be deemed reasonable if: 1) it is administered by a parent (teachers may no longer use physical punishment); 2) the child is between the ages of 2 and 12 years, inclusive; 3) the child is capable of learning from it; 4) it is “minor corrective force of a transitory and trifling nature;” 5) it does not involve the use of objects or blows or slaps to the head; 6) it is corrective, not the result of the parent’s “frustration, loss of temper or abusive personality;” and 7) it is not degrading, inhuman or harmful (*Canadian Foundation for Children, Youth and the Law v. Canada [Attorney General]*, 2004). The court’s criteria were intended to create a zone of non-abusive force that would better protect children from maltreatment. It was assumed that if punishment falls within these limits, a child is not at risk – the ‘limitation position’.

Critics have argued that setting out arbitrary criteria protecting some children (e.g., 18-month-olds) and not others (e.g., 24-month-olds) is a violation of the universal right to protection. These critics also argue that attempts to define ‘reasonable’ or ‘non-abusive’ force actually contribute to maltreatment because they give a green light to physical aggression against children, undermining rather than advancing child protection (Greene, 1999). They conclude that the only way to adequately protect children is to abolish all physical punishment – the ‘abolition position’.

Evidence for the limitation and abolition positions was examined in a study in which the Supreme Court’s criteria for defining ‘reasonable force’ were mapped onto a nationally representative sample of 1286 physical maltreatment cases substantiated by Canadian child welfare authorities (Durrant, Trocmé, Fallon, Milne, & Black, 2009). The court’s definition of reasonable force actually described most substantiated cases of physical maltreatment. In most cases: the perpetrator was a parent (90.6%); the child was between 2 and 12 years of age inclusive (68.9%); the child had no learning impairments (87.3%);

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