How did we come to have a law that supported hitting children?

Ian Hassall, 10 June, 2009

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Summary

Hitting children is not a natural part of bringing them up.

It was not a part of traditional child-rearing practice in Maori and Pacific Island societies before colonisation.

It is a habit that New Zealand has inherited from Britain, reinforced by missionary teaching and British law.

It goes against our biological heritage in which full human development relies on a close bond of identity between child and parent in which hitting plays no natural part.

It is notable that, throughout history, doctrine promoting the physical punishment of children has come from male authority figures not mothers.

Section 59: the law that defended striking children

Until two years ago we had a piece of law in New Zealand that said a parent was justified in using force on a child by way of correction if the force used was reasonable in the circumstances.

> **Crimes Act 1961 Section 59 (1)**
> "Every parent of a child and …every person in the place of the parent of a child is justified in using force by way of correction towards the child if the force used is reasonable in the circumstances."

Over time many New Zealanders came to see this as bad law and eventually Parliament, by a majority of 113 to 8, substituted a new law which said parental force could not be used for the purpose of correction.

> **Crimes (Substituted Section 59) Amendment Act 2007 Section 4**
> "..The purpose of this Act is to amend the principal Act to make better provision for children to live in a safe and secure environment free from violence by abolishing the use of parental force for the purpose of correction."

> **What was the effect of repealing s59 of the Crimes Act 1961?**
> It removed a special defence for parents against a charge of assault on their children and subjected such assaults to the same standard for prosecution and determination of guilt as assaults on other people.

Next month New Zealanders will be asked to respond to a referendum whose aim is to overturn the new law.

> **NZ Referendum on Child Discipline 2009**
> "Should a smack as part of good parental correction be a criminal offence in New Zealand?"

The questions I want to address with reference to the old law are, "How did we come to have such a law?" and "What was wrong with it?" I want to answer these questions because, as George Santayana said, 'Those who cannot learn from history are doomed to repeat it.' Replacement of the old law was a step forward. The referendum aims to take us a step backward.

How did we come to have such a law?

There are historical, anthropological, sociological, legal, religious and political frames within which the law evolved.

1. First, the historical frame. The dominant group of settlers who arrived in New Zealand in the nineteenth century mainly from Britain brought with them the practice of physical punishment of children. It has persisted here and in other countries colonised by Britain and in the countries of Britain itself. Before colonisation Pasifika and Maori practice was not to punish children. (Salmond, 1991; Makereti, 1998; Wood, Hassall, Hook, Ludbrook, 2008, pp. 92, 124.)

2. Second, the anthropological frame. I want to focus on this because there is an underlying assumption by many people who opposed the 2007 law change that physical punishment is justified because it is natural. This is a view that I strongly dispute.

We have, each one of us, come from an unbroken line of ancestors going back to when life first emerged on earth. We are survivors and the descendants of survivors. Had a single one of those ancestors not lived to produce offspring the chain would have been broken and we would not be here.

Survival of the young in each generation of that descent line has been a vital part of our history. For aeons survival of tender offspring depended only on good luck and a robust constitution and the ability to stay hidden.

At a certain point a new strategy emerged in which the young were protected and nurtured by their adult kin. It was a survival strategy that appeared many millions of years ago and it has been highly successful. It is one we share with all mammals and many other creatures.

As a species, we have gone further down this path than others. The period during which as children we are highly dependent on our family for protection and nurturance has lengthened in comparison with other species. This is a trait we share to a degree with our immediate primate relatives. So it has had at least three million years to be shaped and developed.

The place of family in ensuring survival of the young is more than the provision of food and warmth. We know that kittens taken from their mothers too early do not develop proper cat behaviour, monkeys reared with unresponsive mechanical 'mothers' develop poorly and young chimpanzee orphans are apt to die even though they are provided with adequate food and shelter.

Neuroscientists have explored in human infants this dependence on a parent or surrogate parent for social development. They have found certain aspects of the parent's behaviour in the relationship between parent and child to be necessary for the child's social development. In extremely disturbed relationships, there is lifelong seriously impaired functioning which may be accompanied by actual anatomical brain changes. (Glaser, 2000)

Parental love for a child and the accompanying behaviour is a part of our genetic and social inheritance as a species and so is almost universal. As with other species, though, it can be weakened by stressful material and social circumstances, parental disability and inexperience and a non-conforming infant. (Gerhardt, 2004)

In the usual loving, bonded parent child relationship the parent recognises the child's identity and feelings as not entirely separate from her/his own. Physical chastisement is not a natural part of such a relationship.

An explanation of the law supporting physical chastisement cannot be based on natural behaviour within an anthropological frame. It must either be found in aberrant behaviour within that frame arising from social and environmental stress or in alternative frames.

3. Third, the sociological frame. Physical punishment of children was a custom brought to New Zealand by nineteenth century settlers. The pervasiveness of the custom surprised early researchers, Jane and James Ritchie. Their surveys of young mothers in the sixties and seventies found a majority who regularly and frequently struck their children. (Ritchie & Ritchie, 1970).

The Ritchies also found to their surprise that mothers freely admitted that the smacks they gave together with scolding and shouting were a result of their tiredness, isolation, anger and frustration and were not expected to benefit the children. In other words the legal and moralistic justification for striking children that uses such words as 'correction', and 'punishment' is no more than a cover for adult frailty.

At the ordinary human level striking children is not a well-judged act from the range of child-rearing behaviour at our disposal, but a lashing out which, in our culture, developed into a socially sanctioned habit. This habit was ritualised in schools, until a law change in 1990, and in households that use the 'wait until your father comes home' threat and execution.

4. Fourth, the legal frame. The autocratic power of life and death of fathers over their children was established in Roman law. The English common law followed in modified form in sanctioning

parental authority to 'correct' a child. In Victorian England the concept of 'reasonable chastisement' was written into the law.

> Under English law physical punishment was permitted as a means of correction, not only of children but of wives, servants, pupils, apprentices, criminals as well as naval and military personnel. Since then the power to flog, whip, cane, hit and smack has been progressively removed (in England and in its derivative law in New Zealand). With the abolition of corporal punishment in New Zealand schools in 1990, the only remaining circumstance in which human beings could be assaulted without it being an offence was the chastisement of children by parents and those in the place of the parent.
>
> (Wood, Hassall, Hook, Ludbrook, 2008, p.71)

Section 59 of the Crimes Act 1961 was a restatement the justification of the use of force for 'correction' on children by their parents. Until the substitution of the new Section 59 in 2007 this law was used successfully to defend parents against charges of assault and set a standard that no doubt led to many other cases of assaults on children not being prosecuted.

5. Fifth, the religious frame

Sections of the Christian Churches, notably of the evangelical movement, have presented the view that children are born evil and must have pain repeatedly inflicted upon them to teach them obedience to God's will.

> "This, therefore, I cannot but earnestly repeat, -- break their wills betimes; begin this great work before they can run alone, before they can speak plain, or perhaps speak at all. Whatever pains it cost, conquer their stubbornness: break the will, if you would not damn the child. I adjure you not to neglect, not to delay this! Therefore, (1.) Let a child, from a year old, be taught to fear the rod and to cry softly. In order to do this, (2.) Let him have nothing he cries for; absolutely nothing, great or small; else you undo your own work. (3.) At all events, from that age, make him do as he is bid, if you whip him ten times running to effect it. Let none persuade you it is cruelty to do this; it is cruelty not to do it. Break his will now, and his soul will live, and he will probably bless you to all eternity."
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> (Wesley, 1784 in Jackson, 1872)

> "Children are not little bundles of innocence: they are little bundles of depravity…and can develop into unrestrained agents of evil… unless trained and disciplined. Selfishness, violence, lying, cheating, stealing and other manifestations of rebellion, are just the child unpacking some of this sinful foolishness from the vast store in his heart. "
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> (Family Integrity website, 2007)

This view has had a considerable influence in changing the behaviour of Maori and Pasifika people toward their children.

6. Sixth, the political frame. The habit of physical punishment of children and its underpinning in the law have been systematically criticised since at least the 1960s. Before that prominent people sensitive to human suffering and damaged relationships had exposed the brutality and futility of the practice. Katherine Mansfield in her 1921 short story, '*Sixpence'* was one. (Mansfield, 2006)

In 1978 Jane and James Ritchie made a submission to the Parliamentary Select Committee on Violent Offending calling for an end to corporal punishment in the home and in their 1981 book, 'Spare the Rod', mounted a persuasive argument for law reform. (Ritchie & Ritchie, 1981)

The demand for repeal of Section 59 grew, supported by many people and organisations, in particular; parents and parent organisations including Parents Centres, Plunket; child advocacy agencies such as Barnardos, UNICEF New Zealand, Save the Children New Zealand and the Children's Commissioner; human rights proponents and organisations; anti-violence organisations; professional people in healthcare, social work and the law; community and faith-based groups and citizens from all walks of life. EPOCH New Zealand was set up in 1997 with one of its aims being repeal of Section 59.

Public debate occurred sporadically during this time. A number of private members Bills for repeal or revision of Section 59 were placed in the Parliamentary ballot. The first, introduced in 2002 by the New Zealand First MP, Brian Donnelly was for full repeal. In 2005 Green MP, Sue Bradford's Bill, also for full repeal, was drawn from the ballot and during its passage through parliament there was intensified debate. The Bill was passed into law in May 2007 with the support of both major parties and the great majority of MPs. The vote on the third reading was won 113 to 8.

What was wrong with the old law?

In the discussion that has surrounded the law change the point is often raised that research shows no detectable harm to children who have been mildly physically punished when compared with children who have had no such punishment. It is true that this is what a considerable body of research shows. One is our own Christchurch longitudinal study. (Fergusson, Lynskey, 1997)

The supporters of the old Section 59 or a variant of it argue that since the effect of the new law is to prohibit something that does no harm it is invalid.

There are a number of objections to this argument. I shall put forward the two main ones as I see them.

1. The first is that it is an offence against common decency, human dignity, justice and the child's human rights.

The main argument against legally sanctioned assaults on children has never been a question of whether or not it does harm, as can be seen by applying the same argument to assaults on adults.

The law that makes it a criminal offence to assault an adult does not rely for its justification on whether or not it does harm. If evidence was lacking for any ill effects from a certain level of assault by a man on his wife, for example, it would still not be acceptable.

The central issue is not whether or not harm is done but whether or not one person is entitled to assault another. It is a question of rights and human dignity. Women, servants and soldiers, once subject to legally sanctioned corporal punishment are deemed in modern times to have the right to be free from assault and the threat of assault and from the oppression and dehumanisation that accompanies the entitlement of others to inflict pain upon them.

The right of children to physical integrity is recognised by the UN Convention on the Rights of the Child. Twenty-three countries have recognised this right in their law. (Global initiative to end all physical punishment of children, 2009)

To many of us thinking in terms of human rights is rather alien, the sort of thing governments, the United Nations and international agencies do. To me rights are simply expressions of the minimum standard of human behaviour which we know to be right. If we look at hitting children in these terms we know that it is simply wrong.

It feels wrong and when we reflect, we know in our hearts it is wrong. What ordinary parent can recall without remorse the look of fear on the child's face when they raised their arm to strike?

Even worse, if as parents we have become inured to the fear and pain we cause by hitting our children, what have we become? And if our children over the years become used to us hitting them and regard it as normal, what have they become?

Look at how quickly majority support for hitting children has collapsed in those countries which have banned it. Does this not mean that most parents relied on the justifications of custom and law to support a habit they knew in their hearts to be wrong?

2. The second thing wrong with the old Section 59 is that it did indeed do serious harm but it was less obvious than what the researchers measure because it was indirect and long-term.

The old law propped up a sense of entitlement to strike children. This sense of entitlement, in an angry person with limited self control, can be the beginning of a beating. Surveys of adults found guilty of abuse of children have revealed that usually the episode of abuse began with the intention to punish and escalated. (Gelles & Straus, 1980)

A sense of entitlement over children and the inattention to their interests that goes with it has wider implications. It contributes to a failure to cater for children. Such an attitude is behind not only the high rates of violence to children in New Zealand but the high rates of child poverty and child accidents, the low entitlement to paid parental leave and other aspects of the lives of children in this country that are less favourable when compared with other OECD countries.

Conclusion

If abuse of children is to be reduced, if as a society we are to give children their due and if they are to have the self-confidence and competence to give themselves and their nation a secure place in the world, they must be respected. The close reciprocal relationship between parent and child that is our biological heritage must be respected, protected and promoted for it is the foundation of full human functioning. Hitting has no part in it, least of all hitting that is sanctioned by the law.

END

References

Fergusson, D., Lynskey, M. (1997) Physical punishment/ maltreatment during childhood and adjustment in young adulthood. *Child Abuse and Neglect*, 21, 617-630.

Gelles, R., Straus, M. (1980) *Intimate violence*. New York: Simon & Schuster.

Gerhardt, S. ((2004) *Why love matters: How affection shapes a baby's brain.* Hove, East Sussex: Brunner-Routledge.

Glaser, D. (2000) Child abuse and neglect and the brain – a review. *Journal of Child Psychology and Psychiatry,* 41, 97-116.

Global initiative to end all physical punishment of children. *Global progress toward prohibiting all corporal punishment*. Retrieved 11 June, 2009 from http://endcorporalpunishment.org/pages/pdfs/charts/Chart-Global.pdf

Jackson, T. (Ed.) (1872) Sermon 96: On obedience to parents. In, *The sermons of John Wesley 1872 edition.* Retrieved 11 June, 2009 from http://wesley.nnu.edu/john_wesley/sermons/096.htm

Makereti (1998) The way it used to be. In Ihimaera, W. (Ed.) *Growing up Maori*. Auckland: Tandem Press, p24.

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

Ritchie, J., Ritchie, J. (1970) *Child rearing patterns in New Zealand*. Wellington: A.H. & A.W. Reed.

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

Salmond, A. (1991) *Two worlds: First meetings between Maori and Europeans 1642-1722.* Auckland: Viking. P. 422.

Smith, C. *The Christian Foundations of the Institution of Corporal Correction*. Family Integrity, 2005. Retrieved 11 October, 2007 from http://www.familyintegrity.org.nz

Wood, B., Hassall, I., Hook, G., Ludbrook, R. (2008) *Unreasonable force: New Zealand's journey towards banning the physical punishment of children*. Wellington: Save the Children New Zealand.