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A Comparative Analysis of the Corporal Punishment of Children: An Exploration of Human Rights and U.S. Law

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Using a comparative perspective, this paper explores two approaches to child/adult relationships and the practice of corporal punishment: a human rights perspective and a traditional perspective reflected in U.S. law. Source material for our analysis draws on statutes, court decisions, and human rights conventions relating to the status of children and corporal punishment. Legislation and case law reflecting each perspective are presented and analyzed. Discussions of the nature of and reasons for differences include: the absence of human rights principles as a touchstone for U.S. law, the avoidance of linking corporal punishment and violence in the law, and the persistence of a colonial model of child/adult relationships structured around adult dominance and control of children. In contrast, a human rights model has at its core the human dignity of the child. This approach extends human rights to children and discourages corporal punishment and oppressive relationships between adults and children. Finally, this paper discusses the value of bringing a human rights approach to our understanding of child/adult relationships and the use of corporal punishment against children.

INTRODUCTION

Corporal punishment of children is a behavioral manifestation of the cultural, social, and psychological relationships between children and adults. The law of corporal punishment and its application in specific cases shapes and is shaped by this multifaceted relationship. Murray Straus (1991), Bruce Perry (1997), Robert Coles (1997), and Alice Miller (2002) address the important support the law gives to the widespread use of corporal punishment against children. Straus points to this in his systems model of corporal punishment, Perry in his model of brain development (neurobiology), Coles in his work on children's moral development, and Miller in her analysis of adult psychopathology resulting from the harm done to children and the related need to deny this harm. From each of these perspectives, the law provides a legitimizing force for parents and other caretakers for the use of corporal punishment against children.

In this paper, two approaches to the law of corporal punishment are compared and contrasted. The first is a human rights approach to law that takes as its starting point the human dignity of the individual — in this case, the child.

The second approach is that reflected in U.S. law. Here, the legal balance of interests weighs heavily in favor of the parent. Parental power, including the use of physical force (i.e., violence) is applied to the child without reference to basic principles of human dignity.

Relationships between adults and children can reflect a world of love, mutual respect, nurturing, and support. Too often, however, adult dominance and control characterize these relationships, reinforcing children's dependent status. Over the past century, many relationships based on power, dominance, and physical coercion have been challenged and dissolved; however, the relationship of adult dominance and child subservience and submission persists and has acquired a sense of normalcy.

During the past 15 years, the study of children has received increasing attention (Russakoff, 1998; Stephens, 1995; Scheper-Hughes & Sargent, 1998). More specifically, violence in the lives of children — whether in the context of family, school, community, or war — is a developing area of study as researchers and policymakers explore children as perpetrators and victims of violence (Garbarino, 1995; McCord, 1997, Raviv et al., 1999). Children as perpetrators of violence draw two kinds of attention: (1) a criminal justice response of preventing, punishing, and treating child offenders, and (2) attempts to understand the links between violence done to and by children (Heide, 1992, 1999). Directly related to the latter, a large body of scholarly research now shows that violence done to children, even in the form of legally sanctioned corporal punishment, increases the likelihood that they will perpetrate violence on others throughout their lives, including assaulting other children, violent teenaged crime, and ultimately domestic violence and elder abuse (Maxfield & Widom, 1996; Smith & Thornberry, 1995; Straus, 2001; Perry, 1999).

In our view, this attention to children and violence reflects, in part, a recognition that there is something terribly wrong with the way we as *adults* conceive of and structure the relationships between children and the adult world. Increasingly, we are becoming aware of the consequences of the “structured oppressions” that exist between adults and children. Alice Miller (1990b) has documented the history and psychology of beliefs, laws, and advice that adults use to justify corporal punishment and deny children their right to physical integrity and human dignity. As Miller argues, these justifications perpetuate adult oppression of children and transform children into objects, the “other,” or something to be controlled. Without respect for their human dignity, children perpetuate the destructive pattern when they become adults (Miller, 1990a).

The child/adult relationship is examined through comparative analysis of the law of corporal punishment; our examples reflect the application of human rights law to children and statutory and case law from the United States. To be clear, our focus is not on the more extreme forms of physical violence (i.e., “child abuse”) but rather on legally sanctioned violence or “use of physical force” against children. Susan Bitensky (1998) describes the behavioral sub-

ject of our focus in her article “Spare the Rod, Embrace Our Humanity: Toward a New Legal Regime Prohibiting Corporal Punishment of Children” as “sub-abuse”:

...“subabuse corporal punishment” is used to signify attacks on the body of the child, in the name of discipline or guidance, that are not extreme enough to be prosecutable under child abuse or child cruelty statutes. The term “sub-abuse corporal punishment” may thus be defined for purposes of this Article as follows: the currently nonprosecutable (in the United States) use of physical force with the intention of causing a child to experience bodily pain so as to correct, control or punish the child's behavior (359).

It is critical to focus on corporal punishment, the “legitimate use of force,” rather than child abuse for many reasons. To begin with, corporal punishment is one of the most powerful predictors of child abuse (see Straus, 2001; Gil, 1970). Parents who physically abuse their children are far more likely to rely on corporal punishment than other parents. Also, physical abuse often begins as an attempt to control or punish the child through corporal punishment that then escalates to more extreme violence.

The consequences of corporal punishment are substantial. In fact, research shows that the causes and consequences of corporal punishment and physical abuse are the same (Straus, 1983). Findings from U.S. and international studies show that in addition to increasing the likelihood that the child will be violent to other children, commit violent crimes as a teen, and engage in spouse, child, and elder abuse as an adult, the use of corporal punishment also harms the child psychologically. The frequency of corporal punishment is associated with increased depression and suicidal thoughts as a child and an adult, decreased overall wellbeing, increased alienation, and most informatively, less developed consciences and significantly less empathy. (For comprehensive reviews of this literature, see Straus, 2001; Gershoff, 2002; and Bitensky, 1998.) Obviously, the use of corporal punishment on children has profound implications not only for the children's wellbeing, but for society's as well.

Moreover, from our perspective, the “legitimate use of force” to control and/or punish a child is the ultimate mechanism of social control in child/adult relations. Part of the foundation of oppression is the use of force that is legally sanctioned and buttressed by ideology that justifies this force as necessary and “for the children's own good.” As Bitensky (1998) observes with respect to social control in other contexts: “as historically oppressed peoples have liberated themselves from being legally categorized as the property of others, such liberation typically has brought in its wake legal protection from physical chastisement” (439-440).

Rethinking Child-Adult Relationships: A Human Rights Perspective³

Internationally, trends have started the process of challenging and providing alternatives to traditional child/adult relationships. These changes also

have fostered a rethinking of the legitimized use of force against children. Human rights conventions and the application of human rights standards to specific cases permit statutory and judicial support for the position that corporal punishment of children is illegitimate. The United Nations (UN) Convention on the Rights of the Child (CRC), as well as other human rights conventions including the Universal Declaration of Human Rights, the International Covenant on Political and Civil Rights, the European Convention for the Protection of Human Rights, and the UN Torture Convention, provide support for transitioning children from a position of property or an oppressed class to the status of human beings entitled to human dignity rather than corporal punishment (Bitsensky, 1998).

The CRC gives clear voice to these perspectives. Throughout its preamble and in its articles, the CRC references concepts related to the human dignity of children. These provisions not only attempt to ensure a social responsibility for the nurturing of human dignity in children, but also provide legitimacy and social support for preventing violations of children's human dignity. With respect to nurturing children, the CRC recognizes that "the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding" (UN CRC 1989, Preamble). To prevent violations of children's human dignity, the CRC commits member nations to "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 care of the child" (UN CRC 1989, Article 19). Central to the human rights perspective is the belief that adults and children share a relationship of common human dignity rather than one of dominance and subservience. The CRC, then, provides lawmakers in nearly all countries of the world a reference point for legislation related to corporal punishment of children from a human rights approach. In the United States, where the CRC has not been ratified, this is something not available to state-level jurisdictions.

A Human Rights Approach to Corporal Punishment: Legislation

Law embedded in a human rights approach to child/adult relationships aims to eliminate the structural oppression of children. The human rights approach begins with the assumption that children, like adults, possess a right to physical integrity and human dignity, including the right to be free from inhuman and degrading punishment. Neither the status of the child nor the inflictor of punishment, be it judicial officer or parent, changes the nature and character of the act of violence. Law from a human rights approach would grant children the same legal protection from the use of force as adults have because children have the same status as adults — that is, the status of human beings, not property. Such law focuses on eliminating the use of force against

children and immunity from legal accountability when adults inflict pain on children.

For the purposes of our analysis, human rights cases and recent legislation have been gathered from the decisions of the European Court of Human Rights, UNICEF, and the Web sites of groups who monitor and report on corporal punishment issues, primarily the Global Initiative to End All Corporal Punishment of Children (<http://www.endcorporalpunishment.org>). Taken together, these materials provide an alternative way of conceiving the relationships between children and the world of adults that surrounds them, a conceptual language for questioning the legitimacy of corporal punishment applied to children, and a support for the primacy of the nurturance and protection of children.

Throughout the world, the issue of corporal punishment of children — whether occurring in families or exercised in governmental institutions (i.e., schools or the criminal justice system) — is being reframed as a form of violence and placed in the context of a human rights issue. Within the last few years in Austria, Denmark, Finland, Italy, Norway, Croatia, Scotland, Canada, South Africa, Germany, and South Korea, courts and legislatures increasingly are finding that corporal punishment of children in the context of family, school, or the criminal justice system is anachronistic, counterproductive, and/or a violation of the dignity of the individual.

EPOCH - USA (End Physical Punishment of Children), an advocacy organization working to end corporal punishment of children, provides on its Web site (<http://www.stophitting.com>) updates on legislation and court decisions relating to corporal punishment. They note the following recent examples of legislation seeking to end the practice of corporal punishment. (See Bitsensky, 1998 for a thorough discussion of each).

U.N. Convention on the Rights of the Child (1989): Article 19, Paragraph 1: "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from *all forms* of physical and 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." (Emphasis added.)

Finland: 1983 The Child Custody and Right of Access Act begin with a statement of principles which includes the following: "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." (Child Custody and Right of Access Act, ch. 1, subsec. 3). (Emphasis added.)

Austria: 1989 amended their Youth Welfare Act to explicitly state that "...using violence and inflicting physical or mental suffering is unlawful" in bringing up children. (Austrian Civil Code Sec. 146a). Austrian Minister for Environment, Youth and Family noted: "The motive for this reform is our knowledge of the *immeasurable harm children suffer when parents are not willing or able to avoid physical punishment* as a way of bringing up children." (Emphasis added.)

Italy: 1996 Supreme Court of Cassation says that *the very expression 'correction of children' which expresses a view of child-rearing that is both culturally anachronistic and historically outdated* and should be redefined. It stated: "The use of violence for educational purposes can no longer be considered lawful."

Denmark: 1997 amended Parental Custody and Care Act to say: A child has a right to care and security. He or she shall be treated with respect as an individual and *may not be subjected to corporal punishment or other degrading treatment.* (Emphasis added.)

One characteristic of legislation cast in a human rights perspective is the willingness to view corporal punishment as violence. The context for a discussion of corporal punishment is child development, not child control. Bitensky (1998) notes that a human rights approach acknowledges the research on the harm that corporal punishment causes and seeks to prevent it, and further notes that the use of violence for educational purposes can no longer be considered lawful. A human rights approach finds corporal punishment "anachronistic and historically outdated," finds that no violence against children is reasonable, and seeks to educate society and parents about alternatives for achieving the "harmonious development of a child's personality" (385-386).

A Human Rights Approach to Corporal Punishment: Illustrations from Case Law

There have been international cases in which the application of human rights covenants redefines the relationship between adults, violence, and children. Just as the reforms noted above put children's health, welfare, and development first, these cases apply human rights covenants to judgments concerning corporal punishment to start to provide a new "legal realism" reflecting the realities of violence in the lives of children.

In *Tyrer v. United Kingdom* (1978) and *A. v. United Kingdom* (1998), the European Court of Human Rights undercut legal support for the use of corporal punishment in the United Kingdom. These two cases are important not only for their holdings but also for what they reflect about how the law can approach the relationship between children, the adult world, and violence from the perspective of human rights. In addition, *In Plonit v. A.G.* (2000), a case from Israel, shows how even the "reasonable chastisement" principle can be challenged directly when a human rights perspective is available and how the CRC and research on the effects of corporal punishment can make their way into court decisions to de-legitimize corporal punishment and the oppressed status of children.

The *Tyrer* case involves the judicial use of corporal punishment of a child and whether or not such punishment violated Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1985), which states: "No one shall be subjected to torture or inhuman or degrading treatment or punishment." Mr. Tyrer, a 15-year-old boy, was sen-

tenced to three strokes of the birch for a school yard assault of a school mate who reported Tyrer and two friends for bringing beer into the school. In making their appeal that judicial corporal punishment as administered in this case was not degrading, the state referred to four factors: (1) its legislative authorization, (2) public opinion supporting the action, (3) the punishment's deterrent effect, and (4) the fact that the corporal punishment was administered in private (in the police station) without publicity.

The responses of the European Court of Human Rights to these arguments are instructive. With respect to public opinion supporting judicial corporal punishment, the Court observed:

However, even assuming that public opinion can have an incidence on the interpretation of the concept of "degrading punishment" appearing in Article 3 (art. 3), the Court does not regard it as established that judicial corporal punishment is not considered degrading by those members of the Manx population who favour its retention: it might well be that one of the reasons they view the penalty as an effective deterrent is precisely the element of degradation which it involves (§ 31).

The Court iterated the following about deterrent effect and its relationship to whether the punishment is degrading:

It must be pointed out that a punishment does not lose its degrading character just because it is believed to be, or actually is, an effective deterrent or aid to crime control. Above all, as the court must emphasise, it is never permissible to have recourse to punishments which are contrary to Article 3, whatever their deterrent effect may be (§ 31).

The Court also rejected the argument that the victim of the corporal punishment was not humiliated in public or in the press. The Court's interpretation makes the subjective experiences of victims (i.e., children) part of the equation, something totally alien to the colonial model discussed below:

The court does not consider that absence of publicity will necessarily prevent a given punishment from falling into that category [degrading]: it may well suffice that the victim is humiliated in his own eyes, even if not in the eyes of others (§ 32).

Furthermore, the human rights court characterized judicial corporal punishment and its legislative authorization as an example of "institutionalized violence." Here, the human rights court's analysis provides powerful insights and alternative interpretations of any form of corporal punishment to those made from the perspective reflected in U.S. law:

The very nature of judicial corporal punishment is that it involves one human being inflicting physical violence on another human being. Furthermore, it is institutionalized violence, that is, in the present case: violence permitted by the law, ordered by the judicial authorities of the State and carried out by the police authorities of the State. Thus, although the applicant did not suffer any severe or long-lasting physical effects, his punishment — whereby he was treated as an object in the power of

the authorities — constituted an assault on precisely that which it is one of the main purposes of Article 3 to protect, namely a person's dignity and physical integrity. Neither can it be excluded that the punishment may have had adverse psychological effects (§ 33).

In the case of *A. v. the United Kingdom*, the European Court of Human Rights strongly undercut legal support for corporal punishment in that country not by finding that corporal punishment per se violated the Article 3 prohibition against torture or inhuman or degrading punishment, but rather by finding that the defense to assault charges embodied in the "reasonable chastisement" exception of English law failed to provide children adequate protection from torture or inhuman or degrading punishment provided in Article 3. In *A.*, a jury found that a father was not guilty of assault occasioning actual bodily harm on his child because the jury judged that his actions were "moderate and reasonable" in the circumstances permitted by law. However, the father had caned his 9-year-old stepson, leaving a variety of marks on his body.

Upon appeal, the European Court of Human Rights focused on the character of the act done to the child (emphasized in a human rights perspective) and not its reasonableness, which is emphasized in U.S. law. After an initial finding that the father's actions meet the standard of "degrading" punishment, the European Court of Human Rights, referring to the relevant portions of Articles 1 and 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, held the following:

The court considers that the obligation on the High Contracting Parties under art 1 of the convention, to secure to everyone within their jurisdiction the rights and freedoms defined in the convention, taken together with art 3, requires states to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading punishment, including such ill-treatment administered by private individuals. Children and other vulnerable individuals, in particular, are entitled to State protection, in the form of effective deterrence, against such serious breaches of personal integrity. (§ 22).

The result of this holding of the European Court of Human Rights was that British legislation will require changes that give children the same protections against the use of force as adults, as a matter of human rights.⁴

The Israeli case *In Plonit v. A. G. 54* (2000) takes on the "reasonable chastisement" defense more directly. In this case, a mother hit her children on their buttocks and faces, struck her daughter with a vacuum cleaner, and punched her son in the face, breaking one of his teeth. She was convicted of abuse of a minor and assault on a minor. Responding to the CRC's obligation that the state take measures to prevent violence against children, the Israeli Supreme Court decided "that corporal punishment of children, or humiliation and derogation from their dignity as a method of education by their parents, is entirely impermissible" (p.11). In doing so, the Court rejected the "reasonableness" doctrine, noting:

In the legal, social and educational reality in which we live, we cannot leave open the definition of 'reasonable' and thus compromise the risk of danger to the health and welfare of children. We must also take into account that we live in a society in which violence is as pervasive as a plague; an exception for 'light' violence is likely to degenerate into more serious violence. We cannot endanger the bodily and mental integrity of the minor with any type of corporal punishment; the type of permissible measures must be clear and unequivocal, the message being that corporal punishment is not permitted (12).

With this decision, the Israeli Supreme Court removed support of the legal system from the various sources of legitimacy to which parents can refer in deciding to use corporal punishment.

The Law of Corporal Punishment in the United States

A comparison of U.S. law and human rights approaches to child/adult relationships and corporal punishment of children is particularly salient because a human rights prescription, with the assumption that the individual has inherent dignity, is not something that comes easy to Americans who tend to have an exclusionary view of the concepts of rights and dignity of the individual. In understanding the difference between the U.S. experience and the international human rights trends discussed above, it is important to note that over 191 countries have signed the CRC, which "uses language...indicative of an intent to impose human rights obligations protective of children on both states parties and private actors" (Bitensky, 1998, p. 389). As of today, the United States and Somalia are the only two countries in the UN that have not ratified the CRC. Not surprisingly, the status and human dignity of children as individuals or as a group are not concepts respected in national or state law (Bitensky, 1998) or in social custom or practice (Straus, 2001; Child Trends, 2002).

The failure of the United States to ratify the CRC is an example of what Michael Ignatieff (2001) refers to as "American Exceptionalism" with respect to human rights accords. This refers to the observation that the United States supports the development of human rights agendas around the world while resisting the application of these same rights in the United States (see Bitensky, 1998, p. 417-420). Because the United States is not party to the provisions of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms or the CRC, U.S. law and judicial decisions concerning children and the use of force are largely without the influences of human rights principles.

In the United States, the rights of children to be protected from violence and harm often are subordinated to the rights of parents and other caretakers that inflict violence and other forms of degradation and humiliation on children. Here, the law derives from a balance of interests reflecting a consensus (norms) or resolution of conflict (power) and the granting and limiting of the power of parents/adults without reference to basic principles of human dignity of the child. In addition, family responsibilities toward children are often

limited by social or collective responsibilities as expressed through law for protecting and supporting children.⁵ Examining U.S. corporal punishment law against the backdrop of the human rights approach described above helps us to better understand how children's and adults' interests are structured unequally.

Developing a Database of Corporal Punishment Law in the United States

In order to develop a database for a comparison of statutory and judicial legitimization of corporal punishment of children, we gathered statutory language from all 50 states. This is a difficult task because only 19 jurisdictions (18 states and the District of Columbia) specifically mention corporal punishment in their statutes dealing with this form of behavior against children. Only three states use the word "violence" in relevant statutes: the District of Columbia, Montana, and West Virginia. However, none of these three uses of "violence" refers specifically to corporal punishment.

Complicating the matter further is the fact that statutory language relating to corporal punishment is found in a variety of places: criminal law, civil law, laws relating to assault, and laws relating to family or domestic violence. In addition, laws in some states give discretion to local governing bodies (such as school systems) or other state agencies (such as social welfare agencies charged with keeping children safe) to decide the appropriateness of corporal punishment in their area of authority with respect to schools, day care centers, group homes, and foster care (see the EPOCH-USA Web Site at <http://www.stophitting.com>).

Whereas much effort is spent documenting what parents and caretakers are not permitted to do to children (e.g., abuse and neglect) and the legal processes for handling complaints when they arise, there seems to be little awareness of the assumption that statutory law in the United States does authorize and legitimize the use of force against children.⁶ (See the References section for a list of state statutes authorizing the use of corporal punishment against children.)

Contexts for Corporal Punishment in the United States

Corporal punishment law in the United States is not consistent. When looking at the various contexts in which corporal punishment of children can occur, such as family, day care, and schools, there is great variation as to where it is prohibited and permitted. In its recent survey of state regulations and statutes dealing with corporal punishment, EPOCH-USA (2006) found the following regarding the prohibition of corporal punishment by law or regulation: (1) in state-regulated day care centers, 47 states prohibit corporal punishment; (2) in family day care centers, 46 states ban corporal punishment; (3) in family foster care, 44 states prohibit corporal punishment; and (4) in group homes/juvenile institutions, 44 states prohibit corporal punishment. However,

in U.S. schools, 28 states have banned corporal punishment, although some of them permit local school districts or individual parents the option to prohibit corporal punishment. In the family context, all U.S. states except Minnesota allow for corporal punishment.⁷ Thus, what we primarily focus on in the United States is corporal punishment in the family.

Corporal Punishment in the United States: Legislation

In reviewing 80 state statutes in our database relating to the use of corporal punishment of children, we found 25 different terms being used to describe the actions adults are permitted to use against children. "Force" and "physical force" are the most used terms. Other terms such as "extreme punishment," "malicious punishment," "cruel punishment," "abuse" (limiting terms); and "methods of parenting" and "supervision" (functional terms) also provide focus for the statutes. Throughout these statutes, the word "violence" is used in only three jurisdictions: Washington, DC, Montana, and West Virginia. In none of these cases is the term "violence" used to refer directly to corporal punishment.

In analyzing the various contexts for statutory language dealing with corporal punishment, three patterns can be found: placing corporal punishment in statutes (1) defining appropriate use of force; (2) defining inappropriate uses of force; and (3) providing child caretakers with a legally recognized defense to assault when force is used against children at "appropriate" levels for "positive" purposes. See Table 1 for a list of states that authorize corporal punishment in statutory law.

Defining Appropriate Use of Force

Many states place language relating to corporal punishment of children in the context of "justifications for the use of force." This approach places parental use of force against children in the same statute as the use of force by individuals with specific responsibilities for order, maintenance, and/or treatment in emergency situations: police officers, those in charge of and responsible for order and public safety in correctional institutions; various modes of mass transportation or large gatherings; and physicians or nurses in emergency rooms. Missouri law takes this approach to legitimizing the use of force against children:

The use of physical force by an actor upon another person is justifiable when the actor is a parent, guardian or other person entrusted with the care and supervision of a minor...and (1) the actor believes the force used is necessary to promote the welfare of the minor...or to maintain reasonable discipline in a school, class or other groups; and (2) the force used is not designed to cause or believed to create a substantial risk of causing death, serious physical injury, disfigurement, extreme pain or extreme emotional distress (Mo. Rev. Stat. § 563.061, 2002).

Table 1. Corporal Punishment Authorization in Statutory Law in the United States

Focus of Corporal Punishment Authorization in Statutory Law	States ^a
Defining "Appropriate Use of Force"	AL, AZ, AK, AR, CO, CN, DE, GA, HI, KY, MD, MI, MN, MS, MO, NH, NJ, NY, ND, OK, PA, RI, SC, TN, TX, UT, WI
Defining "Inappropriate Use of Force" (Abuse, etc.)	AR, CA, CO, CN, DC, FL, ID, IL, IN, IA, KS, LA, MA, ME, MD, MN, MO, MT, NE, NV, NJ, NM, NY, ND, OH, OK, RI, SC, SD, TX, WA, WV, WY
Providing Defense Against Criminal Charges ^b	LA, NJ, WA

- a. Many states have more than one statute, and many state statutes refer to more than one category.
- b. Although few states provide actual statutory language codifying the "reasonable discipline" defense against criminal charges from the infliction of corporal punishment, almost all reflect this principle as a matter of common law in their 'reasonable discipline' statutes. As Johnson (1998) points out, "as might be expected, the number of ways in which states choose to define and implement the parental defense is subject to variation and nuance, but without question the privilege is an extension of early common-law doctrines" (434).

Police, correctional officials, bus drivers, and medical personnel are justified in using force in what are deemed unusual or emergency situations or to maintain social order. Those responsible for children are justified in using force as part of their routine child-rearing responsibilities to promote the welfare of the minor.

Defining Inappropriate Use of Force

A definition of inappropriate use of force involves setting upper limits on otherwise appropriate use of force/corporal punishment. This approach sets out to define those behaviors in which a child's caretaker may not engage. This is sometimes done in the context of "inappropriate use of force" and sometimes

in the context of child abuse or in the context of excessive discipline. In Iowa, for example, a person commits child endangerment when he "uses unreasonable force, torture or cruelty that results in physical injury, or substantial mental or emotional harm" (Iowa Criminal Code 726.6). In Kansas, the definition of child abuse takes the same approach but mentions specific behaviors: "Abuse of a child is intentionally torturing, cruelly beating, [or] shaking, which results in great bodily harm or inflicting cruel and inhuman corporal punishment upon any child under the age of 18 years" (Kan. Stat. Ann. § 21-3069, 2002). A Mississippi statute states: "Any person who shall intentionally (a) burn any child, (b) torture any child, or (c) except in self defense or in order to prevent bodily harm to a third party, whip, strike or otherwise abuse or mutilate any child in such a manner as to cause serious bodily harm shall be guilty of felonious abuse" (Miss. Code Ann. § 97-5-39). In Washington State, actions used to discipline a child are presumed unreasonable if, for example, the following are used: "throwing, kicking, burning, or cutting a child; striking a child with a closed fist; shaking a child under 3; interfering with a child's breathing; threatening with a deadly weapon; or doing any other act that is likely to cause and which does cause bodily harm greater than transient pain or minor temporary marks" (Wash. Rev. Code § 9a.16.100, 2002).

Similarly, a Delaware statute states that the use of force against a child is not justified if, for example, the force consists of throwing, kicking, or burning the child, but adds "prolonged deprivation of sustenance or medication," "unnecessary degradation," or "substantial risk of serious physical injury or death" (Del. Code Ann. Tit. 11, § 468 [1] c. 2001). In Idaho, child abuse is defined as physical cruelty in excess of that required (Idaho Title 16, Chapter 20, § 16-2002). Similar to other states, the Florida statute allows injuries to be inflicted upon the child but gives factors to consider in evaluating the injury that the child sustained such as the type of trauma and the location and multiplicities of current injuries and prior injuries. The statute enumerates injuries to the child that characterize inappropriate or excessively harsh disciplinary action. For example, "bone and spinal cord damage, intracranial hemorrhage or injury to other internal organs, asphyxiation, permanent or temporary disfigurement, permanent or temporary loss or impairment of a body part or function" are inappropriate (Florida 39.01 [2] [30a] 4: 2003).

Perhaps more than in any other place, the degree to which children are unprotected by U.S. law is evidenced in those statutes that set upper limits on permissible harm to children. Depending upon the state, physical injury is legal as long as it is not as serious as in spinal cord damage or disfigurement; degradation is legal, just not unnecessary degradation; and physical cruelty is legal as long as it is not in excess of what is required. Obviously, when violence against children short of torture, beatings, permanent injury, and death is allowed, we end up with many dead and injured children. To legally sanction such violence (i.e., violence up to the level prohibited by statute) against any subgroup of adults in the United States would be unthinkable. However, in not having human rights principles as a legal reference point, the

United States is forced into the dangerous position of having to specify the severity of physical force not allowed — this is dangerous not only for the child, but also for our society.

A Defense of Assault or Abuse

In statutes that handle corporal punishment by providing an exception to assault or abuse, legal support for the use of force against children is accomplished when statutory language specifically removes criminal and/or civil accountability from the person using force (see Johnson, 1998). The clearest case of this approach is in Louisiana. The statute describes the conduct (use of force) as criminal in other contexts but provides for the following: "The fact that an offender's conduct is justifiable, although otherwise criminal, shall constitute a defense to prosecution for any crime based on that conduct. The defense of justification can be claimed under the following circumstances: when the offender's conduct is reasonable discipline of minors by their parents, tutors, or teachers" (La. Rev. Stat. Ann. § 14:18, 2002).

Statutes legitimizing the use of force against children also delineate positive purposes and justifications for corporal punishment. These include: (1) to maintain discipline, (2) to safeguard or promote the child's welfare, (3) to restrain the child, (4) to correct the child, (5) to prevent misconduct, (6) to punish misconduct, (7) to further the responsibilities of care, and (8) to correct when child refuses to obey a lawful command. Here, the law draws upon and supports the fallacy that adults need to use force against children in order to help them.

Force or corporal punishment applied to a child also is considered legitimate if it meets a variety of criteria in varying combinations across the states; that is, if it is deemed "reasonable," "appropriate," "necessary," "moderate," "appropriate to the age, size, and condition of child," "as long as there is no physical injury," "where there is no evidence of serious physical harm," and "not designed to cause or believed to create a substantial risk of causing death, serious physical injury, disfigurement, or extreme pain." With this language, the law provides parents with justifications and vague criteria for the use of violence against children.

Whereas the first two categories of statutes set limits on the corporal punishment of a child, all three categories legitimize its practice by a child's caretakers. They also provide support for children only in extreme cases such as burning, torturing, or cruelly beating a child. Although "unreasonable use of force" is rendered illegitimate, the bar of what qualifies as "unreasonable" is, in many cases, extreme. This leaves the definition of what can be done to children in a residual category of "reasonable force," which is unspecified and dangerous.

Almost all states limit their statutory discussions of corporal punishment to physical actions and impacts; however, a few states recognize non-physical characteristics and six states include non-physical conditions when describing

the kind of injury or harm relevant to corporal punishment such as extreme emotional distress (Mo. Rev. Stat. 563.061 [2]); mental distress or gross degradation (Neb. Rev. Stat. 28-1413 1[b]); any act likely to cause unnecessary degradation (Del. Code Ann. Tit. 11, § 468, 2001); substantial mental or emotional harm to a child (Iowa Criminal Code 726.6); excessive corporal punishment, physical cruelty in excess of that required, cruel or inhuman corporal punishment, and mental or emotional injuries (Nevada); where mental welfare is harmed (Rhode Island); and mental injury (Wyoming).

Corporal Punishment in the United States: Illustrations From Case Law

Exploring U. S. case law provides opportunities to understand how statutory language authorizing the use of force against children is applied to specific situations, how courts legitimize corporal punishment, and how caretakers act upon their understanding of this legitimacy. For the most part, appellate cases from various states and federal courts over the last few years continue to support the parent's use of corporal punishment and consequently keep the child in traditional oppressed status (i.e., subject to violation of physical integrity). These cases often deal with decisions affecting adults and not corporal punishment directly and suggest a procedure for determining whether a parent's behavior constitutes child abuse. Additionally, cases focus on decisions that result from a finding of child abuse or inappropriate corporal punishment: child custody, the placement of a person's name in a child abuse registry, revocation of probation, and loss of employment (in the case of teachers). These cases are interesting because they highlight the ways trial and appellate courts struggle to protect the interests of children in a statutory legal context designed to legitimize physical punishment of children and to protect the interests of parents.⁸

To illustrate how U.S. case law handles corporal punishment, three cases will be analyzed: *Ohio v. Hart* (1996), dealing with parental discipline, injury to a child, and a child's right to physical integrity; *Hildreth v. Iowa Department of Human Services* (1996), a case involving violence on children (hitting a child) and the resulting appellate court decision that the statutory legitimization of the use of force against children creates; and *Assiter v. State* (2000), a recent case dealing with the definition of "reasonableness" in the application of corporal punishment. Decisions in these U.S. cases are made within available statutory contexts.

In *Ohio v. Hart* (1996), the Ohio Supreme Court addressed questions about the nature of physical harm and its relationship to injury, the relationship of injury to proper parental discipline, and a child's right to be protected from injury caused by parental discipline. In its decision, the Court explicitly denied that a child has any legally protected interest that is invaded by proper and reasonable parental discipline, specifically corporal punishment. In this case, a father slapped his 17-year-old daughter twice after she stole money from his bedroom. The daughter admitted to stealing the money and said she was

slapped eight times. In deciding the outcome of this case, the Ohio Supreme Court observed from the case *State v. Suchomski*:

Nothing in R.C. 2919.25(A) prevents a parent from properly disciplining his or her child. The only prohibition is that a parent may not cause 'physical harm' as that term is defined in R.C. 2901.01(C). 'Physical harm' is defined as 'any injury.' 'Injury' is defined in *Black's Law Dictionary* (1990) as 'the invasion of any legally protected interest of another.' A child does not have any legally protected interest which is invaded by proper and reasonable parental discipline (254).

This decision supports the control-oriented child/adult relationship because it protects a parent's right to use violence against his/her children, leaving the child without a legally protected interest in his or her physical integrity.

In *Hildreth v. Iowa Department of Human Services*, the opinion of the Iowa Supreme Court demonstrates how agencies charged with protecting children can have difficulties when they collide with statutory language designed to support adults. In this case, the agency tried to provide specific guidance for its caseworkers in determining if observations in the field constituted child abuse as applicable law defined it. The applicable statutory law defined abuse as "a non-accidental physical injury, or injury which is at variance with the history given of it, suffered by a child as the result of acts or omissions of a person responsible for the care of the child" (Iowa Code 232.68[2][a] 1993). This provision then was translated into an administrative rule of the Iowa Department of Human Services (DHS), defining "physical injury" as:

Damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition or damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition or damage to any bodily tissue which results in the death of the person who has sustained the damage (Iowa Administrative Code r. 441-175.1).

The court described the following undisputed facts: After finding that the daughter Amanda had failed to take a bath and wash her hair in preparation for a photograph as her father had instructed, the father told that she would be disciplined for failing to follow his directions. At his residence, the father struck Amanda three times on the buttocks with a wooden spoon after discussing the reasons for doing so.

The marks on Amanda's body were reported as purple or red; however, the Supreme Court of Iowa overruled the DHS finding of "non-accidental physical injury," and hence, abuse. In reaching its conclusions, the Court stated:

We cannot accept the conclusion in the agency handbook that any reddening of the skin lasting for 24 hours is a physical injury per se. We believe, rather, that welts, bruises, or similar markings are not physical injuries per se but may be and frequently are evidence from which the existence of a physical injury can be found.

We are convinced that the agency should have concluded that he could not reasonably have foreseen that the rather limited striking of Amanda's buttocks would produce a physical injury. The marginal nature of the alleged injury weighs heavily in that conclusion. The laws of physics are such that when even a moderate degree of force is administered through an instrument that makes contact with only a small area of the body, the pressure visited upon that point may be more than will reasonably be anticipated (*Hildreth v. Iowa Department of Human Services*, 1996, p. 8).

Thus, the court is saying that the child's right to bodily integrity is dependent on the parent's reasonably having knowledge that his or her purposeful behavior (i.e., spanking) will cause injury as defined in this series of definitions. Because the experience of the child in such cases is subservient to the parent, the child is excluded from the concern of the law.

A third case, *Assiter v. State*, addresses the issue of the "reasonable belief" standard that justifies the use of force and provides a defense for parents using corporal punishment. This is the same issue discussed in the Israeli case *In Plonit v. A.G. 54*; that is, it is legally defensible to use force against a child when "the parent reasonably believes that the force is necessary to discipline the child or to safeguard or promote his welfare" (Tex. Code Ann. 9.61). Here, a jury found a father guilty of "intentionally and knowingly" causing bodily injury to his children. Each of three children received six "licks" with a boat oar after they denied breaking a thermometer in the father's marina. The next day, school authorities found bruises on each child's buttocks and contacted the sheriff and child protective services. The father was indicted for and convicted by a jury of intentionally and knowingly causing bodily injury to each of the three children who were younger than 15 years of age.

The father appealed, arguing that the "reasonable belief" justification for the use of force as a defense would apply and exempt the father from prosecution even if legal and factual evidence supported the verdict of guilty. The Texas Appeals Court stated that the standard for the reasonable belief judgment resides not in the parent making a judgment at the time of the infliction of corporal punishment, but rather in an external standard. The only questions are whether the force is reasonable and who is the arbiter of reasonableness, the parent or the jury.

The Court provided an opportunity for the development of an external or objective standard by determining what is reasonable rather than justifying the subjective interpretations of parental control. Although this may seem a step towards protecting children within the context of U.S. law, there is no understanding that "reasonable" violence — whoever is the judge — often escalates to "unreasonable" violence. There is no recognition that leaving the definition of reasonable violence open compromises the health and welfare of children. Finally, there is no recognition of the pervasiveness of that violence and that reasonable violence toward children is still adding to the number of its victims.⁹

Thus, U.S. statutory and case law with respect to corporal punishment of children provides a picture of child/adult relationships, which fosters the

oppression of children as a group through the acceptance and codification of the use of force against children. This law attempts to define only the reasonableness of a particular method of force or the degree of harm caused by that force. This approach legitimizes the infliction of violence and pain on children and allows judgments to come into play only after the harm has occurred.

Table 2. Human Rights and Colonial Perspectives on Child/Adult Relationships and the Corporal Punishment of Children

Human Rights Perspective	Colonial Perspective
Child/adult relationships are built on mutual respect and value	Child/adult relationships are built on inequality and adult dominance
Children's voices matter	Children do not have a voice.
Long-term child development is central	Short-term control of children is central
Children have a right to physical integrity	Children have no right to physical integrity
Children have a right not to have their human dignity degraded	Children's human dignity may be degraded for "their own good"
Corporal punishment is violence	Corporal punishment is not violence
Harm to children extends beyond the physical to subjective experience of harmful acts	Harm to children is almost exclusively defined in physical terms
The state has a responsibility to protect children from violence	The state has a responsibility to protect children from "abusive violence" and to protect caregivers' right to use force to "discipline" children
Research and knowledge informs the law	Law reflects that power relationships between groups are seen as unequal

DISCUSSION

Two very different approaches to child/adult relationships and corporal punishment are found in a comparison of U.S. legislation and international

human rights initiatives: a human rights approach and a "colonial" approach.¹⁰ Table 2 summarizes these approaches. Comparing these bodies of law shows alternative ways to frame the relationships between children and adults and that these alternatives can have different outcomes.

As Ignatieff (2001) argues, comparative legal perspectives can challenge long-held ideas about the structures supporting the adult domination of children. They also can show us how law can provide principles and procedures that empower those subjected to abuse and subjugation. Law also can provide a platform for public advocacy on behalf of oppressed groups rather than serve as a mechanism to oppress them. The exploration of corporal punishment law can challenge our assumptions about denying or recognizing children's right to physical integrity and the right to be free from violence.

A human rights perspective permits us to view the importance of the politics of power relationships in how we label the behavior inflicted on children. A human rights approach assumes that the child has a right to his or her physical integrity; however, it is the court that decides whether or not a child has a legally protected interest. Children do not have the political power to shape a definition of violence; however, some of those with power over children have an interest in violating children's physical integrity.

Non-oppressive legal regimes can develop when children are viewed as an integral, active part of the human family. By starting with an assumption that children have a place in the human community and that children are active participants in the lives of families and communities, the human rights approach reveals how U.S. law places children outside of the community protected by the law. Because children are the only social category against which the use of force is sanctioned — other than criminal offenders or others who place life in danger — they must be viewed legally as separate from adults.

There are three basic reasons for the differences between a human rights approach and the "colonial" approach to child/adult relationships as reflected in U.S. law: (1) U.S. law does not apply human rights standards; (2) there is an inability to see the "violence" inherent in law (something human rights principles brings into relief); and (2) the "colonial nature" of child/adult relationships is altered by a human rights perspective.

With respect to human rights covenants and principles, the CRC highlights the view of the family and parent as the controlling agent and supports the American avoidance of social interference with parental responsibilities in general. Without a set of principles to draw on, U.S. legal decisions are forced to make judgments about the appropriateness of corporal punishment on a case-by-case basis, as measured against rather vague statutory standards supporting the use of and legitimizing of corporal punishment. The only legal principle that might apply in the United States is the "cruel and unusual punishment" clause of the Eighth Amendment of the U.S. Constitution. In 1977, the U.S. Supreme Court held that whereas this principle did apply to those convicted of crimes, it did not apply to disciplinary corporal punishment of children in public schools (*Ingraham v. Wright*, 430 U.S. 651 at 664-71).

Viewing U.S. statutes and cases dealing with corporal punishment in the light of a human rights perspective also reveals the oppressive nature of violence inherent in the law, especially when applied to children. The lack of reference to violence in statutes and court decisions involving corporal punishment in the United States allows legislators and jurists to avoid the oppressive nature of law in its application toward children. As Robert Cover (1992) observes:

Legal interpretation takes place in the field of pain and death. This is true in several senses. Legal interpretative acts signal and occasion the imposition of violence upon others: A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, or even his life. Interpretations in law also constitute justification for violence which has already occurred or which is about to occur. When interpreters have finished their work, they frequently leave behind victims whose lives have been torn apart by these organized, social practices of violence. Neither legal interpretation nor the violence it occasions may be properly understood apart from one another (203).

Parents, child protective services workers, and the courts may legitimize the practice of violence toward children they are charged to protect. Cover analyzes the often justified violent nature of law in the nation-state and desires to call an action by its real name and thereby avoid ambiguity inherent in law. In *The Devil's Dictionary*, Ambrose Bierce (1998) wryly exposes the exploitive nature of legal definitions:

Homicide: The slaying of one human being by another. There are four kinds: felonious, justifiable, excusable and praiseworthy. But it makes no difference to the person slain whether he is fell by one kind or another — the classification is to the advantage of lawyers (139-140).

Lawyers spend much time trying to determine whether corporal punishment of children is "felonious, justifiable, excusable, or praiseworthy." Clearly, these distinctions make no difference to the child who is the target.

The relationship between adults and children can perhaps be seen as the functional equivalent of the relationship between colonial powers, the colonizers, and the people they colonize (see Memmi, 1965; Fanon, 1963; Mannoni, 1964). Colonial child/adult relationships reflect the colonizer's (here, the adult's) dominance, power, and control, and leads to extinction of authenticity and self-initiative in the colonized (i.e., child). Within the colonial child/adult relationship, children and childhood lose value because the world of adults and the world of children are mutually exclusive. The adult is viewed as what the child is not.¹¹ In her discussion of poisonous pedagogy and the exercise of adult power to control children, Alice Miller points out that the child is denied his authentic self and his will must be the will of another; that is, the adult (Miller, 1990b). The law of corporal punishment as it exists in the United States reflects and reinforces this separation.

Not only does a colonial relationship force the colonized individual to lose selfhood, it also denies the colonized individual any voice and place in the cultural, social, and historical narrative of society (Memmi, 1965). With respect to children, scientists from a variety of disciplines address this concern for the neglected and missing voice of children, for the harm children sustain, and the resulting losses to self, family, and society (see Polakow, 1992; Thorne, 1987, Sommerville, 1990; Kruppa, 1985; Adan, 1991.) Alice Miller (1990b) carefully documents, analyzes, and exposes the harm of this perspective with regard to children in her book *For Your Own Good*.

CONCLUSION

What is so ironic about all the energy devoted to creating and supporting corporal punishment law is that the research shows that corporal punishment does not work; rather, it places children in danger, it has ill effects for children and for society¹²; and, as virtually every scholar in this area has pointed out, it is not morally right. From a human rights perspective, it is the birthright of every human being to be treated with dignity and respect. Attempting to justify unequal treatment for any one group, such as children, leaves all of us open to the loss of human dignity. It is critical to move from a perspective of "children as the last colony" to a human rights approach.

There is little hope of protecting children unless we, as a community, abandon our colonial perspectives and connect ourselves, as many nations have done, to principles that protect and support children before harm comes to them. A human rights approach to children provides a set of principles that give children a chance before they are harmed or even killed. A human rights approach serves as an educational vehicle that helps us question the assumptions of our current legal practice, even if it is not codified into law. A human rights perspective views children as individuals and as members of families and communities with rights and responsibilities appropriate to the child's age and development. Essentially, these principles put children first and center, rejecting a control relationship that places children's interests at the periphery. These principles provide parents, teachers, and other caretakers with guidelines that seek to eliminate the harm they may cause to children (often in the name of doing good). Indeed, a human rights approach rejects the idea that corporal punishment has a "good" purpose at all. A human rights approach also articulates a set of responsibilities and avenues of action (including mass education) for communities and governments to act in ways that nurture children and strengthen children's participation and linkages to family and community. A human rights approach emphasizes our collective responsibility to nurture and protect children.

Our analysis of the colonial perspective and the use of force on children, as reflected in U.S. law, shows what happens when there is an absence of a statement of principles or constitutional or statutory language that encapsulates these human rights values toward children. A reading of the CRC and thinking

about the many ways we as individuals can put it into practice in our individual and community lives can be helpful in developing dialogue on these alternatives. We do not need to wait for legal change to do so. If we as a community truly believe in the principle that children should be nurtured and protected from all forms of violence and that children possess human dignity, and if we act on those beliefs, we have a chance to permit human dignity in legal action.

NOTES

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3. We are not arguing that ratifying a particular human rights covenant means that the rights of children will be foremost and respected in particular countries. Child labor, child sexual slavery and abuse, and children's participation in war as well as various forms of abuse in the family context continue to exist in many countries that have ratified the CRC (see Machel, 2001; UNICEF, 2001). The translation of legal/human rights principles into day-to-day practice is a long, complicated, and difficult process.

4. In October 2004, the British House of Commons voted 424-75 against an outright ban on corporal punishment by parents and in favor of a "reasonable chastisement" defense against assault on their children resulting from corporal punishment. The defense would not be available in cases where the corporal punishment causes bruises, reddening of the skin, or mental harm (see <http://www.epolitix.com/EN/News/200411/4201bca7-a2f5-47fa-a727-6a67720569c7.htm>). See *Hildreth v. Iowa Department of Human Services* (1996) for a discussion of the difficulties that can result from such legislation.

5. Ambassador E. Michael Southwick, U.S. Deputy Assistant Secretary of State for International Organization Affairs, emphasized the two themes of parental authority over children and limited social support for children in a statement to delegates and ambassadors gathered for UNICEF's 2001 Special Session on Children. The statement also reflects the concept of "American Exceptionalism" with respect to human rights issues:

The past decade has revealed new challenges, including HIV/AIDS, sexual exploitation, children affected by armed conflict, and the erosion of parental authority. The Convention on the Rights of the Child may be a positive tool for promoting child welfare for those countries that have adopted it. But we believe the text goes too far when it asserts entitlements based on economic, social and cultural rights. The human rights-based approach...poses significant problems as used in this text (Anderson, 2001).

6. A search of the National Clearinghouse on Child Abuse and Neglect's database (<http://nccanch.acf.hhs.gov/>), which has a section on "Legal Issues and Laws" for the phrase "use of force against children," resulted in zero hits. A search for "use of force" resulted in three hits, all related to the sexual assault of children.

7. See Bitensky (1998) for an analysis of the Minnesota law in which it is argued that a combination of statutes taken together appears to make corporal punishment in the family context unlawful.

8. Bitensky (2002) notes a recent development in American case law: Parents argue that the restrictions on their use of corporal punishment violate Section 1983 of the Civil Rights Act of 1871, an act designed to, among other things, reduce and deter violence. Whereas case law generally supports the use of corporal punishment, in these cases a variety of courts have said that the use of corporal punishment on children is not constitutionally grounded in the right to privacy or in freedom of religion, where corporal punishment is justified by religious teachings and separation of church and state (see *Sweaney v. Ada County*, 1997).

9. Research assistant Brad Reaves notes that the overriding difference between *Assiter v. State and Case of A.* is the United States' failure to adopt the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms.

10. We are using the term "colonial" to describe a relationship between adults and children and the effects of such a relationship in both structural and personal terms. This structural relationship is one of unequal power comprised of dominance/subservience. In this relationship, the less powerful group is denied full status as a member of the human family. As a result of this relationship, children's authenticity is denied and they are forced to adopt an identity defined for them by the dominant power, the adults.

11. See Frantz Fanon (1963) for a discussion of mutual exclusivity in colonized/colonizer relationships. See also Alice Miller (1990b) for a discussion of this same process as it applies to adults distancing themselves from childhood.

12. Not only is corporal punishment ineffective in safeguarding children, it is not an effective method of discipline in the long run. Whereas the rare die-hard (see Larzelere, Baumrind, & Cowan, 2002) is determined to show that the use of corporal punishment is equally effective as non-violent methods of discipline in producing short-term compliance, corporal punishment is not an effective form of discipline in the long run. Corporal punishment is associated with lack of empathy, lack of social conscience, the development of bullying behavior, and violent behavior (Straus & Giles-Simms, 1997).

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A New Criminological Frame of Reference*

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A study of mythogenes — the motivational structures of experience and longing — and myths, expressions of wishes and and visions at the larger tribal or national scale, lent a new insight to the formation of “micro-criminology” (individuals and groups such as gangs) and the development of “macro-criminology” (at the national level, such as genocide). This paper aims to create a new criminological frame of reference by building upon the theories of Walter Reckless and Claude Levi-Strauss and using mythological structures to further criminological studies.

INTRODUCTION

The focal concern of criminologists is not a unidimensional phenomenon, such as psychology, which mostly is a study of the behavior of the human individual; nor sociology, which focuses on human aggregates; nor law, which deals in legal norms. Walter Reckless studied the association between behavior and rules as early as 1961; however, his ideas, grouped under the name “containment theory,” were largely ignored by the criminological establishment. In 1969, Travis Hirschi published his social bonding theory, which is based largely on Reckless’s theory and received almost universal acclaim from American criminologists.

The gist of Hirschi’s theory is that the lack of bonds between one individual and another, to his membership groups, or to restraining social norms sometimes leads to delinquency. Hirschi, however, did not address the contents of social bonds nor the individual’s motivation to entertain them. This was carried out in the pioneering work of Claude Levi-Strauss (1964), whose studies in the Amazon River Basin of Brazil revealed that myths link nature and culture. Following in the footsteps of Levi-Strauss, I have demonstrated (2000) that myths may also serve as bonds between subject and object, man and man, and the individual and his group. This paper aims to build a new criminological theory based upon the pioneering work of Reckless and Levi-Strauss.

Myths may provide the motivational contents of the normative bonds of individuals to groups. In this discussion, I distinguish between “mythogenes,” the motivational structures of experience and the longings of individual human beings, and “myths,” which according to Sigmund Freud are “the distorted vestiges of the wish-fulfillment fantasies of whole nations [and] the age-long dreams of young humanity.” (1946)