Sparing the Rod: Reflections on the Abolition of Corporal Punishment in the UK and the Impact on Pupil and Teacher Safety

By

Marie Parker-Jenkins
Professor of Research in Education
University of Derby, UK

The abolition of corporal punishment in the UK was hailed as a victory for children's rights, and came at the end of a 20 year battle by parents, teachers and lobbyists in the 1980’s. Invoking the European Convention on Human Rights (1949), petitioners took their claims to domestic courts and to the European Court of Human Rights in Strasbourg to ensure children were no longer subjected to “humiliating treatment or punishment”, and that parents “philosophical convictions” against physical chastisement were being respected, in keeping with legal Articles in the Convention. Britain was thus the last state in Western Europe to give-up the practice in 1986, and behind others, such as Scandinavian countries, most of Australia, and South Africa in its reluctance to officially end this sanction. This became law for all pupils in state maintained schools in 1986, and extended to all pupils regardless of their schooling by 2000.

But a decade has now passed since the abolition of physical chastisement as a disciplinary measure in schools and some critics look back lamenting the available of the cane to inflict punishment, arguing instead that we have “gone soft on kids”. This also comes at a time when violence in schools is said by the teaching unions to have increased substantially and there are cases of “girls knifing girls” in the classroom. How much of this can be attributed to the abolition of corporal punishment in school? What evidence is there for linking abolition with an increase in violence in schools, and how does this impact on teacher and pupil safety?

Drawing on my research in the 1980’s of the abolition of corporal punishment in British schools, my book on the subject “Sparing the Rod: Schools, Discipline and Children’s Rights” (1999) and my study of the current position, this paper provides:

a) an historical perspective of the use of corporal punishment in the UK
b) the legal context and relevant legislation
c) the evidence available concerning violence in British schools, and
d) contemporary debates concerning teacher and pupil safety

Discussion concludes with consideration of the implications for teachers managing classrooms without violating children’s rights and the adequacy of law in making clear this legal position for school managers and practitioners.
a) Historical Perspective
The use of corporal punishment in British schools and elsewhere can be found in the origins of education and traditional practices. Physical chastisement has been a common feature in child-rearing (Rosen 1994), and carried over into schooling as teachers in both private and state-funded schools were expected to administer the sanction. This was part of tradition in the UK but most countries around the world have corporally chastised their children (Aries 1962, Straus 1994, Gibson 1978, Ryan 1994).

The courts have accepted the principle of reasonable chastisement by a teacher acting “in loco parentis” as a defence in cases of physical punishment (R v Hopley 1806). This assumption was challenged vigorously at the European Court of Human Rights, as we discuss later. A tradition has evolved in which the teacher has sought approval under the umbrella of “in loco parentis” in order to administer corporal punishment (Williams v Eady 1893, Fitzgerald v Northcote and others 1865) and to use detention as a disciplinary sanction. This is not to infer three have been no limits placed on teachers. The courts in the UK have adjudicated on many cases involving involving discipline and from litigation accumulated over the past one hundred years a number of precepts have emerged. These are that the punishment be reasonable and given in good faith; that factors affecting the child should be taken into account; and that the sanction be consistent with school policy and such as the parent might expect if their child did wrong. (Partington 1984). Adams argued that in order to change the situation:

“the power of a teacher generally in relation to corporal punishment will have to be removed by a legal ruling from the European Court, or an Act of Parliament or by powers vested in a local authority”(p.26).

Therein lay the essence of the problem which faced the teaching profession in the UK, for it was precisely this removal or erosion of teachers' right to administer corporal punishment which altered their status. That the European Court of Human Rights in Strasbourg was in a position to affect such a change was the result of Britain’s membership of the Council of Europe and its signing of the European Convention on Human Rights, discussed next.

b) Legal Context
Working collectively, the member states of the Council of Europe seek to improve the standard of human rights within their territories and the recognition of the right to individual petition. As such British parents in the 1980’s used Strasbourg successfully as a forum to adjudicate the use of corporal punishment in British schools, claiming their human rights were being breached. They invoked two particular Articles of the European Convention:
“No one shall be subjected to torture or to inhuman or degrading treatment or punishment” (Article 3, 1949)

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their religious and philosophical convictions” (Article 2 of the First Protocol, 1957)

Despite continual defence by the Conservative Party Government of the day, Britain lost the major “corporal punishment cases” in Strasbourg (eg. Tyrer 1978, Ms X 1981, Campbell and Cosans 1982, Townend 1978). This led to Britain’s need to reconcile with the obligations concerning the European Convention and legislative amendment took place in the form of the Education No 2 Act (1986), forbidding the use of corporal punishment in maintained schools and for children in private schools on assisted placement schemes. This was later extended in the School Standards and Framework Act (1998) to include all children regardless of their school setting, be it private or in a church, mosque or synagogue). Also, the European Convention has now been incorporated into British law under the Human Rights Act (1998), and individuals no longer need to petition to Strasbourg if they feel their human rights have been breached. As to the present arrangements for disciplinary sanctions, a variety of alternative, non-physical sanctions are being implemented. Where necessary, the use of “reasonable restraint” to deal with unruly pupils, is contemplated under The Use of Force to Control Pupils Education Act (1996), and continues to be an area of controversy as we discuss later.

The focus has now shifted to outlawing the physical chastisement of children in the home. Children Unbeatable, an alliance of 350 groups argues that hitting a child should be made illegal (The Guardian 2004). The 144 year old defence of “reasonable chastisement”, discussed above, is being challenged. Supporters claim that evidence from countries where smacking has been banned, notably Scandinavia, showed no large increase in parents being persecuted for disobeying the law, suggestion a level of general consensus (ibid). The on-going campaign in the UK against hitting children has been fuelled by the tragic death of Victorian Climbie who died at the hands of her carers. The State has attempted to compel all government agencies to be more proactive in safeguarding the wellbeing of children, particularly those known by the local government to be at risk. This has now formed the “Every Child Matters “ (2006) policy agenda placing an emphasis on inter-agency co-operation to ensure children are nurtured in such a way as to thrive physically, emotionally, educationally and economically.

Ironically, as the government tightens up the use of physical chastisement in the home, there is now a call for increased laws to give
teachers the right “to discipline and restrain” (Times Educational Supplement 2005). The use of force to restrain is contemplated if there is the potential for injury to people or property. This aims to replace the common law principle of “in local parentis”, which as we saw earlier, has traditionally given teachers the same authority over pupils as their parents.

Teaching unions have supported this move, spearheaded by the National Union of Teachers’s charter for behaviour which calls for new laws explicitly setting out “teachers’ right to restrain pupils” (Times Educational Supplement, 2005).

The power of teachers would extend further, as part of the demand for teachers legal authority over pupils to be brought up to date. This follows the recommendations of Sir Alan Steer’s 2005 committee on pupil behaviour:

- New legislation making explicit teachers right to discipline and restrain pupils using reasonable force
- Schools to be given the right to apply for parenting orders
- Local authorities to provide full-time education for excluded children from the 6th day of any exclusion, fixed term or permanent
- From 2008, all secondary schools must belong to a local partnership sharing “hard-to-place” pupils
- All new schools to have space for pupil services such as learning support units
- Head teachers decisions not to be over ruled if pupils offence and school compliance with disciplinary process acceptable
- Schools to hold mandatory reintegration interviews for any pupil excluded for more than 5 days
- Government should extend schools right to search pupils for weapons to drugs and property

Elements of this list were recommended over a decade ago in the Elton Report (1989) into pupil behaviour. Overall, the calls for change would remove the “in loco parentis” law, and instead provide rights for teachers based on their position as a teacher, and that in matters relating to the school, the authority of the teacher could override that of the parent. Punishments would have to be reasonable and proportionate, in keeping with legal principles discussed earlier. Increased teacher authority would not only extend to matters of behaviour but such things as the use of mobile phones at school, and during off-site school activities.

To date, much of this remains to be implemented or accepted. Schools continue develop their own behaviour policy, and try to determine where physical restraint ends and unreasonable force begins. In the meantime, while the law catches up on the needs of the 21st century classroom, and the demands of teachers and their unions, violence in the classroom is said to be a daily occurrence.
c) Evidence of Violence in the Classroom

Violence in school is not a new phenomenon: as discussed above it has historically featured as a characteristic of the British education system. What is new is that rather than teacher on pupil, it is pupil on teacher and pupil on pupil. No fatality is ever acceptable, but in terms of fatalities the figures are fortunately very low. The sad roll call is as follows:

- Philip Lawrence, deputy head teacher, stabbed to death by a 16 year old boy in 1995, outside a London school when he went to the assistance of one of his pupils

Reported acts of violence in the classroom have been regularly documented by the teaching unions since the abolition of corporal punishment (NUT, NASUWT, PAT). In some cases classroom violence has led to serious injuries being sustained by teachers, and significant numbers have been forced to leave the profession prematurely (NUT 2006). This has been attributed in part, to the abolition of corporal punishment in schools and a general lack of discipline.

Whilst the number of fatalities at school due to violence is low, the increase in the carrying and use of knives appears to be an increasing phenomenon. Two years ago, knife crime in school was not a cause of concern, by 2005-6 the situation has changed. The following headlines reflect media reports of violence in British schools.

- “Boy, 14, knifed in stomach by rivals from other school” (Daily Telegraph, 2006a)
- “Girl is stabbed in eye with scissors by school bullies” Daily Telegraph, 2006b)
- “Supervision order for girl in razor attack at school” (Daily Telegraph, 2006c)

Even if we accept the propensity for some newspapers to sensationalise isolated occurrences, there would appear to be an increase in violent-related incidents in and around schools. Statistically, there were 57 convictions in 2005 for carrying a dangerous weapon. With 7 and a half million pupils (Home Office 2006), that figure would suggest there is not an epidemic or trend (DfES 2006), but that does not take way from the painful and indeed dangerous experience of schooling for some pupils. Sadly, a child is said to be bullied every 7 seconds, and 14 pupils committed suicide in 2005 (Child line 2006).
Clearly, no act of violence is acceptable in the classroom, but what is the true scale of the problem in the UK? And is the situation worse than elsewhere? In other words, what evidence is there to suggest that we should be concerned over violence in British classrooms? If we look to the media there is ample discussion, usually following an individual act of violence in a school, or concerning pupils. Newspaper reports suggest that bullying has reached “epidemic proportions” and that there are regular physical assaults in schools. For example, in the case of the 15-year-old Surrey schoolgirl cited above, she was stabbed five times with a pair of scissors by a gang of girls in the lunch queue at her school (The Telegraph 2005). The girl’s father said this had been the third serious incidence of “bullying” that his daughter had endured at the hands of fellow pupils. Three girls, two aged 14 and one 15, were subsequently arrested in connection with the incident.

Whilst attacks by pupils on pupils in school are still rare statistically, there has been an increasing trend for children to carry knives into school. These have been used as weapons; or in some case, instruments like pencils sharpeners have been used as knives. There has been little research on knives in schools, but recent surveys suggest it is on the increase. For example, a recent Home Office report suggested that 1 in 16 youngsters in London carry a knife into schools, but other sources suggest in places like London the figure is nearer 1 in 3. Generally, the reports also suggest that pupils carry knives into schools for the following reasons:

1. For a fashion accessory
2. For personal protection
3. For a need to satisfy peer pressure

Worryingly, the level of aggression and violence displayed by girls, often within a group of girl gangs, is worryingly on the increase in schools. This is an under-researched area, but constructions of gender and girl’s willingness to engage in acts of violence; particularly against each other is a noticeable phenomenon. As a result of attacks on pupils, the Government has been urged to take seriously the level of violence in British classrooms and make appropriate response. This forms the basis of the final section in this paper.

d): Contemporary Debates Concerning Teacher and Pupil Safety

The Government has recently responded to violence in the classroom by announcing an “anti-bullying charter”, which would include new measures to force parents to take action to improve their children's behaviour (DfES 2006). This is seen as a signal for teachers to punish bullies who “bully” other students, and to take complaints from persecuted children more seriously. The proposed charter means that yet again, teachers are expected to be vigilant and to effectively police pupils, rather than teach them. Equally of concern is the shifting
definition of “bullying”. The Surrey school girl stabbing was in my opinion too serious to be labelled as “bullying.” When you have that level of aggression, it is beyond what constitutes bullying, and instead more properly sits within the area of grievous bodily harm. How we look at a problem denotes how we respond.

Politically, all political parties have signalled their concern over violence at school. Sanctions to deal with violence in schools are also deemed to be inadequate by parents and teachers. As it stands, when children commit serious acts of violence in school, they should receive more than the standard two weeks’ suspension (Education Act 2002). We would not tolerate it in the workplace if someone was sent away for two weeks, possibly having received some element of counselling, and came back, so why should it be tolerated in school? I would argue that when the level of violence is not bullying but common assault or grievous bodily harm, a return to school should not be automatic. Members of the school community need to be secure, and this is underpinned legally by the Health and Safety Act (1970), which places a duty of care on school authorities. Yet one of the difficulties here is the classic case of “rights in conflict”, when under ECHR and the Human Rights Act (1998), cited above, “every one has the right to education”. In educational matters, as with other aspects of life, the judiciary in Britain has been accused of interpreting human rights in such a way as not to breach the rights of the perpetrator, and the victim appears to be less protected. Properly scaled-down rights of perpetrators could be the way forward but thus far the trend has been felt to be in favour of the defendant, so much so that there have been calls for Britain to withdraw from the ECHR as detailed in the Human Rights Act (the Guardian 2006).

In my book, Sparing the Rod – Schools, Discipline and Children’s Rights, published in 1999, I suggested that too much is being asked of teachers and that parents and pupils should be taking more responsibility for their actions. When pupils act violently, they should lose their “right to education” in that context, at that time. The concept is not so elastic as to be limitless. Seven years later, teachers’ responsibilities continue to increase; rather less is said of their rights, particularly with regard to dealing with unruly pupils. The government’s new guidelines look to deal with this and give teachers more powers to restrain unruly children. However, they and the school are left in a difficult situation: where does physical restrain stop and corporal punishment begin? Increasingly, teachers are being used to “police” the school and this clearly needs to be challenged. Responsibility needs to be put very fairly on the shoulders of parents and children. There is a duty of care placed on teachers but there is only so much that a practitioner should be asked to do: dealing with pupils intent on malicious wounding should be outside their remit.

If, as evidence suggests, children and young people have become more unruly, we need to ask why. Part of the reason, I believe, is that
schools are mirroring society. The role of the media, and especially the lyrics of popular music which is sexist, racist and glamorises violence and gun crime are involved here. Rap music particularly has been criticised for reinforcing messages of violence, and allegedly the work of Eminem, 50 Percent, and PDiddy has contributed to this view. Parents too should accept responsibility for their children and in some case their own inadequacies as parents. Support for parents, and parenting classes should form part of any package by the government to improve the situation.

Similarly, what we ask of our children and what future lies ahead is also part of the bigger picture. Government dictates within National Curriculum which still focuses on the academic alone, with a narrow definition of what counts as achievement in school and a heavy concentration on attainment targets and league tables all help to create a climate in which the disaffected and/or low achiever is set up to fail. The absence of vocational courses, outlets or opportunities within the former apprenticeship schemes has meant that the classrooms of the last 20 years have encouraged disaffection and alienation. With a curriculum seen as more “girl friendly” and unsupportive of teaching and assessing boys appropriately, underachievement of boys (Connor 2005), and especially “Black boys” (Sewell 2005), is a key issue in Britain and elsewhere. We should also be asking what must have happened in the perpetrator’s life that they know how to engage in acts of violence, and be prepared to seriously wound others.

Some members of society would argue that with the abolition of corporate punishment, we have spared the rod but spoiled the child. The older generations may bemoan the fact that the cane is no longer used in school, but its use was questionable on the grounds of effectiveness as well as ethics. School records show that it was the same pupils, mostly boys being caned time and time again, and rather than the last resort, in some cases it was the first! (Parker-Jenkins 1999). The cane was cheap and its replacement was not. There has been a growth in violence throughout the eighties and nineties, but there has also been a lack of educational opportunity for the less-academically motivated pupil since the introduction of the National Curriculum (1989), less opportunities to demonstrate success and more inclination I believe to be disaffected by the education system in Britain.

As we saw earlier, the UK was the last country in Western Europe to use the cane. Some countries never used corporal punishment in school (Parker-Jenkins 1999). Professional practice in other European countries suggest we need to consider alternative sanctions to corporal punishment, balancing ‘teachers’ responsibility to maintain good order in the classroom and upholding children’s rights at school. Alternative approaches have been costly in terms of time, people and resources which some schools have not
With concerns over increased violence in the classroom where dangerous weapons are taken into school, there is a situation where we need protection from, as well as protection for children, and the debate on what alternatives are and should be available will be ongoing.

If pupils are prepared to take weapons into the classroom and to use them they should be prepared to forfeit the right to education at that time and in that context. In Germany parents of unruly children have had their child benefit withdrawn. Until parents and children are truly accountable for violence in school, the Government’s attempts to provide a safe environment for pupils and staff are misguided. Some parents are struggling to cope and need support. There is a social stigma for parents who cannot cope with their children, and parent classes may be the way forward to help support parents.

In the meantime, as we search for answers as to why we have violence in the classroom, schools have to continually adjust to the situation. They are being encouraged to work with the police, as they have done concerning drugs. Within the Criminal Justice system it is an offence to carry a weapon, and this carries a four year sentence. Education and prevention are the messages that schools should be sending to challenge the idea that carrying knives into school is acceptable, “cool” and/or harmless. Finally, in order to ensure a safe environment for pupils and staff, schools are also being encouraged to consider metal detectors as practiced in some North American schools. This is not only a sad indictment of the times, but this short-term, knee-jerk reaction will not remove all violent acts in the classroom for sometimes a seemingly harmless piece of equipment can be turned into a dangerous weapon as highlighted above, and as such the wider issues highlighted above need to be tackled.

Conclusion

There is no conclusive evidence to suggest that the abolition of corporal punishment has led to more violence in the classroom. However, violence in society has impacted on staff and pupil safety in the last two decades by way of shifting cultural mores caused by a number of factors. Any initiative which tries to deal with violence in the classroom needs to be well-conceived and not taken in isolation as a single strategy approach. What is telling about new guidelines on restraining pupils, is that there is little reference to the issue of children’s rights, and the country’s obligations under the European Convention on Human Rights. It was Britain’s need to reconcile treaty obligations under Article 3 of the Convention which led to the abolition of corporal punishment. If today’s call for increased authority for teachers over pupils means that “force equals punishment” then European and national law will have been breached. Teachers cannot be empowered to act illegally, and in such a way which contravenes these legal obligations, and therefore there is a continual tension
between the two sets of rights, that of teachers and that of pupils. Tellingly, the role of parents in all this often remains silent, and far more should be expected of parents to enter this equation and assume responsibility for their children’s behaviour at school and beyond.

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Marie Parker-Jenkins
Professor of Research in Education
University of Derby, UK
m.parker-jenkins@derby.ac.uk.
(44-1332 591947).

Authors’ Biographical Details
Marie Parker-Jenkins is Professor of Research in Education at the University of Derby. She has worked abroad in a number of multicultural settings, and has published widely on social justice issues with particular reference to ethnicity and gender. Marie also publishes on education management and law, and her work is strongly influenced by the developing notion of human rights in the classroom.