A Child's Right to Physical Integrity

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On one of my first trips to Juvenile Court with two student lawyers, we represented a 10-year-old girl whom I will call Mary. Tall for her age, very thin and fragile, she had pale white skin, stringy blond hair, and glasses too large for her face. Her most prominent features, on the afternoon we met her, were dark, ugly bruises on her cheek and forehead. Mary was a sweet girl, who laughed and joked with the students as they tried desperately to develop rapport with her without surfacing their own horror as they stared at her conspicuous bruises.

She eventually told us her story in a matter-of-fact way. Mary lived with her mother and her mother's boyfriend. He believed in daily exercise and required Mary to perform mandatory sit-ups, push-ups, etc. On the night before we met her, Mary did not do her exercises and the boyfriend physically disciplined her. The muscular, grown man left her badly bruised and the punishment frightened her mother sufficiently to motivate an emergency call to child protective services. Noteworthy was Mary's apparent belief that she deserved the beating. In Mary's case, this use of corporal punishment by a person acting in a parental role crossed the line to child abuse and she was given some protection through the juvenile court system. Of course, her mother's boyfriend had used corporal punishment to discipline Mary before, but it had never been this bad (or it had never before frightened her mother this badly).

In the United States, it is legal for parents to use corporal punishment as a form of discipline. In fact, more than 90 percent of American parents report using some form of corporal punishment on young children. Parents must draw the line between reasonable corporal punishment and child abuse. Most corporal punishment is legal (e.g. hitting, slapping, smacking) regardless of how much the parent outsizes the child or whether the assault is justified. Realistically, children will only receive protection from adults who hit them if someone notifies child protective services AND the punishment involves the use of an object or leaves bruises. If a parent hits her child in private and is careful not to leave noticeable marks, the child is on his own. Is it wise to leave the distinction between acceptable corporal punishment and abuse up to parents?
As an alternative, we could recognize that a child like Mary has the right to physical integrity — to be free from all physical assault — requiring parents to use alternatives to physical punishment. There is an international movement to ban corporal punishment. The legislatures of Sweden, Finland, Denmark, Norway, Austria, and Cyprus have passed anti-corporal punishment statutes. And, in 1996, Italy's highest court banned corporal punishment of children. Last year, the European Court of Human Rights interpreted the European Convention for the Protection of Human Rights and Fundamental Freedoms to protect a boy who had been repeatedly struck by his stepfather. The United Nations Convention on the Rights of the Child is interpreted by its monitoring committee to require a ban on corporal punishment of children in families is essential in order for reporting countries to achieve treaty compliance. The United States has not joined the 191 nations that have become parties to the UN Convention since 1989. (For a detailed description of international developments in this area, see Susan Bitensky, "Spare the Rod, Embrace Our Children," 31 Michigan Journal of Law Reform 353 [1998]).

In my law practice, I see an endless stream of children treated very badly by their parents. When I look up from the endless stream to seek big-picture solutions, I see international efforts to stop all physical violence against children. I wonder whether we would see fewer cases of child abuse and less violence among American children two or three generations from now, if we adopt, for example, a law like Finland’s:

“A child shall be brought up with understanding, security, and gentleness. He shall not be subdued, corporally punished, or otherwise humiliated. The growth of a child towards independence, responsibility, and adulthood shall be supported and encouraged.”

The impact of a law recognizing the child’s right to be treated with dignity and to physical integrity would not be noticed for a few generations. Most of us were spanked as children, leaving us hesitant to condemn our parents’ techniques and often leaving us without instincts for how to discipline without hitting. Any ban on corporal punishment must be accompanied by a strong public education campaign, as suggested by “Guidance for Effective Discipline,” a 1998 report of the American Academy of Pediatrics:

“Because of the negative consequences of spanking and because it has been demonstrated to be no more effective than other approaches for managing undesired behavior in children, the . . . Academy . . . recommends that parents be encouraged and assisted in developing methods other than spanking . . .”

If we recognize a child’s right to be treated with dignity and without violence, we are necessarily intruding on parents’ right to privacy in raising children. This conflict should be easily resolved in favor of the child to the extent that the parent’s right to use physical punishment is based on ancient and legally abandoned views of children as the property of their parents. More difficult to reconcile is the more modern justification for parental privacy: that parents, not the state, are better positioned to make appropriate parenting decisions, including the proper method of discipline. This leads back to Mary’s story. In our system of laissez-faire parenting, Mary’s mother could turn her 10-year-old daughter over to a grown man for administration of his idea of proper physical punishment. Daily, the appropriate level of physical punishment of children is left to the subjective judgment of their parents and of the other adults who act as or on behalf of their parents. Some would say that a child’s right to dignity and physical integrity should outweigh the privacy rights of her parents, because no one should be subject to physical violence of any kind. Others might say that a child’s right to dignity and physical integrity should outweigh the privacy rights of her parents because the assumption that parents and other adults will handle this judgment wisely is not borne out in our society. As we wring our hands over increasing reports of severe child abuse and how violent many of our children have become, it might be time to reassess policies that give parents and others the license to use even the most mild forms of violence against our children.