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A CHILD IN SCHOOL IS PADDLED SEVERELY by his teacher for misbehavior, and as a result he has bruises for several days. While the infliction of bruises or the severity of the punishment may not have been intended by the teacher, in an action by the state against the teacher the court holds that "mere" excessive or immoderate punishment will not render the teacher criminally liable.[1] It must be shown that the teacher acted out of malice and that there was a lasting or permanent injury, or the threat of one, resulting from the punishment.

The use of the word "mere" in describing excessive or immoderate punishment of a child is certainly unfortunate, for it serves to emphasize the fact that there has been lacking for a long time any legal recognition of the rights of a school child in regard to punishment of this sort. For a court to refer to excessive punishment of a child as "mere" demonstrates that it is time to take a much-needed look at the basic rights of the child. This aspect of the problem has too long been neglected.

Court decisions seem to begin with an assumption of the correctness of the teacher's actions.[2] Presumptions have been made in the wrong direction, for it is now an often-repeated rule that individual liberties cannot be abridged unless there is a demanding reason for the abridgment.[3]

It has also been held that unless a teacher is aware of a physical handicap of the child, there will be no liability for an injury resulting from such a handicap.[4]

The doctrine of *in loco parentis* and the right of the teacher to inflict corporal punishment has a long history of acceptance. The doctrine itself has survived for centuries with no serious challenges to its validity or acceptability. The doctrine states that a teacher stands in the place of the parent and has the right to discipline his students, including the right to inflict corporal punishment for reasonable cause and in a reasonable manner.[5] The basis of the doctrine is an assumption of the delegation of parental authority and an assumption of the correctness of the teacher's actions. A direct result of this doctrine is the passage of statutes in several states granting the teacher the right to a reason-

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1 State v. Lutz, 65 Ohio L. Abs. 402, 113 N.E.2d 757 (C.P. Stark County Ct. 1953).

2 *Id.*

3 Bates v. Little Rock, 361 U.S. 516 (1960); McLaughlin v. Florida, 379 U.S. 184 (1964); Griswold v. Connecticut, 381 U.S. 479 (1965).

4 Quinn v. Nolan, 7 Ohio Dec. Reprint 585 (C.P. Cuyahoga County 1879).

5 State v. Lutz, 65 Ohio L. Abs. 402, 113 N.E.2d 757 (C.P. Stark County 1953); Suits v. Glover, 8 Div. 711, 71 So. 2d 49 (Alabama Sup. Ct. 1954); also *see* Annot., 43 A.L.R. 2d 473 (1955).

able use of corporal punishment.[6] The effect of statutes of this nature is the infringement of two very basic fundamental rights: the right of a parent to bring up his child as he sees fit, and the right of a child to be free from invasions of the dignity and integrity of his person.

Parental Rights

Upbringing of Children

The duty of a parent to direct the upbringing of his child is of a very serious nature.[7] The development of a human being carries with it the obligation to properly prepare the child to live in the world. It is a duty which is extremely personal in nature and over which the parent should have complete control. Since this is such an important and serious function in the development of the child's life, it should be considered a fundamental right of the parents.

The Supreme Court has held that parents have the right to direct the upbringing and education of their children.[8] "The child is not the mere creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."[9] In carrying out this "high duty," parents should have the right to control the use of corporal punishment in disciplining the child. In *Meyer v. Nebraska,*[10] the Court again said that parents have a natural duty to properly educate their children, and that the manner in which this education was to be accomplished was a liberty protected by the fourteenth amendment to the United States Constitution. Equally as important is the disciplining of the child which is providing for the child's education in moral and behavior patterns.

The upbringing of children is the very basis of family life, and family life is to be accorded the highest possible respect and protection.[11] Justice Harlan, dissenting in *Poe v. Ullman*[12] said that "the integrity of that life is something so fundamental that it has been found to draw to its protection the principles of more than one explicitly granted Constitutional right."

Privacy of Family Life

In 1965, the Supreme Court upheld the dignity and respect of family life by striking down Connecticut's birth-control laws.[13] In the court's

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[6] *E.g.*, OHIO REV. CODE § 3319.41:

"A person employed or engaged as a teacher, principal, or administrator in a school, whether public or private, may inflict or cause to be inflicted, reasonable corporal punishment upon a pupil attending such school whenever such punishment is reasonably necessary in order to preserve discipline while such pupil is subject to school authority."

See also ARIZ. REV. STAT., § 13-246; MINN. STAT., ANNOT., § 609.06; REV. CODE OF MONT., § 75-6109; TEX. PENAL CODE, art. 1142.

[7] Prince v. Massachusetts, 321 U.S. 158 (1944); People v. Pierson, 176 N.Y. 201, 68 N.E. 243 (1903).

[8] Pierce v. Society of Sisters, 268 U.S. 510 (1925).

[9] *Id.* at 535.

[10] 262 U.S. 390 (1923).

[11] People ex rel. Wallace v. Labrenz, 411 Ill. 618, 104 N.E.2d 769 (1952).

[12] 367 U.S. 497 (1961).

[13] Griswold v. Connecticut, 381 U.S. 479 (1965).

opinion Justice Douglas found the statute unconstitutional because it operated against the relation of husband and wife, a relation which lies "within the zone of privacy created by several fundamental constitutional guarantees." [14] This relation, he said, was included in the penumbra which surrounds the first amendment[15] and which is formed by "emanations from those guarantees." The right of marital privacy is

> older than our political parties, older than our school system. Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes . . . Yet it is an association for as noble a purpose as any involved in our prior decisions.[16]

A considerable portion of this association has the purpose of raising and developing children. This task, the most important and sacred of the marriage relation, should also be included in the "zone of privacy created by . . . fundamental constitutional guarantees."

As pointed out by the Court, the very thought of the sanctity of the marital bedroom being violated is repugnant. It is equally repulsive that the private role of the parent as the guardian of his children be violated. Just as the freedom of speech and press includes the right to distribute, to receive and to read, the freedom of privacy in the marriage relationship must include the freedom to choose a method of disciplining the children resulting from that marriage. Freedom of the press would mean little without the protection of the means of implementing and maintaining that freedom. By the same argument, the freedom of privacy and sanctity in the family relationship is diminished without the protection of the means of maintaining that relationship.

While the education of the child is mandatory, the manner in which the education is achieved is a choice that constitutionally remains with the parent.[17] So too, the disciplining of the child is mandatory, but the manner in which the disciplining is accomplished must remain with the parent. It is imperative that the parent have the freedom to choose the method of upbringing to be applied to his child.

The Court has recognized that the sanctity of the marital relationship, the relation between husband and wife, falls within the zone of privacy which is created by constitutional guarantees of fundamental rights.[18] To make a distinction between the marital relationship and the family relationship would be to ignore the very purpose of the marital relationship. A contention that the physical relation between husband and wife lies within the area of respect and privacy protected by the Constitution, demands that the social, emotional and intellectual relation between parents and children be accorded the same respect and

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[14] *Id.* at 485.

[15] *Id.* at 484.

[16] *Id.* at 486.

[17] Meyer v. Nebraska, 262 U.S. 390 (1923); Pierce v. Society of Sisters, 268 U.S. 510 (1925).

[18] Griswold v. Connecticut, 381 U.S. 479 (1965).

privacy, because this second relation stems directly from the first relation.

The right to privacy in the sacred relation of parent-child must be protected by the due process clause of the fourteenth amendment. The fourteenth amendment protects not only those liberties included in the Bill of Rights but also protects those rights which are fundamental, but not specifically mentioned. This theory has been advanced by the Court on several occasions.[19]

Those rights protected by the fourteenth amendment are not explicitly and definitely stated anywhere. They are not of such a nature as to be fixed and unchanging; as human knowledge and experience increases these rights must expand also.[20] The advances of society and science must be reflected in similar advances in the rights of individuals. Decisions of the Supreme Court have reflected this trend of thought.[21] As needs arise, the Constitution must be flexible enough to afford protection for violations of personal freedoms.

Included in the protection of the due process clauses of the fifth and fourteenth amendments are rights that are fundamental to the individual.[22] Under the due process clause, the Supreme Court has afforded protection against governmental interference of rights not included in the specific listing of the first eight amendments. The Court has invalidated a statute under which public employees were subject to arbitrary dismissal on the basis of association membership; [23] has struck down a regulation which arbitrarily restricted admission to the bar,[24] and has forbidden racial segregation in schools.[25] It has held that, included in the liberty which cannot be taken from an individual without due process of law, are the right to travel,[26] the right to privacy in association,[27] and the right to distribute information.[28] The Court, in these decisions, has demonstrated that there are many personal freedoms that are not specifically mentioned in the Constitution and that these freedoms will be accorded Constitutional protection. It is necessary that this protection now be extended to embrace the fundamental right of a parent to discipline his child. It is time to limit the doctrine of *in loco parentis,* which gives the teacher permission to exer-

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[19] Griswold v. Connecticut, 381 U.S. 479 (1965); Meyer v. Nebraska, 262 U.S. 390 (1923); Aptheker v. Secretary of State, 378 U.S. 500 (1964); Pierce v. Society of Sisters, 268 U.S. 510 (1925).

[20] Village of Euclid v. Ambler Realty Co., 272 U.S. 365, 387 (1926); Wolf v. Colorado, 338 U.S. 25, 27 (1949).

[21] Bolling v. Sharpe, 347 U.S. 497 (1954); United Public Workers v. Mitchell, 330 U.S. 75 (1945); Gideon v. Wainwright, 372 U.S. 335 (1963).

[22] Howard v. Kentucky, 200 U.S. 164, 173 (1906); Whitney v. California, 274 U.S. 357, 373 (1927).

[23] Wiemann v. Updegraff, 344 U.S. 183 (1952).

[24] Schware v. Board of Examiners, 353 U.S. 232 (1957).

[25] Bolling v. Sharpe, 347 U.S. 497 (1954).

[26] Kent v. Dulles, 357 U.S. 116 (1958); Aptheker v. Secretary of State, 378 U.S. 500 (1964).

[27] NAACP v. Alabama, 357 U.S. 449 (1958).

[28] Martin v. Struthers, 319 U.S. 141 (1943).

cise a parental right. It is now necessary to alter the presumption that a parent has delegated a fundamental right to another.

Support for this personal freedom to be included in the scope of the fourteenth amendment's due process clause is gained from the ninth amendment, which expressly states that the rights listed in the first eight amendments are not intended to be exhaustive, but that other rights are retained by the people. One of these retained rights is the right of parental discipline. Although not mentioned in the Constitution, this is a right similar to the right of privacy in marriage which the Court in *Griswold v. Connecticut* found to be protected from infringement by the ninth amendment.[29] In his opinion Justice Goldberg said that the ninth amendment was not in any way being used to broaden the powers of the Court, or as an independent source of fundamental rights.[30] Rather, the ninth amendment merely states that other rights should not be neglected because they are not specifically mentioned in the Constitution. The right of parental discipline is exactly the type of personal freedom which is retained by the people.

Rights of Children

Dignity of the Human Body

The personal integrity and privacy of the human body is a principle that is well-established in law. It has long been recognized that any unpermitted offensive touching of the body is a battery.[31] An assault is the placing of another in apprehension of an immediate offensive touching of the body.[32] Any exception to these principles must certainly be well-founded. The natural right to privacy of one's body from invasions by others, including representatives of the state, "that are not indisputably necessary for the safety of the community," is a right which must be respected and accorded protection against infringement by those who hold the opinion that man should serve the goals of the state.[33] An individual is entitled to an uninterrupted enjoyment of the use of his limbs, body, and health,[34] the right to "preserve his person inviolate from attack by any other person," [35] and the inherent right of bodily integrity.[36]

Need for Restrictions in Schools

Many restrictions have been made on the use of force on adults. The use of physical punishment on seamen has been forbidden[37] and its use has been greatly restricted in prisons. The integrity and dignity of an individual's person has been seriously dealt with in cases concern-

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29 Griswold v. Connecticut, 381 U.S. 479, 491 (1965).

30 *Id.* at 492.

31 W. PROSSER, HANDBOOK OF THE LAW OF TORTS 30 (2d Ed. 1955).

32 *Id.* at 34.

33 C. ANTIEAU, RIGHTS OF OUR FATHERS, at 93 (1968).

34 Bednarik v. Bednarik, 18 N.J. Misc. 633, 16 A.2d 80 (N.J. Ch. Ct. 1940).

35 Gow v. Bingham, 107 N.Y. Supp. 1011 (Sup. Ct., Sp. Term 1907).

36 Smith v. Command, 231 Mich. 409, 204 N.W. 140 (1925).

37 18 U.S.C. § 2191.

ing alleged criminals. It is an established principle of criminal procedure that any use of force to produce a confession will result in its being inadmissible in court. Yet the theory persists that the use of force as punishment for children is permissible.

Corporal punishment in prisons is permitted in only two states and in one of these states its use has been held to be unconstitutional. The use of corporal punishment in prisons was ruled a violation of the eighth amendment by a United States Court of Appeals in *Jackson v. Bishop*.[38] In deciding that the use of corporal punishment was cruel and unusual, the Court relied on several findings: [39]

1) No convincing evidence that any rule or regulation adopted concerning the use of corporal punishment, would be successful in preventing abuse, regardless of the sincerity with which it was drawn up.
2) Such regulations often go unnoticed or are easily circumvented; difficulties are encountered in enforcing limitations of power.
3) Use of corporal punishment is readily subject to abuse.
4) Corporal punishment develops hate toward those administering it and toward the system which permits its use. It is degrading and frustrates correctional goals.
5) Adjustment to society is made more difficult.

These reasons are even more applicable to the situation of the use of corporal punishment in schools, since the child is in the development stage of life. Situations frequently occur in which the power is abused,[40] and the actual number of abuses is probably quite high. It is a type of punishment which easily lends itself to abuse, and it creates an atmosphere of fear and distrust which is not conducive to learning.

Detriments of Corporal Punishment

1. *Insufficient Supervision.* Any virtues that might be found in a system of immediate physical punishment are substantially outweighed by the dangers inherent in a system where proper supervision is impossible or unlikely.[41] In some instances, even though records are required, the actual extent of the usage is unknown, while in many other instances, records are not even required. Thus, the frequency, severity and the circumstances under which corporal punishment is inflicted can not always be accurately determined. This is a situation which should not be tolerated. The secrecy associated with the use of physical punishment may itself be a strong indication that its value as an effective method of discipline should be questioned.[42] It also lends support to the argument that the teacher-student relationship suffers as a result. It is probably impossible to make any objective study of the effectiveness of corporal punishment without any substantial data in the form of

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[38] 404 F.2d 571 (1968).

[39] *Id.* at 579.

[40] J. KOZOL, DEATH AT AN EARLY AGE (1967).

[41] G. SCOTT, THE HISTORY OF CORPORAL PUNISHMENT 192 (1959).

[42] R. Gummere Jr., *On Beating School Children*, THE NATION, Dec. 6, 1965 at 442.

accurate records. It is also impossible to determine whether any abuse of the privilege is occurring. The fact that abuse is and can be a serious problem is vividly described in a book by a former public school teacher.[43] From first-hand observations, it is illustrated how motives other than child guidance and control can, sometimes unknowingly, cause the use of physical punishment. Without any accurate records, it cannot be determined which students receive the punishment and how often. The answers to questions of this type would be extremely useful in determining the causes of student behavior.

> Is disorder caused more by what we teach pupils, the pupils we teach it to, or the society which requires them to learn it? Does the trouble come from our saber-toothed curriculum, our classroom Ichabod Cranes, our restless youth, or our distraught grown-ups? [44]

Who can answer these questions? More important, who is attempting to answer them? The most serious result of this secrecy is that fundamental personal rights are being violated unnoticed. Again, such a situation is intolerable. A continued use of corporal punishment is not an answer. "Corporal punishment is a privilege that can easily be overdone by parents and teachers. The child is the greatest immediate loser. Adults and society are the indirect losers, suffering the effects of the child's resentment." [45]

2. *Possibility of Physical Harm.* The possibility of physical harm to the child, though unintended, is itself a substantial reason for not using corporal punishment. In areas where strict regulations concerning its use are not adhered to, the severe physical mismatch of teacher and student and the mental attitude of the teacher become important factors in the administering of the punishment. In a study made concerning the use of corporal punishment in the schools,[46] many of the arguments advanced in its favor related to the aid and convenience of the teacher. It has been said that "[F]requently we can improve the quality of discipline by improving the quality of teachers—not by strengthening their whip-hand." [47]

3. *Customary Practice.* Corporal punishment exists, in large part, as a result of its customary use throughout the ages. This is, indeed, a poor reason for its continued use.

> It is revolting to have no better reason for a rule of law than that so it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since, and the rule simply persists from blind imitation of the past.[48]

Corporal punishment can become merely a crutch, used because other methods of discipline are more challenging or inconvenient.

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[43] DEATH AT AN EARLY AGE, *supra* note 38.

[44] *On Beating Children, supra* note 40.

[45] E. PHILLIPS, D. WIENER, N. HARING, DISCIPLINE, ACHIEVEMENT AND MENTAL HEALTH 13 (1960).

[46] K. JAMES, CORPORAL PUNISHMENT IN THE PUBLIC SCHOOLS (1963).

[47] Rosenberg, *Should Teachers Wield the Rod?*, PARENTS MAGAZINE, Feb., 1964, at 106.

[48] O. HOLMES, COLLECTED LEGAL PAPERS 187 (1921).

4. *Improper Teacher-Child Relationship.* The education and development of children is a process that must be undertaken with extreme care. Development of a child's character and attitudes involves problems that are often extremely difficult. Thus, a teacher is operating in a sensitive area in a schoolroom.[49] He is shaping the attitude of young minds toward the society in which they live. This thought was affirmed in *Sweezy v. New Hampshire*[50] when the Supreme Court said

> [n]o one should underestimate the vital role in a democracy that is played by those who guide and train our youth . . . Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to . . . gain new maturity and understanding; otherwise our civilization will stagnate and die.[51]

Again in *Boilan v. Board of Education*[52] the Court stated that

> [I]t has always been the recognized duty of the teacher to conduct himself in such a way as to command the respect and good will of the community . . . Educators have always regarded the example set by the teacher as of great importance . . .[53]

The use of corporal punishment destroys the quality of an effective teacher-child relationship by denying the worth and value of the individual and creating feelings of humiliation. By depending on the force, the teacher loses influence in guiding children toward an intelligent approach to their problems.[54]

It is an interesting observation that there are lobbies in this country for nearly every category imaginable. But someone must speak for the children since they have no voting power of their own.

Trends in Juvenile Court

Recent trends in juvenile court proceedings have emphasized the rights of children. That the child is an individual to be treated with respect and is protected by the provisions of the fourteenth amendment was stated by the court in *Application of Gault.*[55] This thought was also expressed in *Pee v. U. S.*,[56] a decision in which the court said that a hearing in Juvenile Court must measure up to the essentials of due process and fair treatment. In *Kent v. United States*[57] the Court said that the Juvenile Court of Washington, D. C. was engaged in "determining the needs of the child and of society rather than adjudicating criminal conduct. The objectives are to provide measures of guidance

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49 Adler v. Board of Education, 342 U.S. 485 (1952).

50 354 U.S. 234 (1957).

51 *Id.* at 250.

52 357 U.S. 399 (1958).

53 *Id.* at 407.

54 J. HOWARD, CHILDREN IN TROUBLE 239 (1970); H. DOUGLASS, MODERN ADMINISTRATION OF SECONDARY SCHOOLS 332 (1963).

55 387 U.S. 1 (1967).

56 274 F.2d 556 (D.C. Cir. 1959).

57 383 U.S. 541 (1966).

and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment." [58]

Such an objective emphasizes the strong desire of the judicial system to focus on methods of guidance rather than punishment for juveniles. This objective is equally necessary and important in educational institutions. The goal to be strived for is the creating and fostering of an atmosphere that is most conducive to learning.[59]

Constitutional Right to Learn

The Supreme Court in *Griswold v. Connecticut*[60] affirmed many of its earlier holdings interpreting the rights protected by the first amendment freedom of speech and press clause. In these holdings the Court ruled that the state may not reduce the area of available knowledge,[61] that the first amendment freedom of speech and press includes freedom of inquiry,[62] freedom of thought, freedom to teach,[63] and freedom of the "entire university community." [64] In *Barenblatt v. U. S.*[65] the Court said that "[w]hen academic teaching-freedom and its corollary learning-freedom, so essential to the well-being of the Nation, are claimed, this Court will always be on the alert against intrusion . . . into this constitutionally protected domain." [66]

From these decisions it is clear that the right to be free to inquire and learn is very firmly established in constitutional law. The court, in affirming these decisions, stated that "without these peripheral rights the specific rights would be less secure." [67]

If the freedom of association is considered a fundamental right, of what significance is the freedom if the very essence of its existence is not protected. By the same token, if the freedom of inquiry and learning is considered a fundamental right, of what significance is the freedom if the very means of exercising it is not protected.

State Interest

Necessity of Law

Whenever a state passes legislation which attempts to deny a fundamental personal right, it must be clearly and definitely shown that the need for the legislation serves some "subordinating interest which is compelling." [68] The protection of personal rights is so important that only in situations where the state interest is overwhelming can it be

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[58] *Id.* at 554.

[59] R. AMSTERDAM, CONSTRUCTIVE CLASSROOM DISCIPLINE AND PRACTICE 82 (1957); J. HOWARD, CHILDREN IN TROUBLE 239 (1970).

[60] 381 U.S. 479 (1965).

[61] Meyer v. Nebraska, 262 U.S. 390 (1923).

[62] Wiemann v. Updegraff, 344 U.S. 183 (1962).

[63] *Id.*

[64] Sweezy v. New Hampshire, 354 U.S. 234, 249-250 (1957); Barenblatt v. United States, 360 U.S. 109, 112 (1959).

[65] 360 U.S. 109 (1959).

[66] *Id.* at 112.

[67] Griswold v. Connecticut, 381 U.S. 479, 483 (1965).

[68] Bates v. Little Rock, 361 U.S. 516, 524 (1960).

permitted to infringe on them. As the Supreme Court said in *Griswold,* it is not sufficient that the state has rational considerations that support the legislation.[69] The statute cannot be so broad that it unnecessarily invades "the area of protected freedoms," [70] a principle set out in several previous cases.[71] Justice Goldberg said that where "fundamental personal liberties are involved, they may not be abridged by the state simply on a showing that a regulatory statute has some rational relationship to the effectuation of a proper state purpose." [72] It must be shown that the law is "necessary, and not merely rationally related, to the accomplishment of a permissible state policy." [73] Many times the Court has stated that there is a "realm of family life" which the state cannot enter without substantial justification.[74]

It then must be determined whether it is necessary to abridge both the right of a parent to bring up his child and the personal dignity and integrity of the child. This is the result of statutes which grant permission to use corporal punishment.

Legitimate Purpose

It can be assumed that the state's interest in the matter is for the protection of the general welfare and to sustain discipline and control in the state's schools. This is definitely a legitimate state interest. It is not denied that the state, in exercising its police power, can maintain control in its schools; however, the manner in which the state attempts to achieve this goal can most certainly be challenged, and when two fundamental personal liberties are abridged by one statute, then the statute must be viewed very critically and harshly. It must be viewed with serious thought given as to the alternate methods of achieving the goal, methods which would not infringe on basic personal rights. It is not a question of the Supreme Court operating as a "super-legislature to determine the wisdom, need, and propriety of laws that touch economic problems, business affairs, or social conditions." [75] The present law deprives individuals of fundamental rights and for that reason it must be carefully scrutinized.

Alternative Methods

It must be determined then, whether an alternative method is available. If there is a "reasonable and adequate" alternative available, then the statute must be stricken down.[76] This alternative can be found by looking to experts in the area of behavior. Great advances have been

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[69] 381 U.S. 479, 497 (1965).

[70] NAACP v. Alabama, 360 U.S. 240 (1959).

[71] McLaughlin v. Florida, 379 U.S. 184 (1964); NAACP v. Alabama, 360 U.S. 240 (1959); Aptheker v. Secretary of State, 378 U.S. 500 (1964); Schneider v. State, 308 U.S. 147 (1939).

[72] 381 U.S. 479, 497 (1965).

[73] McLaughlin v. Florida, 379 U.S. 184, 196 (1964).

[74] Griswold v. Connecticut, 381 U.S. 479 (1965); Meyer v. Nebraska, 262 U.S. 390 (1923); Pierce v. Society of Sisters, 268 U.S. 510 (1925); Poe v. Ullman, 367 U.S. 497 (1961) (dissenting opinion of J. Harlan).

[75] Griswold v. Connecticut, 381 U.S. 479, 482 (1965).

[76] Dean Milk Co. v. City of Madison, 340 U.S. 349 (1951).

made in observing, interpreting and treating behavior patterns in people, especially children, by psychologists and psychiatrists working in this field. Present theories in this area reject the idea that physical punishment is the best method of developing the child's character *or* that it is the best method of controlling child behavior.[77] In fact, there is much authority which states that physical punishment can actually result in harm being done by creating feelings of resentment and an atmosphere that is not conducive to education.[78]

Another major detriment to the use of corporal punishment is the effect it has on the child. In many cases the only result is the development of an attitude of resentment and fear. "The danger, in all cases, is that the infliction of corporal punishment will create sullenness, hypocrisy and cunning where these did not previously exist, or that it will develop or extend these undesirable characteristics in all instances where they were already in existence." [79] The development of a mutual respect between student and teacher is recognized as an important factor in fostering an effective classroom atmosphere. It is difficult to achieve this mutual respect with the use of physical punishment because attitudes of resentment or submission are created within the child in living with authority.

Another means of determining if an alternate method is available is to compare legislation on the subject. New Jersey schools have been operating under a prohibition of corporal punishment since 1867 with no apparent ill effects.[80] The philosophy behind this statute is reflected in decisions made by the Commissioner of Education in situations where such punishment was inflicted.[81] These decisions state that an individual has a right to be free from bodily harm or any infringement on the physical integrity of his person as a result of physical pain inflicted by another.

Many individual school boards[82] forbid corporal punishment in the interest of developing strong teacher-student relationships,[83] and several foreign countries[84] have abolished this "uncivilized custom." [85]

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[77] R. AMSTERDAM, CONSTRUCTIVE CLASSROOM DISCIPLINE AND PRACTICE 82 (1957); N. CUTTS, & N. MOSELEY, TEACHING THE DISORDERLY PUPIL 34 (1957); J. HOWARD, CHILDREN IN TROUBLE 239 (1970); R. DREIKURS, & L. GREY, LOGICAL CONSEQUENCES: A NEW APPROACH TO DISCIPLINE (1968); E. PHILLIPS, D. WEINER, & N. HARING, DISCIPLINE, ACHIEVEMENT AND MENTAL HEALTH (1960); H. DOUGLASS, MODERN ADMINISTRATION OF SECONDARY SCHOOLS.

[78] N. CUTTS & N. MOSELEY, PRACTICAL SCHOOL DISCIPLINE AND MENTAL HEALTH (1960); H. DOUGLASS, MODERN ADMINISTRATION OF SECONDARY SCHOOLS (1963).

[79] G. SCOTT, THE HISTORY OF CORPORAL PUNISHMENT 190 (1959).

[80] N.J. STAT. ANNOT. 18A: 6-1.

[81] In the Matter of the Tenure Hearing of Frederick L. Ostergren, School District of Franklin Township, Somerset County, decided by New Jersey Commissioner of Education, Oct. 25, 1966; In the Matter of the Tenure Hearing of Pauline Nickerson, Peapack-Gladstone, Somerset County, decided by the Commissioner of Education, Sept. 2, 1965.

[82] Philadelphia, Chicago, Pittsburgh, Baltimore.

[83] *Discipline for Constructive Citizenship,* ADMINISTRATIVE BULLETIN No. 22, School District of Philadelphia (1955).

[84] Norway, Denmark, Finland, Sweden; Vaigo, *Cane Now Ended Throughout Scandinavia,* London Times Education Supplement 671, Oct. 4, 1968.

[85] Vaigo, *Cane Now Ended Throughout Scandinavia, supra* note 84.

These examples indicate that an alternative does exist. Schools can operate effectively without having to resort to physical punishment. School control can be maintained without the need for the state to abridge the personal liberties of parents and children.

It would seem that the state would want to achieve its goal with the most advanced methods. Child development is such an important function that it is imperative that primitive and outdated methods be abolished.

Conclusion

At a time when the schools and the entire educational system have been subjected to criticism from many directions, it appears that an approach is needed which will direct itself towards the best interests of the child. Since there are substantial psychological reasons as well as constitutional reasons for the prohibition of corporal punishment, and since certain jurisdictions are presently operating under such a prohibition, the interests of the child would best be served by finally laying to rest the authority to use such punishment.

We have seen a substantial increase in the use of violence in recent years and an increasing awareness of its detrimental effect, whether it occurs as an act of criminal assault, a means of protest or an act of war. Perhaps a different approach in the early stages of education can result in the desired solution to this problem.