THE BAN ON CORPORAL PUNISHMENT OF CHILDREN

Changing laws to change attitudes: the Swedish experience

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The UN Committee on the Rights of the Child has criticised Australia (and many other countries) in State Reports released in 1997, 2005 and, most recently, 2011, for not introducing a ban on corporal punishment by parents of their children in line with Article 19 of the UN Convention on the Rights of the Child ('CROC').¹ In light of this criticism, and the clear recommendation to ban parental corporal punishment, it is surprising that no government in Australia has yet taken the step towards such a ban.² In the debate on this issue in Australia,³ the main argument against a ban on corporal punishment seems to be that it would be a violation of the right to private family life, and to parents' right to choose how to raise their children. Connected to this argument is a belief that the family structure would collapse if parents were no longer able to physically chastise their children. Furthermore, it is argued that such a ban would result in parents use of 'mild' forms of physical discipline being viewed wrongfully as criminals, which in turn would have negative effects on the children. Another argument put forward is that 'mild' forms of physical punishment do not harm children and that smacking children can be less harmful than verbal reprimands.

To put this debate in some context, it is illustrative to look at Sweden, which was the first country in the world to introduce a ban, in 1979. The arguments raised against such a ban in Australia today are more or less the same as those that were put forward before the ban was introduced in Sweden.⁴ As a researcher within the field of public law I find this very interesting, since research shows that an absolute majority of people in Sweden today would no longer agree with these arguments. It has been shown that attitudes, as well as the use of physical punishment, have shifted quite significantly.⁵ Overall, Sweden and Australia — countries with similar welfare ambitions when it comes to families and children, and possibly also similar financial abilities to meet those goals — have chosen different legal pathways in relation to corporal punishment.

The 1979 reform was a major step in developing children's rights in Sweden. As will be shown in this article, research suggests that the ban must be considered a legal success, because the intentions of the lawmaker have to a large extent, albeit progressively, been met. However, a ban will quite evidently not solve all problems. Violence against children remains a problem in Sweden, and aspects of the child protection system remain questionable. This article discusses both good and problematic outcomes of the Swedish ban, to provide an additional source of knowledge for Australia and other countries in the process towards a ban that is needed to meet the requirements set out in the CROC.

The ban in Sweden — A proactive law with educational and preventive objectives

The Swedish ban on all forms of violent and emotionally-abusive treatment against children can be seen as a result of legal reforms introduced as early as the late 19th century. The reforms meant that men could no longer legally use violence against their wives, and abolished the legal defence for using violence against employees. While Sweden prohibited corporal punishment in all schools and institutions in 1958 and removed the defence of reasonable punishment in the criminal law in 1966 it took another decade before parents were expressly prohibited from physically and emotionally punishing their children. This explicit ban on corporal punishment in home environments, as introduced in the Parental Code in 1979, was by then in many ways a natural step after earlier reforms. Even if arguments were raised against such a ban, society to some extent was prepared for the reform and it was supported by all political parties.⁶ Almost unanimously, the Swedish Parliament voted for a ban and the Parental Code⁷ since then states as follows:

Children are entitled to care, security and good upbringing. Children are to be treated with respect for their person and individuality and may not be subjected to corporal punishment or any other humiliating treatment.

According to the preparatory works to the reform,⁸ (ie, travaux préparatoires, providing further explanations as to the background of the reform and the intent of the legislator when enacting new laws, seen in the Nordic legal tradition as important legal sources giving guidance on how to interpret the law), the overall aim was to make clear that children have the right to an upbringing without violence, including the use of smacking and 'milder' forms of physical punishment. It was made clear that the ban does not prevent parents from restraining their children in order to stop them from doing harm to themselves or others. The reform was grounded in a view that children are not parental property, but are instead 'independent individuals with a right to full respect for their integrity.' The goal was to change attitudes and prevent all forms of violence against children, rather than criminalising parents and parental behaviour.⁹

The ban in the Parental Code, which is a civil law, is an 'educational' provision and does not in itself carry sanctions. Penalties for acts of violence against children are instead specified and provided in the assault section in the Penal Code.¹⁰ This section, which is not specific to criminal acts against children, states that a person is criminally liable for assault if '... inflicting bodily injury, illness or pain upon another or renders him or her powerless or in a similar helpless state...'. The legal criteria of the crime of assault include that, to be punishable, any injury, illness or pain must be more than minor and must not be 'too mild or brief in duration.'¹¹ Consequently, the ban in the Parental Code — with its educational rather than punitive aim that includes 'milder' forms of physical punishment without evidence of a more durable injury or pain — is wider in its scope than the assault section in the Penal Code.¹² Thus, while all forms of physical punishment are 'proactively' banned in the Parental Code, not all are criminalised in the Penal Code.

Effects and results of the ban

At about the same time as the ban was introduced, an extensive publicity campaign was launched, which resulted in the ban being quickly and widely known. Debates and information meetings were organised by different organisations and the issue was discussed in the media.¹³ Furthermore, information was printed on milk cartons to encourage awareness and discussions within families 'around the kitchen table'.¹⁴ Two years after the ban was introduced, more than 90 per cent of Swedish parents were

aware that the law had changed, and the ban was quickly and widely socially accepted.¹⁵ Studies after 1979, in which parents and children were asked about their attitudes and experiences of corporal punishment, show that the actual use of corporal punishment has decreased significantly. Studies in the 70s indicate that around one-half of children experienced being smacked by their parents and that there was a widespread acceptance of corporal punishment in this era.¹⁶ In 1994, one-third of children who were asked about their experiences said they had been smacked and/or beaten at some previous point in time in their childhood. Since 2000, this figure has fallen, and has remained more or less stable at about 14 per cent.¹⁷ In the most recent study from 2011, 92 per cent of parents responded that it was wrong to beat or slap a child. This is a powerful contrast to the tolerance (or even positive attitude) towards corporal punishment a few decades ago. This recent study also addresses speculation that Swedish parents who no longer beat their children are instead verbally abusing and/or insulting them. Children's responses in this study point to the contrary, showing instead strong correlation between parents' humiliating children and the use of corporal punishment. Thus, the speculation that Swedish children are subjected to a larger extent to verbally abusive and insulting parental behaviour is not borne out by the evidence.¹⁸

While attitudes toward and the use of corporal punishment have changed, the rate of more severe forms of child physical assault has not changed in the same way. About three to four per cent of parents from the 1980s and onwards report having beaten their child in a more serious way during the last year. This is consistent with children's responses when asked about more severe physical abuse.¹⁹ When it comes to risk factors correlating with the use of corporal punishment and physical assault, it can be noted that the outstanding risk factor shown in the recurrent studies is violence between the adults in the family. It has also been shown that children with chronic diseases and disabilities appear to have been beaten twice as often as healthy children.²⁰ Furthermore, parents born outside Sweden and parents with low educational levels have been shown to use corporal punishment against their children more than other parents. Even if there is clear evidence that violence against children remains a problem in Sweden, international comparisons suggest that the rates of serious abuse and assault and also violent deaths are lower in Sweden than in other industrialised countries.²¹

The ban and its effects in context

When reflecting upon the Swedish ban and its effects, both the Swedish legal tradition and the function of the welfare system in Sweden must be considered. In the Swedish legal and political tradition — which has its roots in Scandinavian legal realism and the ideology of the Social Democratic Party that has been the dominant political party during most of the 20th century — the focus to a large extent has been on using the law as an instrument to reform society.²² In essence, the role of the law within the field of public law has been to safeguard support to individuals rather than to protect an individual's rights from state interventions, which would be more the focus in a system driven by a liberal ideology.²³

At the same time as the ban was introduced in Sweden, the welfare system expanded and was substantially reformed. The emphasis in this system, governed by the Social Services Act which was enacted in 1982 and is still in force, is on 'open' support measures offered to individuals and provided with respect for self-determination and integrity. Although the welfare system and the Social Services Act have been reformed and challenged in the post-welfare-state era, they are still based on the same legal framework and principles. Many services and supports to families with children are offered and given on a general basis, *i.e.*, given to all families at no or minimal cost. This includes, for example, generously paid parental leave, day care centres, parental courses and children's clinics. Overall, the welfare system can be said to provide a safety net for families with a strong focus on primary prevention.²⁴

To complement this system with open and universal welfare services, Social Services hold ultimate statutory responsibility for children when there are indications that parents cannot fulfil their responsibilities to their children.²⁵ If information about a child at risk is received — most often from those mandated to report such as schools, police, health care institutions, etc²⁶ — Social Services have an obligation to investigate and assess that child's needs.²⁷ This investigation can be completed regardless of parental consent. However, in line with the strong emphasis on self-determination and integrity, priority will be given to providing support in collaboration with parents. A child can be involuntarily removed from the parents only if there is evidence of serious abuse and neglect leading to a tangible risk to the child's health and development.²⁸

One argument raised against the ban in Sweden was that children whose parents had smacked them would be wrongfully removed and placed in out-of-home care. In fact there are no signs of children in Sweden being removed from their parents more often today than 35 years ago.²⁹ The rates of children in out-of-home care in Sweden are no higher than those in other industrialised countries, for example Australia.³⁰ In a study that compared out-of-home placements in Sweden and Australia it was found that the proportion of children in out-of-home care was about the same in the two countries but that the age of these children differed, with more young children in out-of-home care in Australia and more teenagers in Sweden.³¹

As indicated above, the ban and its effects must be seen in light of the surrounding society and welfare system. While there is a need for more research on these issues, much evidence suggests that apart from the 1979 reform itself, the societal services and supports have probably influenced the shift in attitudes, and decreased the use of physical punishment.

Violence against children from a police perspective

Since the mid-1980s, at the same time as research has shown that tolerance and use of physical punishment has decreased, the number of reports to the police regarding cases of suspected assault on children has increased considerably. The number of such reports rose by 190 per cent between 1990 and 1999. During the period 2001–2010 there was a 62 per cent increase in reports for children aged seven to fourteen and a 176 per cent increase in reports for children under seven.³² This quite dramatic change has raised questions about the situation for children in Sweden and has given rise to a significant interest in research, and to official inquiries. Findings in these studies suggest that the increase in reporting does not reflect an actual increase in child abuse, but instead can be explained by the fact that tolerance of assaults on children has decreased and therefore both professionals and individuals are more willing to inform the authorities about suspected cases.³³

It is important to note that the increase in cases reported to the police has not resulted in any equivalent increase in cases that are prosecuted. Research shows that the rate of prosecution is only 15 per cent in cases of suspected assault on children, and convictions only arise when there is clear evidence of physical injuries. These are the same types of cases that were prosecuted in

previous decades before the shift in attitudes following the law reform.³⁴ One suggested explanation for the low rate of prosecution is that the police consider milder forms of assault more of a 'social problem' rather than something to be dealt with by the police.³⁵ The same considerations might extend to the tendency in criminal courts to emphasise mitigating circumstances, therefore finding parents responsible 'only' for the lower category of assault. One example of this is a case that was ultimately addressed by the Swedish Supreme Court³⁶, in which a mother had confessed to beating her nine-year-old son with a wooden spatula five to seven times, until stopped by a friend of the family. The mother was found guilty of the lower category of assault as she was 'stressed and tired.'

Discussion — Proactive and reactive responses to violence against children?

Parents in Sweden today are arguably a lot less likely to use physical punishment as part of parenting than 35 years ago, and are also less likely to do so compared to parents in most other countries.³⁷ Overall, the reform banning corporal punishment in Sweden must be viewed as a legal success. A low (eight per cent) parental acceptance of corporal punishment can be compared to a 2006 Australian study which found that 69 per cent of adult respondents agreed that 'it is sometimes necessary to smack a naughty child.' In the same study 45 per cent were found to believe that it is reasonable to leave a mark on a child as a result of physical punishment.³⁸ As noted above, the rates of serious abuse and assault as well as violent deaths are also lower in Sweden than in other industrialised countries. Furthermore, evidence suggests that the 1979 reform, with its inherent 'new' view on children's rights and childhood, has probably influenced the Swedish society in ways beyond changing attitudes towards corporal punishment. The statement in the preparatory works preceding the reform referred to above³⁹ — that 'children are independent individuals with a right to full respect for their integrity' — was perhaps more visionary than anticipated. However, even though the intentions in the 1979 reform have been met to a large extent, there are problems and challenges to consider in the Swedish child protection system. With three to four per cent of children reporting they have been severely physically assaulted — a figure that has not decreased since the 1980s — and the increase in reports to the police, it can be concluded that violence against children remains a problem in Sweden.

One challenge for the Swedish system today is to appropriately identify children in need of protection. Studies indicate that even when violent incidents have been reported to authorities, support offered to the families does not specifically target problems connected to violence.⁴⁰ Overall, the outcomes of the child protection system in Sweden have not been adequately evaluated,⁴¹ and it is still necessary to explore and evaluate how the proactive support system actually works for families reliant on help and support. There might be a 'blind spot' in the proactive and preventive approach in actually identifying children at risk. Another challenge is how to address the dramatic increase in reports to the police, without any consequent increase in prosecutions, during the last two decades. It can be argued that the low rate of prosecutions is a problem in itself. Some claim that crimes against children are not taken seriously enough when parents who hit their children are not prosecuted. Others argue that the important task for society is to support parents and to proactively promote other methods of parenting, rather than to prosecute parents. Moreover, some would claim that there might be a proactive effect in cases being reported to the police in the sense that it sends a signal that it is against the law to hit a child. It should also be noted that the police are mandated to report such cases to Social Services and, thus, a police investigation might be the impetus for the necessary support to change harmful and risky family situations. However, that requires that adequate support and services are given by Social Services. The debate as to whether a more punitive way of reacting to violence against children is the way forward illustrates that the question of how to combat violence against children is very complex.

The experiences from Sweden — both the positive out-comes of the ban and the challenges that the system face — can serve as an additional source of knowledge for countries like Australia that have not yet introduced a ban. Regardless of the challenges discussed above, it can be concluded that the introduction of the ban in Sweden — combined with support and services to families with children — has proven to be a powerful way of changing attitudes in society as well as decreasing the actual use of physical punishment. It must also be noted that the arguments raised in Sweden before the ban — which are more or less the same as those put forward in Australia today — have to a large extent been proven to be incorrect. Swedish society and structures within families have not collapsed, and most parents have found new, more humane and thriving ways of handling conflicts with their children. Those parents who still smack their children are not stigmatised, nor seen as criminals, and generally children are not removed from their parents. There is no debate about the state usurping parental rights in this regard, and very few Swedes seem to question the correctness of the ban.

To conclude, there are many arguments for banning corporal punishment. With the Swedish experiences as background, it must be questioned whether Australia and other countries have legitimate reasons for delaying the introduction of a ban, at least by repealing the defence of 'reasonable punishment'. This is now further supported after a recent American study suggests that 'milder' forms of physical chastisement may cause harm to children in the form of greater rates of depression, anxiety, substance abuse and personality disorders.⁴² With increasing evidence of the positive effects of the ban and research supporting the need for change, the question cannot be *whether* to introduce a ban but rather *when*, and *what* support measures and strategies should be provided in conjunction with a ban. Australia and other countries must not only take steps towards a reform rejecting the parental right to carry out 'reasonable punishment' and banning corporal punishment. It must also support and educate parents. This is necessary in order to fulfil the responsibilities under the CROC and, more importantly, to depart from an out-dated proprietary approach to parenting in favour of a rights-based approach to children and their rights in the new millennium.

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