

CORPORAL PUNISHMENT AND CHILD DEVELOPMENT*

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Time after time we hear alarming reports, children’s and young persons’ mental health problems are increasing. More resources are demanded for child psychiatry and school nurses. But is the solution really more treatment and more money? Isn’t it time that we seriously ask ourselves the question whether we no longer really understand the needs of children? And that we should stop believing only the answers that confirm us adults?

~ Roger Lord¹

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* This article is a reprint of the article that was printed in the *Akron Law Review*, Volume 43, Issue 2, 2010. There was a printing error with this article and its corrections are included in this article.

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I. INTRODUCTION

According to a detective with the Berea, Ohio Police Department, Barbara Yates has been a defiant child for years. She commonly swears at her mother, refuses to follow any rules, and beats up her younger brother. Her mom has tried almost everything to correct her behavior: grounding, taking away privileges, you name it. But nothing has worked. And the only thing she has refused to try, on principle, is spanking.²

By age 13, Barbara started punching her mom in public and abusing drugs. The police even found that she had been plotting with a friend to kill her mother. Her mom was so frightened that she installed a deadbolt on her bedroom door just to protect herself at night from her own daughter.³

Dangerous behavior like Barbara's is just one example of a problem that has become increasingly common over the past few decades.⁴ Since World War II, "serious assaults committed by juveniles" have increased by 700%.⁵ From the 1980s to the 1990s alone, juvenile arrests for violent offenses increased by over 50%, and the rate of homicide by youths increased by 168%.⁶ Now American teens murder about 2300 people every year.⁷

2. ROBERT R. SURGENOR, NO FEAR 9 (1999). "Barbara Yates" is a pseudonym.

3. *Id.* at 9-12.

4. See, e.g., Philip J. Cook & John H. Laub, *The Unprecedented Epidemic in Youth Violence*, in *YOUTH VIOLENCE, CRIME AND JUSTICE: A REVIEW OF RESEARCH* 27-28 (vol. 24, 1998) ("[T]here has been an explosion in the rates at which adolescents commit and are victimized by serious crimes of violence.").

5. See, e.g., DORIANE LAMBELET COLEMAN, *FIXING COLUMBINE* 24 (2002) (citing JAMES GARBARINO, *LOST BOYS: WHY OUR SONS TURN VIOLENT AND HOW WE CAN SAVE THEM* 8 (1999)).

6. See, e.g., GARBARINO, *supra* note 5, at 7 (relying on statistics from the Centers for Disease Control and the Federal Bureau of Investigation during the mid-1980s to the mid-1990s. *Violent offenses* are considered "possession of weapons, aggravated assault, robbery, and murder.").

7. See, e.g., *id.* at 8.

Violence is not the only change. “[S]tudy after study points to problems and inadequacies in *today’s kids*”—problems caused by “a vortex of *new risks* . . . almost unknown to their parents or grandparents.”⁸ Journalist Patricia Hersch tells of the “deluge of adolescent dysfunction sweeping the nation, manifesting itself in everything from drugs, sex, and underachievement to depression, suicide, and crime”; and it is being seen in younger and younger children.⁹ About 20% of kids now “have some sort of developmental, learning, or behavioral disorder.”¹⁰ And as the Carnegie Council on Adolescent Development warns, “substantial numbers of American youth are at risk of reaching adulthood unable to meet adequately the requirements of the workplace, the commitments of relationships in families and with friends, and the responsibilities of participation in a democratic society.”¹¹

There is a general agreement that “the roots of the most serious and persistent forms of antisocial behavior lie in early childhood”¹² Beyond that, it seems “impossible cleanly to separate the parental and other causes of contemporary childhood dysfunction”¹³

Nevertheless, it has become common to criticize certain trends of the last fifty years. We have become addicted to TV, movies, and

8. See, e.g., COLEMAN, *supra* note 5, at 27 (quoting PATRICIA HERSCH, *A TRIBE APART: A JOURNEY INTO THE HEART OF AMERICAN ADOLESCENCE* 12 (1998)) (emphasis in original).

9. HERSCH, *supra* note 8, at 13; see also, e.g., Bart Jansen, *Mother Testifies About Teen-Age Son’s Suicide*, PORTLAND PRESS HERALD, Sept. 8, 2001, at 1B (reporting testimony before the Senate Health, Education, Labor and Pensions’ Subcommittee on Children and Families, saying that about 5000 American children and young adults kill themselves each year. At the hearing, Senator Christopher Dodd noted, “In 1998, more teenagers and young adults died of suicide than from cancer, heart disease, AIDS, birth defects, stroke, pneumonia and influenza” combined); GARBARINO, *supra* note 5, at 9 (reporting that adolescent suicide rates numbered about 2300 annually, an increase of almost 400% since 1950); *id.* at 41 (“Research by psychologist Ronald Kessler at Harvard Medical School reveals that the rate of serious depression among American youth has increased from 2 percent in the 1960s to almost 25 percent in the 1990s.”); ERIC J. MASH & DAVID A. WOLFE, *ABNORMAL CHILD PSYCHOLOGY* 289 (1999) (saying the adolescent suicide rate rose 200% in the 1990s alone, and that “[i]ndividuals born in the latter part of the 20th century have a greater risk for developing depression than those born earlier. Not only is depression increasing, it also is occurring at a younger age, with individuals born in the later decades of the 1900s reporting progressively younger ages of onset for their first episode of major depression than those born in earlier decades.”).

10. See, e.g., COLEMAN, *supra* note 5, at 25 (citing TED PETERS, *FOR THE LOVE OF CHILDREN: GENETIC TECHNOLOGY AND THE FUTURE OF THE FAMILY* 2 (1996)).

11. HERSCH, *supra* note 8, at 12.

12. See, e.g., MICHAEL RUTTER, *GENETICS OF CRIMINAL & ANTISOCIAL BEHAVIOUR* 5 (1996).

13. See, e.g., COLEMAN, *supra* note 5, at 78.

videogames.¹⁴ Substantially fewer parents stay home with their kids.¹⁵ And divorce rates are the highest in recorded history.¹⁶

At the same time, it has become politically incorrect to criticize the “tremendous decrease” of spanking during the past fifty years.¹⁷ Growing academic, political, and media pressure has persuaded twenty countries to ban physical discipline—that is, to take children from their

14. See, e.g., JOHN ROSEMOND, JOHN ROSEMOND’S SIX-POINT PLAN FOR RAISING HAPPY, HEALTHY CHILDREN 179-80 (1989) (“Since the early 1950s, when television first moved into our homes, the number of violent crimes attributed to juveniles has increased more than tenfold.”); Devin Gordon, Anne Underwood, Tara Weingarten & Ana Figueroa, *The Secret Life of Teens*, NEWSWEEK, May 10, 1999, at 46, available at <http://www.newsweek.com/id/88252/page/2>.

15. See, e.g., Sandra L. Hofferth, *Child Care, Maternal Employment, and Public Policy*, in THE SILENT CRISIS IN U.S. CHILDCARE, THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCES 21 (Suzanne W. Helbrun special ed., vol. 563, 1999) (“In 1995, 64 percent of U.S. married mothers with a preschool child were in the workforce compared with 30 percent in 1970.”); Patrick McKinley Brennan, *Of Marriage and Monks, Community and Dialogue*, 48 EMORY L.J. 689, 715 (1999) (“In 1970, 13 percent of all households were headed by single mothers; today, the number stands at more than 30 percent.”); C.M. Kuhn & S.M. Schanberg, *Responses to Maternal Separation: Mechanisms and Mediators*, 16 INT’L J. DEV. NEUROSCIENCE 261-70 (June-July 1998) (“Consequences of disrupting mother-infant interactions range from marked suppression of certain neuroendocrine and physiological systems after short periods of maternal deprivation to retardation of growth and behavioral development after chronic periods.”); K.J. Anand & F.M. Scalzo, *Can Adverse Neonatal Experiences Alter Brain Development and Subsequent Behavior?*, 77 BIOLOGY OF THE NEONATE 69-82 (2000) (“We propose that lack of N-methyl-D-aspartate (NMDA) receptor activity from maternal separation and sensory isolation leads to increased apoptosis in multiple areas of the immature brain . . .”).

16. See, e.g., NEIL POSTMAN, THE DISAPPEARANCE OF CHILDHOOD 138 (1994) (“According to the National Center for Health Statistics, parents are getting divorced at twice the rate they did twenty years ago, and more children than ever are involved in marital dissolution: 1.18 million in 1979 as compared to 562,000 in 1963.”); THE SILENT CRISIS IN U.S. CHILDCARE, *supra* note 15, at 8 (“Rising divorce rates and the increasing percentage of female-headed households make more families dependent upon the mother’s earnings; 21 percent of all children lived in these families in 1988, compared to only 8 percent in 1960.”).

17. See, e.g., MURRAY A. STRAUS & DENISE A. DONNELLY, BEATING THE DEVIL OUT OF THEM 27-29 (2001) (comparing their own surveys to ANDERSON, 1930 WHITE HOUSE CONFERENCE ON CHILD HEALTH AND PROTECTION 215 (1936)); Carl Bialik, *New Research on Spanking Might Need a Time Out*, WALL STREET JOURNAL, at A18 (Oct. 14, 2009), available at <http://online.wsj.com/article/SB125548136491383915.html> (saying that spanking now “is one of the less popular methods of disciplining young children,” and showing that only 2% of parents use it often); Karina A. Haynes, *To Spank or Not To Spank? Experts Say No—Some Parents Say Yes!*, EBONY 64 (Apr. 1994); Wendy Walsh, *Spankers and Nonspankers: Where They Get Information on Spanking*, 51 FAM. RELATIONS 81, 82 (2002) (“[A]pproval of corporal punishment has decreased from 94% in 1968 to 68% in 1994, and reported use of corporal punishment has decreased from 64% in 1988 to 53% in 1992. Nevertheless, 94% of parents of 3- to 4-year-olds still report using corporal punishment.”) (citations omitted); American Academy of Pediatrics, *AAP Survey on Corporal Punishment Reveals Divergent Views*, cited in Child Corporal Punishment: Spanking, <http://www.religioustolerance.org/spankin2.htm> (“A survey of U.S. parents shows a drop in the use of spanking as the main disciplinary method from 59 percent in 1962 to 19 percent in 1993. Parents now prefer using time-outs (38 percent) and lecturing (24 percent).”).

families because of spanking.¹⁸ Even where corporal punishment is not outlawed (like in the U.S.), those same pressures have made spanking the target of things like child welfare investigations, parenting education, and custody disputes.¹⁹

However, if youth violence and dysfunction is increasing at the same time that corporal punishment is decreasing, we should be open enough to consider whether the two trends are related. Maybe there is no connection. But maybe lawmakers and child welfare workers should pay more attention to the research suggesting that physical discipline can be helpful in certain contexts.²⁰

18. See The Center for Effective Discipline, *Legal Reforms: Corporal Punishment of Children in the Family* (Jan. 2010), available at <http://www.stophitting.com/index.php?page=laws-main> (claiming that twenty-five countries have now banned spanking).

19. Cf., e.g., H. LIEN BRAGG, CHILD PROTECTION IN FAMILIES EXPERIENCING DOMESTIC VIOLENCE, at app.G (2003) (describing the following questions as part of a “Domestic Violence Assessment”: “Have you ever physically harmed or used force on anyone in your family?” and “How do you discipline your children?”); Robert Flanagan, *Corporal Punishment Issues Arise in Custody and Domestic Violence Cases*, MARYLAND DIVORCE ATTORNEY BLOG (Dec. 9, 2009), <http://www.marylanddivorceattorneyblog.com/2009/12/maryland-divorce-and-custody-a.html>; Richard P. Barth, *Preventing Child Abuse and Neglect with Parent Training: Evidence and Opportunities*, 19 THE FUTURE OF CHILDREN 95, 99 (Fall 2009), available at http://futureofchildren.org/futureofchildren/publications/docs/19_02_05.pdf.

20. See, e.g., Robert E. Larzelere & Brett R. Kuhn, *Comparing Child Outcomes of Physical Punishment and Alternative Disciplinary Tactics: A Meta-Analysis*, 8 CLINICAL CHILD & FAM. PSYCHOL. REV. 1, 32 (2005) [hereinafter Larzelere, *Meta-Analysis*] (finding, from all the studies analyzed, that physical discipline was generally more effective than other punishments); *id.* at 4 (saying “children had to average less than 13 years old at the time of the discipline” to be included in the study); *id.* at 20 tbl.IV, 22 tbl.V, 24 tbl.VI (showing spanking to be better at controlling aggression than mental punishments like timeout, reasoning, scolding, “non-contact” punishment, privilege removal, love withdrawal, or diverting. Also showing that calm and controlled spanking, and spanking in response to defiance, is uniformly more beneficial than other punishments); *id.* at 27 (saying “all types of physical punishment were associated with lower rates of antisocial behavior than were alternative disciplinary tactics.”) (emphasis in original); Robert E. Larzelere, *A Review of the Outcomes of Parental Use of Nonabusive or Customary Physical Punishment*, 98 PEDIATRICS 824, 827 (1996) [hereinafter Larzelere, *Review*] (finding that, for young children, spanking was more beneficial than all seven alternative discipline responses—physical restraint, ignoring, love withdrawal, child-determined release from time out, reasoning without punishment, punishment without reasoning, and discipline other than punishment or reasoning. For older children, grounding was the only alternative discipline response that had more beneficial outcomes than did physical punishment. But even for older children, spanking had more beneficial effects than nonphysical punishment and verbal put-downs.); Mark W. Roberts & S.W. Powers, *Adjusting Chair Timeout Enforcement Procedures for Oppositional Children*, 21 BEHAV. THERAPY 257 (1990) (showing spanking to be beneficial in enforcing timeout in oppositional 2- to 6-year-olds); M. Chapman & C. Zahn-Waxler, *Young Children’s Compliance and Noncompliance to Parental Discipline in a Natural Setting*, 5 INT’L J. BEHAV. DEV. 81 (1982) (showing that for children between 10- and 29-months-old, physical coercion by their mother was more effective than reasoning or verbal prohibition at gaining immediate compliance); Robert E. Larzelere, P.R. Sather, W.N. Schneider, D.B. Larson & P.L. Pike, *Punishment Enhances Reasoning’s Effectiveness as a Disciplinary Response to Toddlers*, 60 J. MARRIAGE & FAM. 388 (1998) [hereinafter Larzelere,

True, spanking is a primitive discipline method. But a child's mind is also primitive. As researchers like Dr. Jean Piaget of the University of Geneva have popularized, kids learn from the tangible to the intangible—from the concrete to the abstract.²¹ It is during the tangible, concrete stages when physical discipline seems to be the most helpful.²²

Punishment] (finding that for 2- and 3-year-olds, spanking without reasoning as a primary discipline method was associated with substantially less disruptive behavior twenty months later than reasoning, and to a lesser extent than timeout, privilege removal, or reasoning plus physical discipline); Robert E. Larzelere, P.R. Sather, W.N. Schneider, D.B. Larson & P.L. Pike, *The Effects of Discipline Responses in Delaying Toddler Misbehavior Recurrences*, 18 CHILD & FAM. BEHAV. THERAPY 35 (1996) (finding that for 2- and 3-year-olds the combination of spanking, nonphysical punishment, and reasoning was the most effective in delaying future fights); H. Lytton, *Correlates of Compliance and the Rudiments of Conscience in Two-year-old Boys*, 9 CAN. J. BEHAV. SCI. 242 (1977) (showing that for 2-year-old boys, spanking by father and mother was more beneficial than verbal punishment, love withdrawal, or criticism to gain compliance or to positively affect the conscience); David C. McClelland & D.A. Pilon, *Sources of Adult Motives in Patterns of Parent Behavior in Early Childhood*, 44 J. PERSONALITY & SOC. PSYCHOL. 564 (1983) (finding that 5-year-old children who were spanked had substantially less "Need for Power" when interviewed again at 31-years-old, than those whose parents used reasoning, privilege removal, and love withdrawal); Kathy L. Ritchie, *Maternal Behaviors and Cognitions During Discipline Episodes*, 35 DEV. PSYCHOL. 580 (1999) (showing that for ninety 3-year-old boys and girls, spanking was much more effective at reducing defiance than reasoning, offering alternatives, threatening, verbal power assertion, privilege removal, or ignoring, and to a somewhat lesser extent timeout or physical power assertion); Robert R. Sears, *Relation of Early Socialization Experiences to Aggression in Middle Childhood*, 63 J. ABNORMAL & SOC. PSYCHOL. 466 (1961) (showing that, for a kindergarten sample of 160 children, even severe physical punishment was associated with less antisocial aggression when the children were 12-years-old, than privilege removal and love withdrawal); Murray A. Straus & V.E. Mouradian, *Impulsive Corporal Punishment by Mothers and Antisocial Behavior and Impulsiveness of Children*, 16 BEHAV. SCI. & LAW 353 (1998) (revealing that, for a random sample of children 2- to 14-years-old, spanking and to a lesser extent severe, out-of-control corporal punishment (in which mothers said they "lost it" due to anger) was more beneficial during the six months studied than disciplinary reasoning, privilege removal, and timeout to deal with antisocial or impulsive behavior); F.S. Tennant, R. Detels & V. Clark, *Some Childhood Antecedents of Drug and Alcohol Abuse*, 102 AM. J. EPIDEMIOLOGY 377 (1975) (showing that, for a group of 5044 U.S. Army soldiers, being spanked when they were under 14-years-old was associated with less substance abuse than other punishments were); D.G. Watson, *Parenting Styles and Child Behavior*, Doctoral dissertation, State University of New York at Buffalo, 50 DISSERTATION ABSTRACTS INT'L 3181 (1989) (showing from a group of 2500 National Merit Scholarship finalists and average test-takers, that parent-reported spanking (and possibly timeout) before age 6 was more beneficial than privilege removal to improve antisocial behavior and reduce alcohol usage, and was associated with higher class rank and higher scores on the National Merit Scholarship Test); MARIAN R. YARROW, J.D. CAMPBELL & R.V. BURTON, *CHILD REARING* (1968) (showing conditional spanking is more effective for 4-year-olds than reasoning, isolation, love withdrawal, diverting, or scolding to control a child's aggression—rated by nursery school teachers two months later); Carolyn Zahn-Waxler, Marian Radke-Yarrow & Robert King, *Prosocial Initiations Toward Victims of Distress*, 50 CHILD DEV. 319 (1979) [hereinafter Zahn-Waxler, *Prosocial*] (showing that for children 15- to 24-months-old, even predominate physical punishment was more beneficial than verbal prohibition for developing prosocial behavior).

21. See *infra* Part III.

22. See *infra* Part IV.

For instance, the Family Socialization Project at the University of California, Berkeley indicates that many of the best childrearers use spanking when the child is young and concrete thinking.²³ As the child begins to think more abstractly, they rely on it less and less; and they almost never use it during adolescence.²⁴

In this light, perhaps it makes sense why youth dysfunction is increasing at the same time that corporal punishment is decreasing. To function in society, people must learn to control themselves enough to not break the law or harm other people. While not every child learns this the same way, a number of them seem to learn it through at least some corporal discipline—a tangible tool that can complement their primitive learning stages.

II. BACKGROUND: THE DOCUMENTED PROBLEMS WITH SPANKING BANS

In the past [forty] years, many Americans scrapped almost all that they knew instinctively, culturally, and personally about what it takes to raise emotionally healthy children, children who are most likely to succeed as adults in their own lives and in their contributions to the society.²⁵

Spanking has been a method of child discipline for centuries.²⁶ But it has been criticized for a long time, too. Some in ancient Israel seemed to oppose it, as Solomon felt the need to promote corporal punishment six times in his proverbs.²⁷ In modern times, people have condemned spanking since at least the late 1800s.²⁸ And by 1931, it was already “not in best repute among modern exponents of child-training,” even though there was very little research on corporal punishment at all.²⁹

23. *See id.*

24. *See infra* Part IV.C.

25. *See* COLEMAN, *supra* note 5, at 85.

26. R.G. VAN YELYR, *THE WHIP AND THE ROD: AN ACCOUNT OF CORPORAL PUNISHMENT AMONG ALL NATIONS AND FOR ALL PURPOSES* v-vii (1957); *id.* at 186 (saying corporal punishment was used in Ancient Greece and Rome).

27. *See Proverbs* 13:24; 19:18; 22:15; 23:13; 23:14; 29:15.

28. ROBERT GREEN INGERSOLL, *IS CORPORAL PUNISHMENT DEGRADING?* (1891).

29. FLORENCE L. GOODENOUGH, *ANGER IN YOUNG CHILDREN* 200 (1931). *Compare, e.g.,* J.B. WATSON, *PSYCHOLOGICAL CARE OF INFANT AND CHILD* (1928) (advocating strictness, and even warning mothers about the “dangers” of expressing love toward their children), *with* Murray A. Straus, *Spanking and the Making of a Violent Society*, 98 *PEDIATRICS* 837 (1996) (“Ashley Montague argued that ‘[s]panking the baby may be the psychological seed of war’ (Boston Sunday Globe, Jan. 5, 1941).”).

It was around this time that Sweden—the first country to ban all physical discipline—began the slow, incremental process of influencing a largely pro-spanking public to believe that spanking is bad.³⁰ Sweden began in 1928 by prohibiting physical discipline in secondary schools.³¹ Over the next fifty years, the government advertised against spanking, and slowly placed more and more restrictions on it—first in reform schools, then in childcare institutions, and finally in the home in 1979.³²

This model so successfully turned public opinion against spanking that it has become a focus of the U.N. Convention on the Rights of the Child—a global “treaty” that aims to:

- (a) Explicitly prohibit all forms of corporal punishment in the family [and]
- (b) Sensitize and educate parents and the general public about the unacceptability of corporal punishment.³³

30. Compare, e.g., JOAN E. DURRANT, *A GENERATION WITHOUT SMACKING* 6-7 (2000) (saying the 1979 Swedish spanking ban “represents the end of a series of legislative reforms spanning 50 years which were aimed at making the rejection of corporal punishment increasingly explicit in the law.” Indicating further that the gradual restrictions were generally not opposed by the public, and that the government restrictions were enacted so that “Swedes would [come to] understand that corporal punishment was no longer an acceptable practice.”), with, e.g., Kluas A. Ziegert, *The Swedish Prohibition of Corporal Punishment: A Preliminary Report*, 45 J. MARRIAGE & FAM. 917, 921 (1983) (reporting that in 1965, 53% of Swedes agreed that a child “has to be given corporal punishment from time to time”).

31. See, e.g., DURRANT, *supra* note 30, at 7.

32. In 1928, Sweden prohibited physical discipline in secondary schools by amending the Education Act. *Id.* In 1957, it removed the corporal punishment defense from the Penal Code. *Id.* Three years later, it officially abolished physical discipline from all childcare institutions and reform schools. *Id.* Although the majority continued to support spanking, in 1966, the government removed a law permitting parents to spank. *Id.* Over the next fourteen years, the Swedish government conducted a massive advertising campaign against corporal punishment, and in favor of mental punishments. See, e.g., Evelyn Gordon, *The Supreme Court In Loco Parentis*, in AZURE: IDEAS FOR THE JEWISH NATION 55 (Winter 2001). In 1977, Sweden created a Commission on Children’s Rights to study how to change the Parents’ Code. DURRANT, *supra* note 30, at 7. Within a year, that commission unanimously proposed an explicit spanking ban. *Id.* By 1978, public support for spanking had dropped to 26%, and 98% of Parliament voted to ban all spanking in 1979. *Id.*

33. U.N. Comm. on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Ireland*, ¶¶ 39-40, U.N. Doc. CRC/C/IRL/CO/2 (Sept. 29, 2006). See also, e.g., Convention on the Rights of the Child, G.A. Res. 44/25, art. 28 ¶ 2, U.N. GAOR, 61st plen. mtg., U.N. Doc. A/RES/44/25 (Nov. 20, 1989) (prohibiting all schools from using corporal punishment); *id.* at art. 37(a) (forbidding “torture”); *id.* at art. 19 ¶ 1 (requiring “measures to protect the child from all forms of . . . abuse [and] maltreatment”); U.N. Comm. on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, ¶¶ 15, 29, 52, U.N. Doc. CRC/C/15/Add.188 (Oct. 9, 2002) (consistently using the terms “torture” and “abuse” and saying physical discipline qualifies as “physical abuse”); *id.* (recommending that Ireland and the U.K. “[w]ith urgency adopt legislation throughout the State party to remove the

So far, over two dozen countries have used Sweden's model to completely outlaw physical discipline,³⁴ including Denmark,³⁵ Austria,³⁶ and New Zealand.³⁷ And many other Western nations are inching closer to a ban.³⁸ As each little restriction becomes more normal, it becomes easier to turn public opinion against corporal punishment.³⁹

It is happening in America, too. During the last few decades, at least twenty-three states have expressly outlawed corporal discipline in schools.⁴⁰ Even where it is still legal, more and more school districts are

'reasonable chastisement' defense and prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation . . .").

34. See *supra* note 18 and accompanying text; Gordon, *supra* note 32, at 76 n.22 ("In the other countries that imposed a ban, there was a similar pattern. Denmark, for example, passed a law in 1985 substantially restricting spanking by parents, and twelve years later amended that law to make the ban absolute.") (citing Susan H. Bitensky, *Spare the Rod, Embrace Our Humanity*, 31 U. MICH. J.L. REFORM 353, 371-73 (1998)).

35. Lov nr. 416 om ændring af lov om forældremyndighed og samvær 1 [Danish Act to Amend the Act on Parental Custody and Conviviality no. 416 1 (Kromann & Mûm ûnter trans.) (May 28, 1997) ("The child has the right to care and security. It shall be treated with respect for its personality and may not be subjected to corporal punishment or any other offensive treatment.").

36. 146a ABGB [Austrian Civil Code 146a] (Berlitz Translation Services trans.) (1989) ("The minor child must follow the parents' orders. In their orders and in the implementation thereof, parents must consider the age, development and personality of the child; the use of force and infliction of physical or psychological harm are not permitted.").

37. Amendment Act 2007, 2007 S.N.Z. No. 59(2)-(3) ("(2) Nothing in subsection (1) or in any rule of common law justifies the use of force for the purpose of correction. (3) Subsection (2) prevails over subsection (1)").

38. See, e.g., Jason M. Fuller, Comment, *The Science and Statistics Behind Spanking Suggest that Laws Allowing Corporal Punishment Are in the Best Interests of the Child*, 42 AKRON L. REV. 243, 257-62 (2009), available at <http://ssrn.com/abstract=1357669> (describing the incremental path that leads to a ban on spanking in the home); ERICA R. MEINERS, RIGHT TO BE HOSTILE 171 (2007) "[T]he United States and parts of Australia are still among the 'thirty-five industrialized countries who do not ban [corporal punishment in schools]. Starting in 1970, by 2005 over half of the states abolished corporal punishment in schools. The disuse of corporal punishment in schools in the United States has been a slow process transpiring at the local and state levels, and there is still little consistency, or agreement, on this practice as some districts have banned it, while the state permits it. Yet, although the practice is still disputed in the United States, public polls clearly indicate that the majority of parents are not in support of schools possessing the right to engage in corporal punishment." (citations omitted).

39. See, e.g., *supra* note 30 and accompanying text; MEINERS, *supra* note 38 and accompanying text.

40. See CAL. EDUC. CODE §§ 49000 (West 1986); 49001 (West 1986); DEL. CODE ANN. tit. 14, § 702(b) (2003); HAW. REV. STAT. § 302A-1141 (1996); IOWA CODE § 280.21 (West 1998); MD. CODE ANN. EDUC. LAW § 7-306(a) (1996); MASS. GEN. LAWS ch. 71 § 37G (West 2000); MICH. COMP. LAWS ANN. § 380.1312(3) (West 2001); MINN. STAT. § 121A.58 (West 1998); MONT. CODE ANN. § 20-4-302(3) (1991); NEB. REV. STAT. § 79-295 (2006); NEV. REV. STAT. § 392.4633 (West 1993); N.J. STAT. ANN. § 18A:6-1 (West 1968); N.D. CENT. CODE § 15.1-19-02(1) (1995); N.Y. COMP. CODES R. & REGS. tit. 8, § 19.5 (2007); OHIO REV. CODE ANN. § 3319.41(A) (2009); OR. REV. STAT. § 339.250(12) (West 2001); 22 PA. CODE § 12.5(a) (2005); VT. STAT. ANN. tit. 16, § 1161a(c) (2003); VA. CODE ANN. § 22.1-279.1 (West 1995); WASH. REV. CODE §

voluntarily prohibiting it, or seldom using it at all.⁴¹ Spanking has been abolished in virtually every foster home, public institution, and daycare facility throughout the country.⁴² And social workers are even being trained to condemn it when on private home visits.⁴³

28A.150.300 (2006); W. VA. CODE ANN. § 18A-5-1(e) (West 2008); Wis. STAT. ANN. § 118.31 (West 2000).

Most other states have kept spanking in schools legal, often with regulation, while a few states have left the issue rather nebulous. *See* ALA. CODE § 16-1-24.1(g) (1994); ALASKA STAT. §§ 14.33.120(a)(4) (2008); 11.81.430(a)(2) (1978); ARIZ. REV. STAT. ANN. § 15-843(B)(2) (2007); ARK. CODE ANN. § 6-18-505(c)(1) (West 1994). *Compare* CONN. GEN. STAT. ANN. § 53a-18(6) (1992) (allowing “reasonable physical force”), *with* *Sansone v. Bechtel*, 429 A.2d 820, 822 (Conn. 1980) (“[T]he teacher is authorized to use reasonable means to compel a disobedient pupil to comply with his orders including the use of corporal punishment.”) (citation omitted). *See* FLA. STAT. § 1003.32(1)(k) (West 2003); GA. CODE ANN. § 20-2-730 (West 1964); IDAHO CODE § 33-1224 (1963). *Compare* 105 ILL. COMP. STAT. 5/24-24 (disallowing “slapping, paddling or prolonged maintenance of students in physically painful positions”), *with* *People v. Ball*, 317 N.E.2d 54, 56 (Ill. 1974) (“We fully recognize the desirability and indeed the absolute necessity that teachers be able to maintain discipline in the schools, including reasonable use of corporal punishment.”). *See* KAN. STAT. ANN. § 161.180 (1990); LA. REV. STAT. ANN. §§ 223 (1988), 416.1 (2004). *Compare* ME. REV. STAT. ANN. tit. 17-A § 106(2) (allowing teachers to use “a reasonable degree of force”), *with* *Patterson v. Nutter*, 7 A. 273, 275 (Me. 1886) (“[T]he teacher is not to be held liable on the ground of the excess of punishment, unless the punishment is clearly excessive . . .”). *See* MISS. CODE ANN. § 37-11-57 (West 1997); MO. REV. STAT. § 160.261 (West 2008); N.H. REV. STAT. ANN. § 627:6(II)(a), (IV) (2008); N.M. STAT. § 22-5-4.3(B) (West 1993); N.C. GEN. STAT. §§ 115C-390 (West 1991), 115C-391 (West 2008); OHIO REV. CODE ANN. § 3319.41 (West 1996); OKLA. STAT. ANN. tit. 70 § 24-100.4(B) (West 2008); 22 PA. CODE § 12.5(b) (2005); S.C. CODE ANN. § 59-63-260 (1973); S.D. CODIFIED LAWS § 13-32-2 (1990); TENN. CODE ANN. § 49-6-4103 (West 1979); UTAH CODE ANN. § 53A-11-802 (1992) (prohibiting corporal punishment “unless written permission has been given by the student’s parent or guardian . . .”).

41. *See, e.g.*, MEINERS, *supra* note 38 and accompanying text; Dennis Randall, *States with Corporal Punishment in School*, FAMILY EDUCATION, available at http://school.familyeducation.com/classroom-discipline/resource/38377.html?for_printing=1 (saying every school board in Rhode Island has banned corporal punishment); FLORIDA DEPARTMENT OF EDUCATION, TRENDS IN DISCIPLINE AND THE DECLINE IN THE USE OF CORPORAL PUNISHMENT, Jan. 2008, available at <http://www.fldoe.org/eias/eiaspubs/pdf/discipline.pdf> (showing incidents of corporal punishment in Florida schools dropping from 24,198 in 1991-92 to 5245 in 2006-07); Tracy M. Neal, *Whatever Happened to Paddling in Schools: ‘Board of Education’ Pretty Much Retired*, THE BENTON COUNTY DAILY RECORD, Dec. 1, 2008 (saying Arkansas schools rarely use corporal punishment, although it is legal).

42. *See, e.g.*, The Center for Effective Discipline, *U.S. Progress in Ending Physical Punishment of Children in Schools, Institutions, Foster Care, Day Care and Families*, July 2008, available at <http://www.stophitting.com/index.php?page=statelegislation> (saying physical discipline is banned by law or regulation in the family day cares of forty-seven states, general day cares of forty-eight states, group homes and institutions of forty-four states, and foster homes of forty-nine states); CAL. HEALTH & SAFETY CODE § 1531.5 (West 1986); IOWA CODE § 234.40 (West 1992); KY. REV. STAT. ANN. § 199.896(18) (West 1987); N.C. GEN. STAT. § 110-101.1 (West 1997); JAMES W. TRENT JR., INVENTING THE FEEBLE MIND 118 (1995) (“By 1910, most other superintendents also opposed corporal punishment . . . [A] director of research, Henry H. Goddard, had insisted: ‘In this Institution the slightest approach to corporal punishment is followed by immediate dismissal.’”).

43. *Compare, e.g.*, SOCIAL WORK SPEAKS: NASW POLICY STATEMENTS, 2009-2012, at 252-57 (8th ed. 2009) (the National Association of Social Workers officially opposing the use of

A. *Crime Statistics Where Corporal Punishment is Outlawed, and Where it is Prevalent*

Eliminating [corporal punishment] does not guarantee that the new state of affairs would be better. What is perfect for most children may be excruciatingly painful for others.

~ Dr. Murray Straus⁴⁴

Those in the burgeoning anti-spanking movement hope that a ban on corporal discipline will create a “cultural spillover” of nonviolence.⁴⁵ Thus, high-profile organizations like the American Academy of Pediatrics say that “[s]panking increases aggression and anger instead of teaching responsibility.”⁴⁶ And academics like Dr. Murray Straus of the University of New Hampshire profess that a spanking ban would make our country “less violent, healthier, and wealthier.”⁴⁷

Considering how quickly physical discipline is being restricted, I sincerely hope that they are right. The problem is that the anti-spanking philosophy is so vulnerable to scientific and statistical challenge.⁴⁸

physical punishment in homes), and MYLES J. KELLEHER, *SOCIAL PROBLEMS IN A FREE SOCIETY* 124 (2004) (“Today’s legal definition of ‘physical abuse’ covers the gamut of actions from the original concern over battering or ‘beating up’ children to corporal punishment, and even spankings that result in reddening of the buttocks.”), with, e.g., ALFRED KADUSHIN & GOLDIE KADUSHIN, *INSTRUCTOR’S MANUAL FOR THE SOCIAL WORK INTERVIEW* 26 (4th ed. 1997) (“You are a worker in a protective service unit. In response to a report of child abuse you are visiting a family of immigrants. The mother readily admits that she has used a belt to discipline her 5-year-old son. She says that she is following the teachings of her culture that says, ‘You have to use corporal punishment if you expect a child to grow up straight.’ What would you say?” The manual leaves the answer open for class discussion.), and MARY EDNA HELFER, RUTH S. KEMPE & RICHARD D. KRUGMAN, *THE BATTERED CHILD* 579 (5th ed. 1999) (saying their “[p]rimary” means of preventing child abuse comprises “[e]fforts aimed at whole population groups, addressing the underlying or societal causes of child abuse (for example . . . acceptance of corporal punishment as a form of discipline . . .)” (emphasis in original).

44. Murray A. Straus, *Corporal Punishment by Parents*, 8 VA. J. SOC. POL’Y & L. 7, 52 (2000).

45. See, e.g., Murray A. Straus, *New Theory and Old Canards about Family Violence Research*, 38 SOC. PROBLEMS 180 (1991) (espousing the Cultural Spillover theory); CA 4596/98 *Plonit v. A.G.* [2000] IsrSC, at ¶¶ 29-30 (saying physical punishment “distances us from our aspirations to be a society free from violence. Therefore, the use by parents of corporal punishment . . . is forbidden today in our society.”).

46. See, e.g., AMERICAN ACADEMY OF PEDIATRICS, *WHAT IS THE BEST WAY TO DISCIPLINE MY CHILD?*, available at http://www.aap.org/publiced/BR_Discipline.htm (recommending natural consequences, logical consequences, withholding privileges, and timeout, but not spanking).

47. Straus, *supra* note 44, at 60 (“A society that brings up children by nonviolent methods is likely to be less violent, healthier, and wealthier.”).

48. See, e.g., Okey Chigbo, *Bum Rap: Antispanking Activists Should Take a Time-out*, NEXT CITY (Summer 1998) (“Even without a PhD in sociology, the average person, using his common sense, should be suspicious of studies that claim spanking increases societal violence. The first

For instance, after Sweden outlawed spanking, violent behavior did not decrease. Instead, there has been substantially more violence in Sweden than ever before—violence by children, violence by parents, and violence by society in general.⁴⁹

Swedish youths now display a “growing propensity for violence.”⁵⁰ Toddlers and young children have begun hitting their parents often.⁵¹ And minor-on-minor assaults have increased by twenty-five times.⁵² All

question the skeptic asks: Was there more violence and crime in the '50s and '60s than there is now? The answer, of course, is no.”).

49. See, e.g., John S. Lyons & Robert E. Larzelere, Where Is Evidence That Non-Abusive Corporal Punishment Increases Aggression?, Presentation at the XXVI International Congress of Psychology, Montreal (Aug. 18, 1996) (“[T]he effects of the Swedish anti-spanking law seem to have had exactly the opposite effect of its intention . . .”). For a more complete discussion of these phenomena, see, e.g., Fuller, *supra* note 38, at 264-76. In Sweden, the crime has risen in the past ten years—both per capita and in total. See, e.g., SCB Statistics Sweden, Swedish Population (in one-year groups) 1860-2007, available at <http://www.scb.se/statistik/BE/BE0101/2007A01a/Be01010Folkmängd1860-2007eng.xls> (showing Sweden’s population 8,854,322 in 1998); SCB Statistics Sweden, Population Summary 1960-2008, available at http://www.scb.se/Pages/TableAndChart__26040.aspx (showing Sweden’s population to be 9,256,347 in 2008); Reported Offences, 1950-2008, BRÅ, NATIONAL COUNCIL FOR CRIME PREVENTION, *Rapporterade brott [Reported Offenses]* (Swed.), available at http://www.bra.se/extra/pod/?action=pod_show&id=14&module_instance=11, then click on *Rapporterade brott, 1950-2008 (xls) [Reported Offenses, 1950-2008 (xls)]* (showing crime rising from 1,181,056 in 1998 to 1,377,854 in 2008). This means that crime in Sweden has risen from 13,339 per 100,000 people in 1998 to 14,886 per 100,000 people in 2008.

50. See, e.g., BRÅ, *supra* note 49 (showing that the number of reported crimes against life and health “today lies at a level that is nearly four times that of the 1975 figure.” Whereas crimes against property—i.e., nonviolent crimes—is not much more than in 1975); Robert E. Larzelere, *Differentiating Evidence from Advocacy in Evaluating Sweden’s Spanking Ban*, July 2005, at 7 available at <http://ches.okstate.edu/facultystaff/Larzelere/rdurrnl.75.pdf> (“At least two studies in Sweden were initiated in the 1990s because of societal concerns about increasing youth violence. One rationale for one study was that ‘There is also much evidence that our [Swedish] society has a growing propensity for violence.’”).

51. See, e.g., Adrienne A. Haeuser, *Reducing Violence Towards U.S. Children: Transferring Positive Innovations from Sweden* (1988) (unpublished manuscript, on file at Univ. of Wis.-Milwaukee, Sch. of Soc. Welfare & Univ. Outreach, Milwaukee) at 25 (“In 1988 I rather repeatedly saw a kind of parent child interaction in public as well as private which I had not observed at all in 1981. Toddlers and young children for whatever reason often hit their parents, not so hard to inflict pain but continuously enough to be clearly annoying.”).

52. Compare, e.g., U. Wittrock, *Barnmisshandel I Kriminalstatistiken 1981-1991 [Violent Crimes Against Children in Criminal Statistics, 1981-1991]*, KR Info. 7 (1992) (Swed.), available at <http://ches.okstate.edu/facultystaff/Larzelere/sweden81.html> [hereinafter Wittrock, 1981-1991], with Sveriges Officiella Statistik, *Hela landet Anmälda brott, upklarade brott, totalt och efter brottstyp, typ av beslut samt procentandelen åtalsbeslut, strafföreläggande eller åtalsunderlåtelse av antalet anmälda brott efter brottstyp, år 2008 [Whole Country: Reported Offenses, Crimes Solved, and After a Total Offense, Type of Decision and the Rate of Prosecutions, Penal Prosecution or Omission in the Number of Crimes by Offense, 2008]*, at tbl.170 (Swed.) (collectively showing that minor-on-minor assaults progressively increased from ninety-three in 1981 to 2377 in 2008).

this despite the fact that Sweden has restricted violent media, implemented anti-bullying programs, and banned “war toys” (like toy guns).⁵³

So, the ban has not made youth behavior any better. And now, it seems that many Swedish parents feel they can “neither control the child’s behavior nor tolerate its effect upon themselves.”⁵⁴ Some even appear unable to resist “explosive attacks of rage” against their own kids.⁵⁵ Within ten years of the ban, physical child abuse had risen to three times the U.S. rate.⁵⁶ And in the thirty years since the ban, child abuse has increased by over 1400%, even though the Swedish population has only increased by about 11.5%.⁵⁷ Thus, Sweden’s experience since outlawing spanking has been largely inconsistent with its nonviolent goals.

53. See, e.g., U.N. Children’s Fund (UNICEF), *Children and Violence*, 16, INNOCENTI DIGEST NO. 2 (Sept. 1997) (reporting the war toy ban); Susan P. Limber & Maury M. Naton, *Bullying Among Children and Youth*, JUV. JUST. BULL. (Apr. 1998), available at <http://ojjdp.ncjrs.org/jjbulletin/9804/bullying2.html> (“The first and best-known intervention to reduce bullying among school children was launched by Olweus in Norway and Sweden in the early 1980s.”); ROBERT MCKENZIE, *COMPARING MEDIA FROM AROUND THE WORLD* 5 (2006) (“The Swedish government takes an active role in restricting violent media . . .”).

54. See, e.g., Lyons, *supra* note 49 (saying “permissive parents were the most likely to report ‘explosive attacks of rage in which they inflicted more pain or injury upon the child than they had intended Permissive parents apparently became violent because they felt that they could neither control the child’s behavior nor tolerate its effect upon themselves.’ Permissive parents used spanking less than did either authoritative or authoritarian parents. So it could be that the prohibition of all spanking eliminates a type of mild spanking that prevents further escalation of aggression”) (citation omitted). Some may argue that Permissiveness does not provide consistent rules or consequences, and that that alone accounts for child behavior problems. But, with few effective ways to secure compliance, spanking bans may often force permissiveness, when parents cannot seem to enforce Authoritative demands otherwise.

55. See Lyons, *supra* note 49; SCB Statistics Sweden, *Spanking and Other Forms of Physical Punishment: A Study of Adults’ and Middle School Students’ Opinions, Experience and Knowledge*, at Demography, the Family and Children 1.2 (1996) (saying 22% of Swedish parents only use physical force when they get “upset enough”).

56. Compare Haeuser, *supra* note 51, at 34 (showing that the 1988 physical child abuse rate, as reported to Swedish police, was 6.5 per 1000 children) (“Since the Swedish police data omits child abuse cases known to social services but not warranting police intervention, the actual Swedish incidence rate is probably higher” than in the U.S.), with Lyons, *supra* note 49 (showing the 1987 U.S. child abuse rate, when limited to physical abuse known to police or sheriffs, was only 2.2 per 1000) (citing National Center on Child Abuse and Neglect, Executive Summary, *Study of National Incidence and Prevalence of Child Abuse and Neglect* (1987) (U.S.)).

57. The population has remained relatively stable over the past thirty years, increasing from 8,303,010 in 1979 to 9,256,347 in 2008—an increase of just over 10%, a far cry from the several hundred percent increases in youth violence and child abuse. *Supra* note 49 and accompanying text. However, the child abuse rates have increased by over 1,400%. See *supra* note 52 (collectively showing that the in-home abuses of children 0-6 years old steadily increased from ninety-nine in 1981 to 1589 in 2008).

At the other end of the spectrum is Singapore. It is common to hear spanking opponents claim that, “although physical punishment may produce conformity in the immediate situation, in the longer run, it tends to increase the probability of deviance, including delinquency in adolescence and violent crime inside and outside the family as an adult.”⁵⁸ Some even say that “corporal punishment disadvantages children cognitively.”⁵⁹

If true, we would expect to see these problems where spanking is prevalent, like in Singapore. There, schoolteachers corporally punish unruly students, parents cane their children, and the government whips adults as criminal punishment.⁶⁰ If the anti-spanking position were valid, Singapore would be one of the most violent and academically deficient societies on the planet.⁶¹

Instead, it is the opposite. Despite the fact that Singapore’s population has risen by 27% in the past ten years, their crime rates have *dropped*—both per capita and in total.⁶² “Several independent

58. See, e.g., Murray A. Straus, *Discipline and Deviance: Physical Punishment of Children and Violence and Other Crime in Adulthood*, 38 SOC. PROBS. 133, 133 (May 1991), available at <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=132125>.

59. See, e.g., Deanna Pollard, *Banning Child Corporal Punishment*, 77 TULANE L. REV. 575, 614 (2003).

60. Right of Private Defence –Singapore Statutes Online, ch. IV, General Exceptions, Article 89, available at http://statutes.agc.gov.sg/non_version/cgi-bin/cgi_getdata.pl?actno=1872-REVED-224&segid=888373001-000358 (“[N]othing, which is done in good faith for the benefit of a person under 12 years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person . . .”). The benefit of a child under this statute includes “reasonable chastisement,” as used at English common law. See Singapore Application of English Law Act, art. 3; The Crown Prosecution Service, *Reasonable Chastisement Research Report* (July 2007), at Intro., available at <http://www.cps.gov.uk/Publications/research/chastisement.html> (“[T]he reasonable chastisement defence remains available for parents and adults acting in loco parentis charged with common assault under section 39 Criminal Justice Act 1988.”); see also Singapore Women’s Charter, ch. 353, art. 64(d) (providing for the use of force “by way of correction towards a child below 21 years of age . . .”); Singapore Children and Young Persons Act, art. 68(2)(d) (allowing the manager of an approved school, an approved home, a remand home, or a place of detention to “use such force as is reasonable and necessary” to compel a child to obey); Singapore Evidence, Enforcement and Punishment, pt. III, art. 33(a) (requiring as punishment for a drug conviction 5 to 7 years imprisonment and “not less than 3 strokes and not more than 6 strokes of the cane.”).

61. See, e.g., Straus, *supra* note 58; Pollard, *supra* note 59, at 614-20 (saying spanking causes developmental or cognitive damage); *id.* at 657 (concluding that corporal punishment should be banned); Chigbo, *supra* note 48.

62. See SINGAPORE DEPARTMENT OF STATISTICS, *Statistics, Time Series on Population* (Mid-Year Estimates), available at <http://www.singstat.gov.sg/stats/themes/people/hist/popn.html> (showing that Singapore’s population was 3,927,200 in 1998, and rose to 4,987,600 in 2009); Yearbook of Statistics Singapore, 2009, STATISTICS SINGAPORE, tbl.24.6, available at <http://www.singstat.gov.sg/pubn/reference/yos09/statsT-miscellaneous.pdf> (showing that “Crime

assessments indicate that Singapore has a crime rate far lower than those in most Western nations . . . lower than the average crime rate in rural America.”⁶³ “Singapore has 12 times the population of Vancouver but just half the crime rate.”⁶⁴ At the same time, Singaporean schoolchildren have done very well on international academic tests—taking second and third place in math, and first place in science.⁶⁵

Granted, Singapore’s authoritarian culture may not interest everyone.⁶⁶ But it does show that the spanking-is-always-harmful position does not stand up to casual scrutiny.⁶⁷

Cases Recorded” had decreased from 40,090 in 1998 to 32,412 in 2008, and that crime dropped from 1021 per 100,000 people in 1998 to 670 per 100,000 people in 2008). Compare that with Sweden where crime has risen in the past ten years—both in total and per capita. *See supra* note 49, and accompanying text.

63. MANAGEMENT OF SUCCESS: THE MOULDING OF MODERN SINGAPORE 915 (Kernal Singh Sandhu & Paul Wheatley eds.) (citations omitted) (saying also, “Statistically, major crimes are not a serious problem in Singapore.”); *see also* CRIME PREVENTION IN THE URBAN COMMUNITY 242-45 (Koichi Miyazawa & Setsuo Miyazawa eds., 1995); ENCYCLOPEDIA OF CRIME AND PUNISHMENT, vol. 2, at 1518-19 (David Levinson ed., 2002) (“Singapore, once a lawless and pirate-infested island, is now one of the safest places in the world. . . . When compared with numerous developed countries, Singapore has one of the lowest crime rates.”); JOSEPH SLABEY ROUČEK, JUVENILE DELINQUENCY 339 (1970) (saying juvenile crime in Singapore was “almost negligible” in 1970).

64. Pam Soltani, *Crime and Punishment in Singapore*, PACIFIC RIM MAGAZINE (2003), available at <http://ezproxy.langara.bc.ca/creative-arts/publishing/prm/2003/singapore.html> (noting also that “Singapore is a popular tourist destination, receiving over eight million visitors a year. At just 700 sq. kms, Singapore has an annual GDP that competes with leading nations of Europe. This gives it the world’s fourth most competitive economy, placing it ahead of the United States. The city-state also boasts a high standard of living, low unemployment, and a literacy rate of 98 percent.”).

65. *See, e.g.*, NATIONAL CENTER FOR EDUCATION STATISTICS, HIGHLIGHTS FROM TIMSS 2007: MATHEMATICS AND SCIENCE ACHIEVEMENT OF U.S. FOURTH AND EIGHTH-GRADE STUDENTS IN AN INTERNATIONAL CONTEXT 32 (2009), available at http://nces.ed.gov/pubs2009/2009001_2.pdf (showing that Singapore ranked first in science for both fourth and eighth grade international tests); *id.* at 7, available at http://nces.ed.gov/pubs2009/2009001_1.pdf (showing that, in the fourth and eighth grade math portion of the TIMSS, Singapore ranked second and third respectively); Chigbo, *supra* note 48.

66. *See, e.g.*, Alejandro Reyes, *Rough Justice: A Caning in Singapore Stirs Up a Fierce Debate About Crime and Punishment*, ASIaweek, May, 25 1994, available at <http://www.corpun.com/awfay9405.htm> (quoting Associate Professor Walter Woon of the National University of Singapore, “The [Singaporean] system is stacked against criminals. The theory is that a person shouldn’t get off on fancy argument. . . . [America’s legal system] has gone completely berserk. They’re so mesmerized by the rights of the individual that they forget that other people have rights too. There’s all this focus on the perpetrator and his rights, and they forget the fellow is a criminal. . . . [The] mother and father [of an American criminal] have no sense of shame. Do they not feel any shame for not having brought him up properly to respect other people’s property? Instead they consider themselves victims.”).

67. *See, e.g.*, STRAUS & DONNELLY, *supra* note 17, at 171 (2001) (saying even “a single spanking carries a risk of harmful side effects . . .”); Chigbo, *supra* note 48.

B. *Common Flaws with Anti-spanking Research*

The contrast between Sweden and Singapore may be somewhat confusing, because of widely advertised claims that corporal punishment is “associated with higher rates of aggression”⁶⁸ The problem is that these claims, though widely advertised, are seldom based on sound scientific research.⁶⁹ Rather, professional methodologists have found that anti-spanking studies are often structured to support the researcher’s personal philosophy, instead of being structured to fairly analyze the results of physical discipline.⁷⁰

To start, many anti-spanking researchers begin with a conclusion, not a hypothesis.⁷¹ Take Dr. Murray Straus, one of the world’s leading spanking opponents. He admits that his goal is to prove that physical discipline, “by itself, has harmful psychological side effects for children and hurts society as a whole.”⁷²

Similarly, a review of the research indicates that over 80% of the corporal punishment articles are “merely opinion-driven editorials, reviews or commentaries, devoid of new empirical findings.”⁷³ Thus, when methodologists try to gain a comprehensive understanding of the research, they have to filter out most of the articles.⁷⁴

68. Murray A. Straus & Carrie L. Yodanis, *Corporal Punishment by Parents*, 2 U. CHI. L. SCH. ROUNDTABLE 35 (1995) [hereinafter Straus, ROUNDTABLE].

69. See, e.g., Fuller, *supra* note 38, at 277-314.

70. See generally *id.* (citing many sources); Bialik, *supra* note 17.

71. See, e.g., STRAUS & DONNELLY, *supra* note 17, at xx (“[T]he assumption that guided this research is that corporal punishment, by itself, has harmful psychological side effects for children and hurts the society as a whole”); Den A. Trumbull, M.D. & S. DuBose Ravenel, M.D., *Spare the Rod? New Research Challenges Spanking Critics*, 9 FAM. POLICY 5 (Oct. 1996) (describing 132 identified articles. “[M]ost of the empirical studies were methodologically flawed by grouping the impact of abuse with spanking. The best studies demonstrated beneficial, not detrimental, effects of spanking in certain situations.”) (citing Dr. John S. Lyons, Rachel L. Anderson & Dr. David B. Larson, *The Use and Effects of Physical Punishment in the Home: A Systematic Review*, Presentation to the Sec. on Bio-Ethics of the Am. Acad. of Pediatrics (Nov. 2, 1993)).

72. STRAUS & DONNELLY, *supra* note 17, at xx (saying the problems likely to beset a spanked child “range from attacks on siblings to juvenile delinquency, wife beating, depression, distorted sexual behavior, to lower occupational success and income”).

73. See, e.g., Trumbull, *supra* note 71 and accompanying text.

74. Cf., e.g., Larzelere, *Review*, *supra* note 20, at 824 (saying that, of the 166 relevant articles, thirty-five met the criteria. Of the thirty-five, “9 articles (26%) found predominantly beneficial child outcomes associated with nonabusive or customary physical punishment, 12 articles (34%) found predominantly detrimental outcomes, and the other 14 articles (40%) found neutral outcomes, i.e., neither beneficial nor detrimental outcomes.”). Remarkably, all of the clinical and sequential studies found predominately beneficial child outcomes from spanking, the prospective studies usually found neutral outcomes, and the retrospective studies (statistically the weakest type) usually found detrimental outcomes. *Id.*; Diana Baumrind, *Specious Causal Attributions in the Social Sciences: The Reformulated Stepping-Stone Theory of Heroin Use as Exemplar*, 45 J. PERSONALITY

Many of the remaining studies are still unreliable. Some have not passed peer-review.⁷⁵ Others do not compare corporal punishment to any other punishments, which does not allow for meaningful analysis.⁷⁶ Still others mainly research extreme violence—like beating someone with a strap—and then assume that the results apply to a mild slap on the hand.⁷⁷

The studies that do not have these problems show “no evidence for unique detrimental effects of normative physical punishment.”⁷⁸ Instead, they tend to show that spanking is either harmless or beneficial,

& SOC. PSYCHOL. 1289, 1293 (1983) (“Since Radke-Yarrow’s (1963) relentlessly critical examination of the validity of retrospective reports by parents, of their own and of their children’s behavior, this method of studying parent-child interaction has fallen into disrepute.”) (citing M. Radke-Yarrow, *Problems of Methods in Parent-Child Research*, 34 CHILD DEV. 215-26 (1963)); K.A., Ericsson & H.H. Simon, *Verbal Reports as Data*, 87 PSYCHOL. REV. 215-22 (1980) (showing that little confidence can be placed in reports drawing on long-term memory).

75. See, e.g., Larzelere, *Review*, *supra* note 20, at 824 (“The first selection criterion for inclusion in this review was publication in a peer-reviewed journal. Second, a study had to include at least one measure of nonabusive or customary physical punishment by parents. This excluded findings about punitiveness broadly defined and measures of physical punishment dominated by severity or abusiveness.”); *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 593-94 (1993) (“[S]ubmission to the scrutiny of the scientific community is a component of ‘good science,’ in part because it increases the likelihood that substantive flaws in methodology will be detected.”) (citations omitted).

76. See, e.g., Larzelere, *Meta-Analysis*, *supra* note 20, at 5 (from the previous quarter of a century, finding only twenty-six studies where corporal punishment was compared with other punishments).

77. See, e.g., Lynn Rosellini & Anna Mulrine, *When to Spank: For Decades, Parenting Experts Have Said Spanking Irreparably Harms Kids. But a Close Look at the Research Suggests Otherwise*, U.S. NEWS & WORLD REP., Apr. 13, 1998, available at <http://www.goodparent.org/articles/whentospank.htm>; Robert D. Woodberry & Christian S. Smith, *Fundamentalism et al: Conservative Protestants in America*, 24 ANN. REV. SOC. 25, 39-40 (Aug. 1998), available at <http://majorsmatter.net/religion/Readings/Fundamentalist.pdf> (“[M]ost studies on the negative impact of corporal punishment are seriously flawed, especially as it applies to the conservative Protestants. These studies combine spanking, beating, threats, and assault with weapons, and they do not control for attenuating factors like parental involvement, affection, and communication. Definitive conclusions are difficult because almost no research analyzes the impact of mild-to-moderate corporal punishment.”).

78. E.g., Diana Baumrind, Ph.D., Inst. of Human Dev., Univ. of Cal., Berkeley, *Does Causally Relevant Research Support a Blanket Injunction Against Disciplinary Spanking by Parents?*, Invited Address at the 109th Annual Convention of the American Psychological Association 10 (Aug. 24, 2001) [hereinafter Baumrind, *Causally Relevant Research*] (“[W]e found no evidence for unique detrimental effects of normative physical punishment.”); *id.* at 8 (“There are no significant differences between children of parents who spank seldom and those who spank moderately.”); Diana Baumrind, Univ. Cal., Berkeley, *When Are Causal Inferences Justified in the Debate About Physical Discipline “Effects”?*, Presentation at Univ. Cal., Berkeley on *Infering Causality from Longitudinal Studies* (Mar. 21, 2003), available at <http://ihd.berkeley.edu/baumrinds.htm> [hereinafter Baumrind, *Discipline “Effects”*] (“In sum, there was no evidence to . . . suggest that mild to moderate spanking is associated with negative outcomes”); *supra* note 74 and accompanying text.

depending on the context.⁷⁹ That is, the effects of physical discipline depend on things like the overall parenting style, the accompanying use of explanation and reason, and the child's age.⁸⁰

III. CHILDREN LEARN FROM THE CONCRETE TO THE ABSTRACT

concrete: *adj.*, Perceptible by the senses; real.

abstract: *adj.*, Apart from concrete existence; Hard to understand.⁸¹

It is hard for most children to think abstract thoughts.⁸² Few can understand, say, the concept of *business*. The ability to think abstractly takes years to develop, but it can be nurtured by making abstract concepts more concrete.⁸³ So, kids can begin to understand *business* better if their parents describe it to them when they are working a lemonade stand.⁸⁴

It is the same in virtually every aspect of a child's development: math, science, language—anything.⁸⁵ Take math. Dr. Kurt Reusser of the University of Zurich asked several groups of children questions like, “Steve has bought 4 planks of 2.5 [meters] each. How many planks of 1

79. See, e.g., Larzelere, *Review*, *supra* note 20, at 827 (“Those studies that excluded abuse from their measures of physical punishment were more likely to find predominantly beneficial outcomes. Of eleven studies with such exclusions, six (55%) had beneficial outcomes, four (36%) showed neutral outcomes, and only one (9%) had detrimental outcomes.”).

80. See *supra* note 20 and accompanying text; Larzelere, *Review*, *supra* note 20, at 827 (“Parents who obtained better outcomes associated with physical punishment were positively involved with their child, had child-oriented motivations for using spanking rather than parent-oriented motivations, did not increase their children's fear of parental discipline, followed through with their warnings, and cooperated with each other in discipline responsibilities. They did not use verbal put-downs, and they changed their main discipline method to grounding when their children got older.”).

81. See THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE (4th ed., 2009).

82. See, e.g., Chris J. Boyatzis & Malcolm W. Watson, *Preschool Children's Symbolic Representation of Objects Through Gestures*, 64 CHILD DEV. 729 (1993); Lorie Saxby & Jeremy M. Anglin, *Children's Sorting of Objects from Categories of Differing Levels of Generality*, 143 J. GENETIC PSYCHOL. 124; W.F. Overton & J.P. Jackson, *The Representation of Imagined Objects in Action Sequences: A Developmental Study*, 44 CHILD DEV. 309-14 (1973).

83. See, e.g., Eliana Colunga & Linda B. Smith, *The Emergence of Abstract Ideas: Evidence from Networks and Babies*, 358 PHIL. TRANSACTIONS: BIOLOGICAL SCI. 1205 (July 29, 2003); Paula Schwanenflugel & Carolyn E. Akin, *Developmental Trends in Lexical Decisions for Abstract and Concrete Words*, 29 READING RES. Q. 260 (Jul., Aug., Sept. 1994); Saxby, *supra* note 82, at 123-24.

84. See, e.g., Irene Flemming, *Physics in Kindergarten*, 26 EUR. EDUC. (Summer 1994) (“A child learns best through action.”); Michael H.G. Hoffmann, *Learning from People, Things, and Signs*, 26 STUD. PHILOS. EDUC. 193 (2007).

85. See, e.g., Flemming, *supra* note 84; Zhe Chen & Robert S. Siegler, *Across the Great Divide: Bridging the Gap Between Understanding of Toddlers' and Older Children's Thinking*, 65 MONOGRAPHS SOC'Y RES. CHILD DEV. 76 (2000); Boyatzis, *supra* note 82, at 729, 730, 733-35.

[meter] can he get out of these planks?” With just paper and pencil, not only did most grade-schoolers get the question wrong, but their answers tended to make no sense.⁸⁶ When Dr. Reusser asked other grade-schoolers the same question—and gave them real planks, a saw, and a meter stick to work with—the number of realistic answers almost *tripled*.⁸⁷ The question was no longer just a math problem; it was part of the tangible world that kids understand better.⁸⁸

It is only as children are exposed to enough concrete concepts that they develop the ability to handle abstract concepts.⁸⁹ For instance, fourth, fifth, and seventh graders were asked the unanswerable question: “John’s best time to run 100 meters is 17 seconds. How long will it take him to run 1 kilometer?”⁹⁰ Only 18% of the fourth and fifth graders gave an answer that considered John’s inability to run 1000 meters as quickly as he can sprint 100 meters.⁹¹ But the seventh graders considered this 42% of the time—over twice as often.⁹²

Such studies suggest that we should not “rush to impose” higher levels of abstraction on children; it is just not productive.⁹³ Learning abstract math concepts takes time—it takes a concrete foundation of giving, getting, selling, or losing tangible objects.⁹⁴

This concrete-to-abstract growth is no different with science.⁹⁵ Early scientific education “must bear a relation to the world in which

86. See, e.g., Kurt Reusser, *Success and Failure in School Mathematics: Effects of Instruction and School Environment*, 9 EUR. CHILD & ADOLESCENT PSYCHIATRY 17, 23-24 (2000).

87. See, e.g., *id.*

88. See, e.g., *id.* at 19, 24; see also Jean Piaget & A. Szeminska, *La genèse du nombre chez l'enfant*, in Neuchâtel: Delachaux et Niestlé (1941).

89. See, e.g., Sorel Cahan, Charles Greenbaum, Lavee Artman, Nilly Deluya & Yael Gappel-Gilon, *The Differential Effects of Age and First Grade Schooling on the Development of Infralogical and Logico-Mathematical Concrete Operations*, 23 COGNITIVE DEV. 258-59 (2008) (“Piaget and Inhelder describe middle childhood, specifically 7 to-12-years-of-age, as the phase of concrete operations. The essence of the move from the sensorimotor stage to that of concrete operations is a shift from action to thought. Piaget viewed concrete operations as a major turning point in cognitive development. When children attain this stage, their thought bears a much closer resemblance to that of adults than to the preoperational child: it is flexible, organized and logical.” (citations omitted)).

90. Reusser, *supra* note 86, at 23-24.

91. *Id.* at 24.

92. *Id.*

93. See *id.* at 19; Victoria A. Morin & Susan Peterson Miller, *Teaching Multiplication to Middle School Students with Mental Retardation*, 21 EDUC. & TREATMENT CHILD. (Feb. 1998).

94. See Reusser, *supra* note 86, at 19; ADRIAN TREFFERS, *THREE DIMENSIONS: A MODEL OF GOAL AND THEORY DESCRIPTION IN MATHEMATICS INSTRUCTION—THE WISKOBAS PROJECT* (1987); HANS FREUDENTHAL, *REVISITING MATHEMATICS EDUCATION* (1991); Debra Viadero, *Studies Find that Use of Learning Toys Can Backfire*, 26 EDUC. WEEK (Apr. 25, 2007).

95. See, e.g., Flemming, *supra* note 84.

[children] live and experience. If, then, we do experiments . . . a child must also be able to smell, taste, hear, and feel with the hands.”⁹⁶ It is easier for kids to understand, say, that sound comes from vibration if they can twang a rubber band.⁹⁷

It is the same with language.⁹⁸ Learning basic words like *apple*, *book*, or *pencil* helps kids understand more abstract words like *fruit*, *dictionary*, or *writing*.⁹⁹ Children simply need to learn concrete concepts before they can understand abstract ones.¹⁰⁰ This is why many educators agree that “*working with things*—concrete objects or representations—is far more important for the development of knowledge than anything else.”¹⁰¹

A. *Kids Learn Behavior the Same as Math, Science, or Language—
from Simple to Complex*

Research in virtually every area of education shows that children learn best from the tangible to the intangible.¹⁰² The first seven years of life tend to be highly active and concrete, a time when many basic learning processes occur.¹⁰³ Between the ages of 7 and 12, a child’s understanding tends to shift from action to thought.¹⁰⁴ Then around 11 or 12, he finally begins to develop a true capacity for abstract

96. See, e.g., *id.*

97. See, e.g., *id.*

98. See, e.g., K. Fliessbach, S. Weis, P. Klaver, C.E. Elger & B. Weber, *The Effect of Word Concreteness on Recognition Memory*, 32 *NEUROIMAGE* 1413 (2006); Barbara A. Hutson, *How Abstract is a Young Child’s Knowledge of Syntax?*, 126 *J. GENETIC PSYCHOL.* 23-24 (1975) (“The central question of this study was, ‘How abstract is a young child’s knowledge of language?’ The answer appears to be ‘[n]ot very.’”).

99. See, e.g., R.W. Brown, *Linguistic Determinism and the Part of Speech*, 55 *J. ABNORMAL SOC. PSYCHOL.* 1-5 (1957); J. Kiraly & A. Furlong, *Teaching Words to Kindergarten Children with Picture, Configuration, and Initial Sound Cues as a Prompting Procedure*, 67 *J. EDUC. RES.* 295-98 (1974); P.J. Schwanenflugel, *Why Are Abstract Concepts Hard to Understand?*, in *THE PSYCHOLOGY OF WORD MEANINGS* 251-52 (P.J. Schwanenflugel ed., 1991); L.D. Yore & L.O. Ollila, *Cognitive Development, Sex, and Abstractness in Grade One Word Recognition*, 78 *J. EDUC. RES.*, 242-47; V. Coltheart, V.J. Laxon & C. Keating, *Effects of Word Imageability and Age Acquisition on Children’s Reading*, 79 *BRIT. J. PSYCHOL.* 1-11 (1988); Schwanenflugel, *supra* note 83, at 260.

100. See, e.g., Coltheart, *supra* note 99, at 1-11.

101. See, e.g., Hoffmann, *supra* note 84 (emphasis in original); Fliessbach, *supra* note 98.

102. See, e.g., Arne Trageton, *Workshop Pedagogy—From Concrete to Abstract*, 47 *READING TCHR.* 350 (Dec. 1993 & Jan. 1994).

103. See, e.g., Cahan, *supra* note 89, at 258-59; Schwanenflugel, *supra* note 83, at 259; JEAN PIAGET & BÄRBEL INHELDER, *THE CHILD’S CONCEPTION OF SPACE* (F.J. Langdon & J.L. Lunzer trans., 1971) [hereinafter *PIAGET & INHELDER, SPACE*].

104. See, e.g., *PIAGET & INHELDER, SPACE* *supra* note 103; *supra* note 89 and accompanying text.

reasoning.¹⁰⁵ At first he can handle one abstract idea, then two, and eventually multiple abstractions at the same time.¹⁰⁶

Diagram 3.1. Child Development from the Concrete to the Abstract

Age	2	3	4	5	6	7	8	9	10	11	12	13	14+
<i>1st Stage: Child Is Highly Active and Depends on the Concrete</i>	←————→												
<i>2nd Stage: Child's Understanding Begins to Shift from Action to Thought</i>						←————→							
<i>3rd Stage: Child Develops a True Capacity for Abstraction</i>										←————→			

It is no different with ethical development, which psychologists have been studying for almost a century.¹⁰⁷ “[T]he main evidence for this is that the number of children displaying a certain way of thought or

105. See, e.g., PIAGET & INHELDER, *SPACE supra* note 103; Zopito Marini & Robbie Case, *The Development of Abstract Reasoning about the Physical and Social World*, 65 *CHILD DEV.* 155, 157 (Feb., 1994).

106. See, e.g., Marini, *supra* note 105, at 148 (citing research on point).

107. See, e.g., JEAN PIAGET, *THE MORAL JUDGMENT OF THE CHILD* 38-41, 70-71, 270-94, 314 (1932) (describing his research of how children establish rules and morality, and concluding that children progress from the concrete to the abstract in three major stages: approximately 0-7, 7-10 (during which rules are still “regarded as sacred and untouchable, emanating from adults and lasting forever”), and 10-11+); *THE ESSENTIAL PIAGET* xxxvii (Howard E. Gruber & J. Jacques Vonèche eds., 1995) (“Piaget has not only insisted on the slowness of development, but on the universality of its main stages.”); HILGARD’S *INTRODUCTION TO PSYCHOLOGY* 81-83 (Rita L. Atkinson et al. eds., 1996); IAN WARD, *LAW AND LITERATURE: POSSIBILITIES AND PERSPECTIVES* 90-118 (1998); JOSEPH ADELSON, *THE POLITICAL IMAGINATION OF THE YOUNG ADOLESCENT* 1013-50 (1971) (describing a transition similar to Piaget’s from ages 12-16); Robbie Case & Yukari Okamoto, *The Role of Central Conceptual Structures in the Development of Children’s Thought*, 61 *MONOGRAPHS SOC’Y RES. CHILD DEV.* 197 (1996) (“[P]reaxial tasks are generally solved at 4, uniaxial tasks at 6, biaxial tasks at 8, and integrated biaxial tasks at 10.”); RONALD DUSKA & MARIELLEN WHELAN, *MORAL DEVELOPMENT: A GUIDE TO PIAGET AND KOHLBERG* 6-7 (1975).

kind of behavior increases with age.”¹⁰⁸ Take two situations that Dr. Jean Piaget told kids of different ages:

- A. A little girl named Marie wanted to give her mother a nice surprise and cut out a piece of sewing for her. But she didn’t know how to use the scissors properly and cut a big hole in her dress.
- B. A little girl named Margaret took her mother’s scissors one day when her mother was out. She played with them for a while. Then, because she didn’t know how to use them properly, she made a little hole in her dress.¹⁰⁹

When asked which girl should be punished more, a 6-year-old was more likely to say Marie, because she “made a big hole.”¹¹⁰ An 8-year-old, however, was more likely to say Margaret, because she “was playing with the scissors and she shouldn’t have been.”¹¹¹ The 6-year-olds tended to consider only the size of the hole—the tangible part of the story.¹¹² But 8-year-olds more often considered the girl’s intent—the intangible part of the story.¹¹³

Such differences are virtually universal. “Interview after interview with children repeatedly reinforces the fact that at certain stages things are seen from a perspective which is significantly different from an earlier or later perspective.”¹¹⁴ Indeed, an older child like the 8-year-old is often surprised at the reasoning of a younger child like the 6-year-old, and does not remember that he once thought the same way.¹¹⁵

1. The Child’s Understanding of Rules

A hypothetical situation, like the hole-in-the-dress story, tests children’s understanding of rules against things like lying, stealing, or breaking things.¹¹⁶ But it is not a perfect test of their *natural* development, because their understanding of ethical rules is usually influenced by parental rewards or punishments.¹¹⁷

108. ESSENTIAL PIAGET, *supra* note 107, at xxvi.

109. PIAGET, *supra* note 107, at 122.

110. *Id.*

111. *Id.*

112. *Id.*

113. *Id.*

114. DUSKA & WHELAN, *supra* note 107, at 7.

115. *Id.*

116. ESSENTIAL PIAGET, *supra* note 107, at 155; PIAGET, *supra* note 107, at 122.

117. DUSKA & WHELAN, *supra* note 107, at 8-9.

This is why Dr. Piaget also studied the child's understanding of game rules—like the rules to the game of marbles.¹¹⁸ Games seldom involve parental rewards or punishments.¹¹⁹ Their rules are often learned “by the children alone,” and are “preserved solely by the respect that” children feel for them.¹²⁰ Thus, Dr. Piaget watched children play marbles, and then asked them things like what the rules are, where the rules came from, and whether the rules could be changed.¹²¹

If “all morality consists in a system of rules,” he noted, “and the essence of all morality is to be sought for in the respect which the individual acquires for those rules,” then it should not matter what kind of rules are studied.¹²² The crucial question is how the mind comes to respect any kind of rule.¹²³

Interestingly, it did not really matter whether Dr. Piaget used games or hypothetical ethical situations. Both showed the same pattern. Up through age 7, most kids are still trying to figure out what the rules are.¹²⁴ When a game ends, some of them do not even know who won.¹²⁵ They were just playing to see what happens when certain moves are made.¹²⁶ Whether a move was unintentional or malicious seldom matters.¹²⁷ Young children are more interested in how well the move conforms to the rules.¹²⁸

Around age 8, kids start to view rules more deeply. They start seeing rules as things that people have agreed to, and thus can agree to change.¹²⁹ While children still focus on how well a move conforms to the rules, they begin to understand that cooperation can affect how

118. See, e.g., ESSENTIAL PIAGET, *supra* note 107, at 155; DUSKA & WHELAN, *supra* note 107, at 7-9, 15; WARD, *supra* note 107, at 94.

119. DUSKA & WHELAN, *supra* note 107, at 8-9.

120. PIAGET, *supra* note 107.

121. DUSKA & WHELAN, *supra* note 107, at 8-9.

122. PIAGET, *supra* note 107, at 13.

123. *Id.* at 8.

124. *Id.* at 27 (“[T]he child receives from outside the example of codified rules . . . [and is trying] to understand the nature of [rules].”).

125. *Id.*

126. *Id.*

127. JEAN PIAGET & BÄRBEL INHELDER, THE PSYCHOLOGY OF THE CHILD (Helen Weaver trans., 1969) [hereinafter PIAGET & INHELDER, PSYCHOLOGY].

128. *Id.*

129. *Id.* (“Older children . . . regard rules as the result of agreement among contemporaries, and accept the idea that rules can be changed by means of a democratically arrived at consensus.”).

things work.¹³⁰ Rules start to be influenced by matters of give-and-take, like “you scratch my back and I’ll scratch yours.”¹³¹

Then around ages 11 or 12, kids stop focusing so much on how the rules affect them personally, and start focusing on how they affect other people. “The motto ‘Do as you would be done by,’ thus comes to replace the conception of crude equality.”¹³²

It seems, then, that a child’s natural understanding of rules follows “approximately the same lines of development as other forms of thought”—it grows from the concrete to the abstract.¹³³ Each new stage represents a more complex perspective of “groups and one’s relationship to groups.”¹³⁴ Before adolescence, kids tend only to think of how rules affect them personally, “with little or no perception of a society”¹³⁵ It is only around adolescence that they start to see that rules affect not only themselves, but also “society, its groups and its institutions”¹³⁶

2. The Child’s Understanding of Justice

Perhaps it is not surprising that a child’s understanding of justice seems to follow his understanding of rules. As Dr. Piaget observed, “all our results have shown [that] consciousness of rules cannot be isolated from the moral life of the child as a whole”¹³⁷

For instance, when kids are asked what kinds of things are wrong, their answers tend to focus on their understanding of rules.¹³⁸ Young children generally focus on forbidden behavior as wrong (assuming, of course, that they’ve been taught that certain behaviors are forbidden).¹³⁹ Older children, however, tend to focus on unequal treatment as wrong.¹⁴⁰

130. DUSKA & WHELAN, *supra* note 107.

131. Lawrence Kohlberg & P. Turiel, *Moral Development and Moral Education*, in *PSYCHOLOGY AND EDUCATIONAL PRACTICE* 415 (G. Lesser ed., 1971).

132. PIAGET, *supra* note 107.

133. *See, e.g.*, ESSENTIAL PIAGET, *supra* note 107, at 154; Lawrence Kohlberg, *Continuities and Discontinuities in Childhood and Adult Moral Development Revisited*, in *LIFE-SPAN DEVELOPMENTAL PSYCHOLOGY: RESEARCH AND THEORY* (Baltes & Schaie eds., 1975).

134. DUSKA & WHELAN, *supra* note 107, at 50 (noting also that the concept of *society* is more abstract than the concept of *self*, because *society* is not as directly discernible to the senses).

135. *Id.*

136. *Id.*

137. PIAGET, *supra* note 107.

138. *Id.* (asking specifically what kinds of things are “unfair”).

139. *Id.*

140. *Id.*

Table 3.2. Behaviors Children Think Are Wrong¹⁴¹

Ages	Acts Forbidden by a Parent	Acts Forbidden by a Game Rule	Unequal Treatment	Social Injustice
6-8	64%	9%	27%	0%
9-12	7%	9%	73%	11%

Such data led Dr. Piaget to conclude that there are “three great periods in the development of the sense of justice in the child.”¹⁴²

One period, lasting up to the age of 7-8, during which justice is subordinated to adult authority; a period contained approximately between 8-11, and which is that of progressive equalitarianism; and finally a period which sets in toward 11-12, and during which purely equalitarian justice is tempered by considerations of equity.¹⁴³

Young children do not care much about justice, in the adult sense.¹⁴⁴ Up to about age 7, rules are “sacred and untouchable,” and justice comes automatically from “physical nature and inanimate objects.”¹⁴⁵ “It is not a matter of social or individual responsibility: justice just happens.”¹⁴⁶

So, instead of thinking about rules and justice like we do, kids are mainly learning about them by observing the consequences of certain behaviors.¹⁴⁷ Thus, punishment is very valuable to young children. It is a clear, tangible consequence that (1) defines wrongdoing, and then (2) becomes the expected result of wrongdoing.¹⁴⁸

141. *See id.*

142. *See id.*

143. *See id.* Dr. Piaget called the 1st Stage the “sensorimotor” period, the 2nd Stage the “concrete operations” period, and the 3rd Stage the “formal operations” period. *See, e.g.,* ESSENTIAL PIAGET, *supra* note 107, at xxv.

144. PIAGET, *supra* note 107, at 279 (“What is just is not differentiated from what is in conformity to authority.”); *id.* at 280, 284 (“Just is what is commanded by the adult.”).

145. *Id.* at 18, 32-41, 111, 122, 314 (saying three-quarters of kids under 8 believe this, that “justice is subordinated to adult authority,” and that this period is characterized by “the tendency to regard duty and the value attaching to it as self-subsistent and independent of the mind, as imposing itself regardless of the circumstances in which the individual finds himself.”); PIAGET & INHELDER, PSYCHOLOGY, *supra* note 127.

146. PIAGET, *supra* note 107, at 250-75; PIAGET & INHELDER, PSYCHOLOGY, *supra* note 127 (saying that most children think duties and values come straight from rules themselves, “independent of intentions and relationships”).

147. PIAGET, *supra* note 107, at 279-80, 284.

148. DUSKA & WHELAN, *supra* note 107, at 32 (saying it’s “both the means of defining wrongdoing and the expected condition following wrongdoing.”).

This helps explain why inconsistent discipline tends to make kids seem “bratty.”¹⁴⁹ If, say, “lying were not punished, one would be allowed to tell lies”¹⁵⁰ Children begin to think the rule is *lying is okay*.¹⁵¹ On the rare occasion that a lie does attract punishment, they are confused, and more likely to protest the punishment as inconsistent with the rule. We may interpret this as brattiness, but it is really just obedience to what we unintentionally defined as the law.¹⁵²

It is not until around age 8 that kids begin to focus more on blameworthiness.¹⁵³ Granted, there is still something sacred and transcendent about rules.¹⁵⁴ But now kids tend to think that punishment should be “related to the offense, either by making the offender suffer the material consequences of his [behavior], or by doing to the offender something comparable to what he has done.”¹⁵⁵

By ages 11 or 12, justice begins to mean more than this.¹⁵⁶ Adolescents start to think that punishment should reflect “the [extenuating] circumstances of some. . . . [I]t means no longer thinking of a law as identical for all but taking account of the personal circumstances of each (favoring the younger ones, etc.).”¹⁵⁷

149. See, e.g., GOODENOUGH, *supra* note 29, at 220, 241. Cf. also Benjamin Spock, M.D., *How Not to Bring Up a Bratty Child*, REDBOOK, Feb. 1974, at 29 (“The commonest reason, I think, why parents can’t be firm is that they’re afraid that if they insist, their children will resent them or at least won’t love them as much. You can see this clearly in an extreme case in which a bratty child can get what she or he wants by shouting, ‘I hate you!’ The parent looks dismayed and gives in promptly. Of course most of us dislike unpleasantness, and prefer for this reason to accommodate others, including our own children. But that’s not a sensible reason for giving in to them unreasonably, since we sense that this only invites more demands and arguments.”).

150. PIAGET, *supra* note 107.

151. See, e.g., *id.*

152. See, e.g., DUSKA & WHELAN, *supra* note 107, at 32 (saying it’s “both the means of defining wrongdoing and the expected condition following wrongdoing.”).

153. See PIAGET, *supra* note 107, at 104-94 (discussing “progressive equalitarianism”).

154. See, e.g., PIAGET, *supra* note 107, at 32-38 (“This period may be defined by the progressive development of autonomy and the idea of expiatory punishment is no longer accepted with the same docility as before, and the only punishments accepted as really legitimate are those based upon reciprocity. Belief in immanent justice is perceptibly on the decrease and moral action is sought for its own sake, independently of reward or punishment.”).

155. DUSKA & WHELAN, *supra* note 107, at 28.

156. PIAGET, *supra* note 107.

157. ESSENTIAL PIAGET, *supra* note 107, at 188 (quoting PIAGET, *supra* note 107) (brackets in original). See also Kohlberg & Turiel, *supra* note 131 (“Good behavior is that which pleases or helps others and is approved by them. There is much conformity to stereotypical images of what is majority or ‘natural’ behavior. Behavior is frequently judged by intention. ‘He means well’ becomes important for the first time. One earns approval by being ‘nice.’”).

Diagram 3.3. Development of the Understanding of Rules and Justice¹⁵⁸

Age	2	3	4	5	6	7	8	9	10	11	12	13	14+
<i>1st Stage: Rules Have No Author, and Justice Just Happens</i>	←————→												
<i>2nd Stage: Rules Can Be Negotiated, and Should Be Applied Equally</i>							←————→						
<i>3rd Stage: Society Makes Rules, which Should Reflect Individual Circumstances</i>										←————→			

3. The Child's Understanding is not Automatic, it is Cumulative

Now, age does not strictly determine someone's total understanding of rules and justice.¹⁵⁹ It is just a good indication of a person's orientation toward those things.¹⁶⁰ Ultimately, understanding varies from child to child, and develops little by little.¹⁶¹

Remember the earlier hole-in-the-dress story. Most young children judged guilt by how much tangible damage was done, while the older ones considered the girls' intent. Well, those same children were given a similar story about boys who broke cups. Interestingly, some of the older ones did not reach the same type of conclusion each time. They accounted for the innocence of the girl who cut the big hole in the dress, because she "wanted to help her mother." But they did not account for the boys' innocence. Rather, they still focused on who "knocked down more things."¹⁶²

158. See DUSKA & WHELAN, *supra* note 107, at 12 tbls.I-II.

159. *Id.* at 13, 103.

160. ESSENTIAL PIAGET, *supra* note 107, at xxviii; DUSKA & WHELAN, *supra* note 107, at 103.

161. ESSENTIAL PIAGET, *supra* note 107, at xxvii (saying it's "generally agreed" that "children develop at different rates . . .").

162. DUSKA & WHELAN, *supra* note 107, at 7, 18.

So, there is a gradual transition between the development stages—it does not just happen all at once.¹⁶³ Development tends to accompany age, but it is not automatically triggered by age.¹⁶⁴ Foundations have to come first.

A child tends to learn foundations through “those features of the environment to which he can meaningfully respond”¹⁶⁵ But what is meaningful to one child may not be meaningful to another. And when a child does not get the foundations that are meaningful to him, he seems to develop abnormally.¹⁶⁶ Thus, Dr. Piaget found that some kids do not completely transition from the 1st Stage to the 2nd Stage until age 11, even though the average transition age is 8.¹⁶⁷ Other research even suggests that some children stagnate to the point where they *cannot* develop normally anymore.¹⁶⁸

This is a problem, not just because their ethical development has been impaired, but also because lower development stages are linked to childish, self-centered behavior, regardless of a person’s age.¹⁶⁹ For example, most people who have not reached the 3rd Stage tend to cheat often or moderately, whereas only 10% of those with more abstract values cheat at all.¹⁷⁰ Indeed, over 80% of juvenile delinquents seem not to have the abstract understanding of rules and justice that their non-delinquent peers tend to.¹⁷¹ Even some adult prisoners have not progressed past the 1st Stage, and many more have never progressed past the 2nd Stage.¹⁷²

163. ESSENTIAL PIAGET, *supra* note 107, at xxvii.

164. DUSKA & WHELAN, *supra* note 107, at 84 (saying that “for Kohlberg there is no such thing as necessary development. We can find adults at all levels of development. Chronological age is no guarantee of moral development.”).

165. *See, e.g.*, ESSENTIAL PIAGET, *supra* note 107, at xxxviii.

166. *See, e.g.*, Lawrence Kohlberg, *Stages of Moral Development as a Basis for Moral Education*, in MORAL EDUCATION: INTERDISCIPLINARY APPROACHES 86-88 (saying that normal development relies both on the “continuity, organization and complexity of the social and cognitive stimulation the child is exposed to,” and on how the child naturally reacts to that stimulation).

167. *See* DUSKA & WHELAN, *supra* note 107, at 18, 84.

168. *See, e.g.*, Kohlberg & Turiel, *supra* note 131.

169. *See, e.g.*, DUSKA & WHELAN, *supra* note 107, at 37 (“A child of fourteen responding from what appears to be a low stage in authority-justice relationships is *retarded* in his moral development, and this is bound to cause problems for him in school and home.”) (emphasis in original).

170. Lawrence Kohlberg, *Cognitive-Developmental Theory and the Practice of Collective Moral Education*, in GROUP CARE: THE EDUCATION PATH OF YOUTH 346 (M. Wolins & M. Gottesman eds., 1971).

171. DUSKA & WHELAN, *supra* note 107, at 111.

172. *Id.* at 52, 102.

So, it is potentially vital to a free society that each child gets the ethical foundations that are meaningful to that individual child. It is not enough just to know what normal development looks like, and to assume that our childrearing preferences will adequately suit every unique child. We have to be concerned with why some kids progress through all the development stages, and why others do not.

IV. OPTIMAL CHILDREARING: POSITIVE ATTENTION AND NEGATIVE CONSEQUENCES—ALL IN STAGE-APPROPRIATE WAYS

[T]he qualifications for self-government in society are not innate. They are the result of habit and long training.

~ Thomas Jefferson¹⁷³

Determining what helps, hinders, or has no effect on a child's development has proven to be a tricky science.¹⁷⁴ To start, everyone is different. For one child, milk may really boost brain development.¹⁷⁵ For another, it may cause a severe allergic reaction.¹⁷⁶

It is the same with discipline.¹⁷⁷ For one child, a stern "No" may be enough to stop bad behavior.¹⁷⁸ For another, a spanking may be all that works.¹⁷⁹ That is perhaps the most obvious problem with the idea that

173. THOMAS JEFFERSON, ANDREW ADGATE LIPSCOMB & ALBERT ELLERY BERGH, *THE WRITINGS OF THOMAS JEFFERSON* 22 (1905).

174. *Cf., e.g.*, Diana Baumrind & Stanford B. Friedman, *Personal Statements*, 98 *PEDIATRICS* 857 (Oct. 1996) (statement by Robert E. Larzelere, Ph.D.) ("The most surprising aspect of this [American Academy of Pediatrics] conference was the poor quality and quantity of relevant empirical studies on child outcomes associated with physical punishment.").

175. *See, e.g.*, ARLENE EISENBERG, HEIDI E. MURKOFF & SANDEE E. HATHAWAY, B.S.N., *WHAT TO EXPECT THE FIRST YEAR* 360 (1989).

176. *See, e.g., id.* at 114.

177. *See, e.g.*, ROBERT E. LARZELERE, PH.D., *COMBINING LOVE AND LIMITS IN AUTHORITATIVE PARENTING: A CONDITIONAL SEQUENCE MODEL OF DISCIPLINARY RESPONSES* (1998), available at <http://parenthood.library.wisc.edu/Larzelere/Larzelere.html> [hereinafter LARZELERE, *COMBINING LOVE*] ("Kochanska (1991) used a measure that contrasted power assertion at one extreme with rational growth encouragement at the other extreme. She found that power assertion predicted less conscience development in high-anxiety children, but not in low-anxiety children. She concluded that there were different paths to conscience development in the two types of children.").

178. *See, e.g.*, Zahn-Waxler, *Prosocial*, *supra* note 20, at 322 (telling a story of a young boy in their study who stopped hitting after his mother sternly said, "No, Todd. You mustn't hit people.").

179. *See, e.g.*, Helen Noh Ahn, *Cultural Diversity*, in RICHARD P. BARTH, JILL DUERR BERRICK & NEIL GILBERT, *CHILD WELFARE RESEARCH REVIEW* 52 (1994) ("Lytton and Zwiner (1975) found in their observational study of parent-child disciplinary interaction of two- and three-year old Caucasian boys that physical control (slapping or restraining or restricting) had a more powerful effect on the child than other kinds of interventions ('command,' 'reasoning,' etc.), both for compliance and noncompliance.").

some discipline methods suit all children, or that other discipline methods never do.

But there is a more subtle problem. When researchers isolate just one childrearing factor, the results can be confusing.¹⁸⁰ For example, one researcher isolated parental warmth—like approval, empathy, and sympathy—and found it to be helpful for boys, but “debilitating” for girls (because it made them less autonomous).¹⁸¹ That is hard to believe, because personal experience teaches so many of us that it is good to show our daughters warmth. And indeed, when the researcher no longer isolated warmth and viewed it in the context of good parenting styles, it did benefit girls.¹⁸²

It is the same with many studies that isolate things. One study isolated birth weights, and found that kids with average birth weights were more aggressive than kids with low or high birth weights.¹⁸³ But nobody really thinks that a seven-pound newborn is doomed to become a bully. Another study showed that a child is more likely to become achievement-driven if his mom toilet trains him severely—that is, if she is strict about putting him on the toilet at certain times and punishing him for accidents.¹⁸⁴

Because there is probably more to becoming achievement-driven than toilet training, it seems clear that just one piece is not the whole puzzle. Without looking at the entire context of childrearing, isolating just one childrearing factor can be taken too far.¹⁸⁵

180. See *infra* notes 181-84 (finding some confusing single-dimension factors).

181. Diana Baumrind & Allen E. Black, *Socialization Practices Associated with Dimensions of Competence in Preschool Boys and Girls*, 38 CHILD DEV. 313, 319, 322 (June 1967).

182. See *id.* at 325-26.

183. MONROE M. LEFKOWITZ, PH.D., LEONARD D. ERON, PH.D., LEOPOLD O. WALDER, PH.D. & L. ROWELL HUESMANN, PH.D., *GROWING UP TO BE VIOLENT: A LONGITUDINAL STUDY OF THE DEVELOPMENT OF AGGRESSION* 95 (1977).

184. McClelland, *supra* note 20, at 568, 572.

185. See, e.g., Diana Baumrind, Ph.D., *Current Patterns of Parental Authority*, 4 DEV. PSYCHOL. MONOGRAPH 1, 95 (1971) (saying it’s “more meaningful to talk about the effects of *patterns* of parental authority than about the effects of single parental variables” because “without certain other conditions being present . . . the strength or direction of an expected parent-child relationship might well be altered.”) (emphasis in original); Laurie J. Bauman, *Assessing the Causal Effect of Childhood Corporal Punishment on Adult Violent Behavior: Methodological Challenges*, 98 PEDIATRICS 842 (Oct. 1996) (“When a behavior is so normative [as spanking] it is likely that people who do not engage in it are different in many ways from people who do. If the children of this special small subgroup have better or worse outcomes than the majority of children who are spanked, how can we possibly attribute it to spanking practices alone? Further the extent, nature, and intensity of spanking behavior among those who spank is likely to be strongly associated with other behaviors and values, such as religious beliefs, region of the country, how parents were disciplined, kind and level of education, socioeconomic status, and ethnicity. All these factors also affect a child’s proclivity to violence in adulthood.”).

Nevertheless, spanking opponents like Dr. Straus isolate physical discipline to justify their belief that spanking, “by itself, has harmful psychological side effects”¹⁸⁶ Interestingly, when Dr. Straus studied physical *and* mental punishments—grounding, privilege removal, allowance removal, and sending kids to their room—spanking performed just as well as, or better than, the mental punishments.¹⁸⁷ The mental punishments were linked to more antisocial behavior—significantly more for grounding, marginally more for privilege or allowance removal, and insignificantly more for sending kids to their room.¹⁸⁸ These results are consistent with most studies that compare physical and mental punishments (as opposed to ones that just isolate corporal punishment).¹⁸⁹

A. *High Responsiveness and High Demands*

If all we are trying to do is promote our personal childrearing philosophies, then we should rely on studies that isolate only one childrearing factor.¹⁹⁰ But if we are truly interested in finding out what works best for children, then we have to focus on overall childrearing methods. We have to look at which kids turn out well, which do not, and how they were different.¹⁹¹

This is the method used by researchers like Dr. Diana Baumrind of the University of California, Berkeley.¹⁹² She started her career by focusing on children at a local preschool.¹⁹³ Finding that some were “assertive, self-reliant, self-controlled, buoyant, and affiliative,” and that others were not, she set out to discover whether there were any common patterns in their home environments.¹⁹⁴

186. See, e.g., *supra* note 71 and accompanying text; Straus, *supra* note 44, at 9.

187. Compare Murray A. Straus, D.B. Sugarman & J. Giles-Sims, *Spanking by Parents and Subsequent Antisocial Behavior of Children*, 151 ARCHIVES PEDIATRICS & ADOLESCENT MED., 761-67 (1997) (researching spanking, grounding, privilege removal, allowance removal, and sending children to their room), with Larzelere, *Meta-Analysis*, *supra* note 20, at 32.

188. See *supra* note 187 and accompanying text.

189. See, e.g., Larzelere, *Meta-Analysis*, *supra* note 20.

190. See, e.g., *supra* note 71 and accompanying text.

191. See, e.g., Baumrind & Black, *supra* note 181, at 291.

192. See generally, e.g., *id.*

193. See generally, e.g., *id.*; Diana Baumrind, *Child Care Practices Antecedent Three Patterns of Preschool Behavior*, 75 GENETIC PSYCHOL. MONOGRAPHS 43 (1967) [hereinafter Baumrind, *Child Care Practices*].

194. See, e.g., Baumrind & Black, *supra* note 181, at 291-92 (contrasting the favorable group of kids with kids who were “discontented, withdrawn, and distrustful, and [others who had] little self-control or self-reliance and tend to retreat from novel experiences.”).

It turned out that the most likeable kids tended to have parents who were “controlling, demanding, communicative, and loving”—parents she called Authoritative.¹⁹⁵ The unhappy or unsociable children tended to come from Directive homes, where parents were somewhat controlling but also detached.¹⁹⁶ And kids who were the least self-reliant and self-controlled often had Permissive parents—parents who were relatively warm, but neither controlling nor demanding.¹⁹⁷ Thus, there were broad-based differences that seemed to affect child development.¹⁹⁸

Eventually, Dr. Baumrind and several teams of professionals began the Family Socialization Project—an unusually long and thorough study of families from a middle-class, well-educated section of the San Francisco Bay Area.¹⁹⁹ While the families were of a similar socioeconomic status, they had different childrearing patterns.²⁰⁰ And

195. *Id.* at 292; Diana Baumrind, *The Discipline Controversy Revisited*, 45 FAM. REL. 405, 405 (1996) [hereinafter Baumrind, *Discipline Controversy*].

196. *See, e.g.*, Baumrind & Black, *supra* note 181, at 291-92; Baumrind, *Causally Relevant Research*, *supra* note 78, at tbl.3.

197. *See, e.g.*, *supra* note 196.

198. *See, e.g.*, Baumrind, *Child Care Practices*, *supra* note 193, at 45-46 (“With varying degrees of consciousness and conscientiousness, parents create their children psychologically as well as physically. The child’s energy level, his willingness to explore and will to master his environment, and his self-control, sociability, and buoyancy are set not only by genetic structure but by the regimen, stimulation, and kind of contact provided by his parents. The child’s inherent cognitive potential can be fully developed by a rich, complex environment or inhibited by inadequate and poorly timed stimulation. The young child learns from his parents how to think as well as how to talk, how to interpret and use his experience, how to control his reactions, and how to influence other people. Children learn from their parents how to relate to others, whom to like and emulate, whom to avoid and derogate, how to express affiliation and animosity, and when to withhold response. The parents’ use of reinforcement, whether punishment or reward, alters the child’s behavior and affects his future likes and dislikes. Parents differ in the degree to which they wish to influence their children, and they differ in their effectiveness as teachers and models. Some parents attempt to maximize and others to minimize the direct influence that they have upon their children. Some parents enjoy prolonged and intense contact and others are discomforted by such contact. Parents differ in their ability to communicate clearly with their children and in their desire to reason with and listen to the ideas and objections of their offspring. They vary in the frequency and kinds of demands that they make of their children. Some parents require of their preschool children that they participate in household chores, or that they care for themselves and their rooms, or that they control their feelings, while others seek to prolong the early period of dependency, immaturity, and spontaneous expression of feelings.”).

199. *See, e.g.*, Diana Baumrind, *The Influence of Parenting Style on Adolescent Competence and Substance Use*, 11 J. EARLY ADOLESCENCE 56, 58 (1991) [hereinafter Baumrind, *Influence*] (“At each time period, one team of observers spent at least 20 hours with the child and a different team spent about 30 hours with the parents prior to completing a comprehensive set of ratings. In order to keep the data sets independent, different observers and raters were used at each time period, and for parents and children.”); Baumrind, *Causally Relevant Research*, *supra* note 78, at 2; *id.* at 4 (saying they longitudinally analyzed seventy-nine families and cross-sectionally analyzed 164); Baumrind, *Discipline Controversy*, *supra* note 195.

200. *See, e.g.*, Baumrind, *Influence*, *supra* note 199, at 64-65.

each pattern tended to produce distinct behaviors throughout the study.²⁰¹ Some children were more mature, friendly, and motivated, while others were more often depressed, disruptive, and lazy.²⁰²

Those who developed the highest self-esteem, ethical standards, and “[o]ptimum competence” usually had parents who were both highly demanding and highly responsive.²⁰³ *Responsive* means the parents “intentionally foster individuality and self-assertion by being attuned, supportive, and acquiescent to children’s needs and demands.”²⁰⁴ *Demanding* means the parents make their children

become integrated into the family and community by their maturity expectations, supervision, disciplinary efforts, and willingness to confront a disputative child. Demanding parents supervise and monitor their children’s activities by directly confronting rather than subtly manipulating them and, thus, may engage in open conflict with their children at points of disagreement.²⁰⁵

201. See, e.g., Baumrind, Discipline “Effects,” *supra* note 78.

202. See, e.g., Baumrind, *Influence*, *supra* note 199, at 69-71 tbl.3.

203. See, e.g., *id.* at 62 (“Children from authoritative homes have consistently been found to be more instrumentally competent—agentic, communal, and cognitively competent—than other children”); *id.* at 69-71 (showing that children of authoritative parents overall showed the greatest maturity, optimism, self-esteem, cognitive motivation, and academic achievement, among other things); *id.* at 91 (“Unlike any other pattern, authoritative upbringing (in this socioecological niche) consistently generated competence and deterred problem behavior in both boys and girls at all developmental stages (Baumrind, 1989). Secure in their attachment to their parents and with adequate protection from the instabilities present in the larger society, adolescents from authoritative homes showed that they simultaneously could validate the interests of personal emancipation and individuation, and the claims of their shared social norms.”).

204. Baumrind, *Discipline Controversy*, *supra* note 195, at 410.

205. *Id.* at 411.

Table 4.1. Characterizing the Different Parenting Styles²⁰⁶

Parenting Style	Demands	Responsiveness	Outcome	% of Study
Authoritative	High	High	Most Beneficial	17%
Democratic	Medium	High	↓	20%
Directive	High to high-medium	Low to low-medium		23%
Good-Enough	Medium	Medium		10%
Permissive	Low	Medium to High		6%
Rejecting-Neglecting	Low	Low	Most Detrimental	24%

Many of us probably think that the most important childrearing quality is high responsiveness—like a high level of intellectual stimulation or respect for the child’s individuality. While that is definitely important, we see from Table 4.1 that three types of parents are highly responsive—Authoritative, Democratic, and Permissive parents—but their kids turn out differently.²⁰⁷ Permissive parents raise children who are more likely to be heavy substance abusers and underachievers, whereas Authoritative parents raise kids who are the most likely to be self-regulated and academically advanced.²⁰⁸

206. Baumrind, *Causally Relevant Research*, *supra* note 78, at tbl.3; Baumrind, *Influence*, *supra* note 199, at 65, 69-71 tbl.3. Note that it’s difficult to rank Directive, Good-Enough, and Permissive parents. They certainly fall within third to fifth place, but their problems are dissimilar enough that their rank really just depends on your values. The order in Table 4.1 is the order in Baumrind, *Causally Relevant Research*, *supra* note 78, at 5, tbl.3.

207. *See, e.g.*, Baumrind, *Influence*, *supra* note 199, at 69-71 tbl.3.

208. *See, e.g., id.* at 74 (finding permissive, also called nondirective, parents “more responsive than demanding . . . nontraditional and lenient, and valued individuality above conformity. However, nondirective parents were even less willing than democratic parents to set limits, especially on drug use, and were more nonconforming. However, compared to adolescents from either democratic or authoritative homes, adolescents from nondirective homes were, as expected, significantly less achievement oriented despite their high intelligence (average 121), and also were somewhat less optimally competent, self-regulated, and socially responsible. They were heavier users of illicit drugs than all other adolescents except those from unengaged homes”); *supra* note 203 and accompanying text.

The difference seems to be the intensity of demands placed on the child, high demands being the most helpful.²⁰⁹ This relatively universal need for high demands suggests that “few children are as easily traumatized as psychoanalysts imagine; most thrive on challenges and are motivated by a drive for competence.”²¹⁰ Even in a highly responsive family, the prudent use of punishment seems to be a “necessary tool” to promote the child’s development.²¹¹

And indeed, in study after study, no matter the context, kids have been shown to develop best with Authoritative parents—parents who give them a high level of responsiveness *and* demands; a lower level of either tends to be less beneficial.²¹² While children from Authoritative

209. Baumrind, *Discipline Controversy*, *supra* note 195, at 411 (“Confronting parents are involved and firm but not necessarily coercive, although they may be. A confronting parent takes a stand even when to do so provokes conflict. . . . Perry and Perry (1983) point out that to be minimally sufficient to produce compliance, inducements in the home setting must often be moderately severe. It is not confrontation or the exercise of firm control per se, but rather the arbitrary, harsh, and nonfunctional exercise of firm control that has negative consequences for child behavior. By modeling evasive manipulation and depriving the child of opportunities to engage in open disputation, the goal of simply minimizing confrontations can be maladaptive. Power-assertive confrontational upbringing does not undermine prosocial behavior when parents are (a) supportive, (b) nonpunitive, (c) authentic (in that they do not attempt to disguise inconsiderate and demeaning remarks to children as friendly confrontation), and (d) sensitive (in that they take into account the extent to which a particular child can profit from direct confrontation without becoming anxious or overwhelmed.”) (citations omitted).

210. *Id.* at 406.

211. *Id.* at 405.

212. *Compare id.* at 412 (“Authoritative parents are both highly demanding and highly responsive, by contrast with authoritarian parents, who are highly demanding but not responsive; permissive parents, who are responsive but not demanding; and unengaged parents, who are neither demanding nor responsive.”), with *supra* note 202 and accompanying text. See, e.g., F. Petito, & R.A. Cummins, *Quality of Life in Adolescence: The Role of Perceived Control, Parenting Style and Social Support*, 17 BEHAV. CHANGE 196 (2000) (finding a specific association between authoritative parenting and adolescents’ quality of life); A.H. McFarlane, A. Bellissimo & G.R. Norman, *Family Structure, Family Functioning and Adolescent Well-Being: The Transcendent Influence of Parental Style*, 36 J. CHILD PSYCHOL. & PSYCHIATRY 847 (1995) (well-being); Shannon M. Suldo & E. Scott Huebner, *The Role of Life Satisfaction in the Relationship Between Authoritative Parenting Dimensions and Adolescent Problem Behavior*, 66 SOC. INDICATORS RES. 165, 187 (2004) (finding “a strong relationship” between authoritative parenting and adolescents’ life satisfaction); Laurence Steinberg, Ilana Blatt-Eisengart & Elizabeth Cauffman, *Patterns of Competence and Adjustment Among Adolescents from Authoritative, Authoritarian, Indulgent, and Neglectful Homes: A Replication in a Sample of Serious Juvenile Offenders*, 16 J. RES. ADOLESCENCE 47, 55-56 (“In general, juvenile offenders who describe their parents as authoritative are more psychosocially mature, more academically competent, less prone to internalized distress, and less likely to engage in problem behavior than their peers”); Laurence Steinberg, Susie D. Lamborn, Sanford M. Dornbusch & Nancy Darling, *Impact of Parenting Practices on Adolescent Achievement: Authoritative Parenting, School Involvement, and Encouragement to Succeed*. 63 CHILD DEV. 1266 (1992).

families are not perfect, they tend to be the most mature, academically competent, and satisfied with life.²¹³

B. When the Most Successful Families Spank, it is Consistent with the Child's Development Stage

Every type of family in the Family Socialization Project used corporal punishment at some point.²¹⁴ Out of the entire study, only three children were never spanked.²¹⁵ Granted, they did turn out with social problems, but so did many who were spanked.²¹⁶ Thus, whether a child turns out well is not predicted by the mere fact that he does or doesn't get physical discipline, but rather by "variations in the complex pattern of childrearing"²¹⁷

It is not a question of *whether* a parent spansks, but *how* she spansks.²¹⁸ Families with the worst outcomes tend to spank inconsistently or in frustration.²¹⁹ Families with the best outcomes

213. See, e.g., *supra* note 212.

214. See, e.g., Baumrind, *Discipline Controversy*, *supra* note 195, at 409.

215. Baumrind, *Causally Relevant Research*, *supra* note 78, at 10 ("The 3 children (all girls) of parents who totally abstained from spanking at all time points, were not more competent by adolescence than those whose parents spanked occasionally. All were prosocial, but two were very low on self-assertiveness and the one who was self-assertive and achievement-oriented manifested severe internalizing and externalizing symptoms.")

216. Compare *id.*, with Baumrind, *Influence*, *supra* note 199, at 74, and *supra* note 214 and accompanying text.

217. See, e.g., Baumrind, *Causally Relevant Research*, *supra* note 78, at 14.

218. See, e.g., LARZELERE, *COMBINING LOVE*, *supra* note 177; Baumrind, *Causally Relevant Research*, *supra* note 78, at 14 ("If the effectiveness of a disciplinary practice is the extent to which it has the desired outcome as typically used, and efficacy is the power of a practice to produce the desired effect when properly used, then efficacy should concern practitioners (e.g., pediatricians, clinicians, and parent educators) more than effectiveness. By being consistently firm, rational, and responsive and by proactively teaching the child to behave morally, caregivers can minimize the need for spanking or other punishment, as well as render punishment more efficacious.") (emphasis in original).

219. See, e.g., Ahn, *supra* note 179, at 50 ("Trickett and Susman's (1988) comparative study of physically abusive and nonabusive families found that the use of or belief in corporal punishment cannot necessarily be associated with child abuse. With respect to child-rearing practices and beliefs, they found that abusive parents significantly differed from a matched sample of nonabusive parents in many aspects (abusive parents were less satisfied with their children and perceived child rearing to be more difficult than the nonabusive parents) but not in their belief of spanking. On a scale of 5 (1 = strong belief that spanking should never be used, 5 = strong belief in importance of spanking), abusive parents scored on the average 2.33 while nonabusive parents scored 2.44. In another study, the abusive parents did not use physical punishment more frequently than the nonabusive parents but used more severe forms of punishment such as striking the face, hitting with an object, or pulling the child's hair"); Baumrind, *Causally Relevant Research*, *supra* note 78, at 7 ("Compared to other parents in the study, the 4% to 7% of parents in the Red Zone [who 'can be said to hit violently'] were much more exploitive and intrusive and much less responsive, planful and consistent in their discipline. Their children were consistently much less competent and more

(Authoritative families) tend to spank constructively, when necessary to enforce their high demands.²²⁰

More broadly, Authoritative parents try to discipline by whatever way works for the individual child.²²¹ Sometimes this is negotiation, sometimes it is privilege removal, and sometimes it is corporal discipline.²²² Their goal is not to impress the professionals. They just want to win the behavior battles when their children are young, which tends to drastically lessen the need for punishment when their children grow older.²²³ Indeed, Authoritative parents do win these behavior battles, and often find spanking to be a valuable way to do this.²²⁴

maladjusted than children of parents in the Green or Yellow zones, and the reverse was never true.”); *id.* at 9 (“[F]amilies classified in the Red zone were disproportionately either Authoritarian-Directive or Rejecting/Neglecting (90% at T1, 75% at T2, 83% at T3), and no Authoritative parent at any time period fell into the Red zone, although one Democratic parent did.”).

220. *See, e.g.,* Baumrind, *Discipline Controversy*, *supra* note 195, at 412 (“The authoritative model of discipline is characterized by use of firm control contingently applied and justified by rational explanation of consistently enforced rules. Authoritative parents endorse the judicious use of aversive consequences, which may include spanking, but in the context of a warm, engaged rational parent-child relationship.”).

221. *Cf., e.g., id.* (“Authoritative parents view the child as maturing through developmental stages with qualitatively different features, but do not describe this maturational process as an automatic unfolding, emphasizing instead well-timed parental interventions. Because children have their own agendas that include testing the limits of their parents authority, disciplinary encounters are frequent, even in authoritative homes. At such times, direct power assertion that suffices to control the child’s behavior and is preceded by an explanation serves to reinforce parental authority concerning the standards that the child must meet.”); Joan E. Grusec & Jacqueline J. Goodnow, *Impact of Parental Discipline Methods on the Child’s Internalization of Values: A Reconceptualization of Current Points of View*, 30 DEV. PSYCHOL. 7 (1994) (saying “authoritative parents use more reasoning and negotiation regardless of the situation. Results of a number of studies reported over the last decade indicate, however, that mothers do not use a single style when dealing with their children’s misbehavior. Instead, they vary their discipline practices according to the nature of the particular social standard that the child has violated.”) (citations omitted).

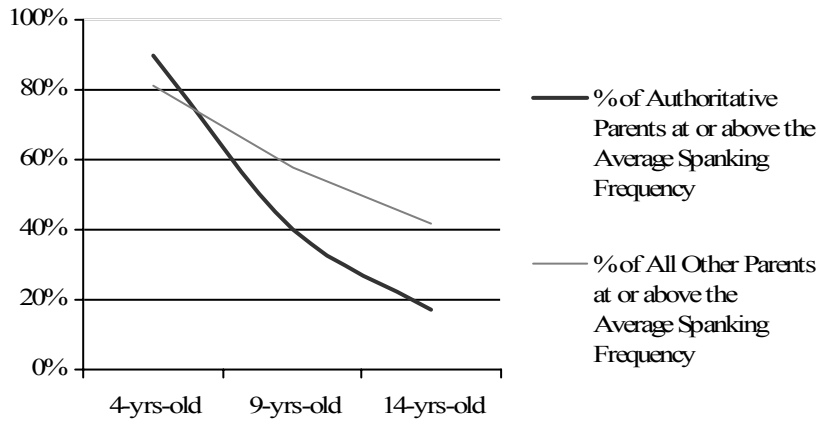
222. *Cf. supra* note 221 and accompanying text.

223. *See, e.g.,* Baumrind, *Causally Relevant Research*, *supra* note 218 and accompanying text.

224. *See, e.g., supra* note 221 and accompanying text; Baumrind, *Causally Relevant Research*, *supra* note 78, at 9 (“Ninety percent (9 of 10) of Authoritative couples at T1 had scores at or above the mean on the physical punishment scale, and Authoritative or Democratic parents were not disproportionately classified in the Green zone. Thus, the higher competence and lesser maladjustment of the preschool children of the most effective parents was not due to their being spanked infrequently. . . . Furthermore, both absolute and relative spanking frequency of Authoritative couples decreased rapidly after Time 1 with only 40% at or above the mean at T2, compared to 58% of all other parents, and by T3 with only 17% at or above the mean, compared to 42% of all other parents.”).

Diagram 4.2. Spanking Frequency Through the Child Development Stages²²⁵

Each child in the Family Socialization Project was tracked around



the ages of 4, 9, and 14—which roughly correspond to the 1st, 2nd, and 3rd Stages of Dr. Piaget’s development structure.²²⁶ It is during the 1st Stage (when children think most concretely) that the families with the best outcomes tend to spank the most, and more often than other parents.²²⁷ It is only as kids think more abstractly that Authoritative families use less physical discipline.²²⁸

Other families generally follow a similar, but less distinct, pattern.²²⁹ And both patterns are consistent with what Dr. Baumrind’s noted: that “impos[ing] authority, even against the child’s will is stage appropriate during the first 6 years, the period [sometimes called] the ‘authority inception period.’”²³⁰

225. See *supra* note 224 and accompanying text. Eighty-one percent of non-Authoritative parents at T1 were at or above the mean. See Letter from Diana Baumrind, Ph.D., Institute of Human Development, University of California, Berkeley, to Jason M. Fuller (Nov. 25, 2009) (on file with author).

226. Compare *supra* note 201 and accompanying text, with *supra* Diagram 3.1.

227. See *supra* Diagram 4.2; *supra* note 224 and accompanying text; Baumrind, *Causally Relevant Research*, *supra* note 78, at 11 (“[I]n our study Authoritative parents who used more than average frequency of spanking with their preschoolers, did not rely on this tactic and phased it out in favor of more negotiated strategies of parental control, were outstandingly successful.”).

228. Compare *supra* note 225 and accompanying text, with *supra* Diagram 3.1.

229. See *supra* note 224 and accompanying text.

230. Baumrind, *Discipline Controversy*, *supra* note 195, at 407 (citing Elisabeth Ruch Dubin & Robert Dubin, *The Authority Inception Period in Socialization*, 34 *CHILD DEV.* 885 (Dec. 1963)).

C. *Successful Spanking Mirrors Concrete Thinking*

So, many of the families who have the best outcomes tend to use corporal punishment frequently when the child is young, and decreasingly as the child ages.²³¹ This is in line with most of the methodologically sound research.²³²

It is true that some researchers claim spanking is inherently and always harmful.²³³ But their research is seldom fair, because it often:

- Relies on Abnormal Punishment—like boxing the ears or whipping,²³⁴
- Avoids Comparing corporal and mental punishments;²³⁵
- Studies Teenage corporal punishment, and then Assumes that the same results apply to younger kids;²³⁶ or
- Avoids Contexts where spanking seems to be Helpful—like in Authoritative families, or where a child is unusually defiant.²³⁷

The research that does not make these errors tends to suggest that, for the first thirteen years of a child's life, using corporal punishment

231. See *supra* note 225 and accompanying text.

232. See, e.g., Fuller, *supra* note 38, at 247-48 n.18 (listing research suggesting that spanking reduces “aggression, defiance, and antisocial behavior better than mental punishments like timeout, reasoning, privilege removal, threats, verbal power assertion, ignoring, love withdrawal, or diverting.”).

233. See, e.g., *supra* note 186 and accompanying text; Straus, *supra* note 44, at 53 (advocating notices on birth certificates saying, “WARNING: SPANKING HAS BEEN DETERMINED TO BE DANGEROUS TO THE HEALTH AND WELL BEING OF YOUR CHILD—DO NOT EVER, UNDER ANY CIRCUMSTANCES SPANK OR HIT YOUR CHILD.”).

234. See, e.g., Diana Baumrind, Robert E. Larzelere, Philip A. Cowan, *Ordinary Physical Punishment: Is It Harmful? Comment on Gershoff*, 128 PSYCHOL. BULL. 580, 581-82 (2002) [hereinafter, Baumrind, *Ordinary Physical Punishment*] (overviewing some of the studies included in Dr. Elizabeth Gershoff's meta-analysis and finding that “[a]lmost two thirds (65.4%) of the 52 aggression composite studies used overly severe [corporal punishment].”); *supra* note 77 and accompanying text.

235. Cf., e.g., Straus, *ROUNDTABLE*, *supra* note 68, at 36-37 (admitting that a clinical population is “obviously essential” for research intended to evaluate the effects of a treatment method; but rejecting the use of such a sample because of his philosophy that spanking is violent and all violence should be avoided).

236. Cf., e.g., *id.* (mentioning his surveys of teenagers, which found links to spousal assault and abusing one's child later in life, then generalizing such links to all spanking); STRAUS & DONNELLY, *supra* note 17 (referring often to his theoretical models and surveys of teenagers to justify a spanking ban).

237. Cf., e.g., STRAUS & DONNELLY, *supra* note 17, at 190-92 (proposing his own spank-free communities, rather than observing the use of spanking). See also Larzelere, *Meta-Analysis*, *supra* note 20, at 3, 17 (identifying conditions under which spanking has been found beneficial).

can be more effective than using only mental punishments at reducing aggression, defiance, and antisocial behavior—and it is also associated with better long-term effects, like less alcohol use, a lower need for power, and higher academic performance.²³⁸

Such beneficial associations tend to be most prominent until around 7 or 8 years old.²³⁹ Then from 7 to 13 years of age, corporal punishment seems slightly more effective than only mental punishments, if at all.²⁴⁰ And after the child becomes a teenager, spanking tends to be less effective than mental punishments.²⁴¹

238. See, e.g., *supra* note 20 and accompanying text; Jodi Polaha, Robert E. Larzelere, Steven K. Shapiro & Gregory S. Pettit, *Physical Discipline and Child Behavior Problems: A Study of Ethnic Group Differences*, 4 PARENTING SCI. & PRAC. 339 (2004) (finding that, when a non-parent judges the child's outcome, physical discipline reduces aggression in African-American men, and rarely increases aggression); Larzelere, *Meta-Analysis, supra* note 20, at 25 ("After controlling for outcome and type of physical punishment, differential effect sizes continued to favor physical punishment over alternatives more for long-term outcomes . . ."); *id.* at 1 (finding that conditional spanking reduced noncompliance and antisocial behavior more than ten of thirtenn mental punishments did, and equally as well as the other three did).

239. See, e.g., *supra* note 20 and accompanying text; Robert E. Larzelere, *Child Outcomes of Nonabusive and Customary Physical Punishment by Parents: An Updated Literature Review*, 3 CLINICAL CHILD & FAM. PSYCHOL. REV. 199–221 (2000); Marjorie Lindner Gunnoe, Ph.D. & Carrie Lea Mariner, M.A., *Toward a Developmental-Contextual Model of the Effects of Parental Spanking on Children's Aggression*, 151 ARCHIVES PEDIATRICS & ADOLESCENT MED. 768 (1997) (finding spanking at ages 4 to 7 predicted significantly less fighting subsequently, whereas spanking at ages 8 to 11 predicted significantly more fighting later). *But see* Larzelere, *Meta-Analysis, supra* note 20, at 23 ("Age also predicted differential effect sizes significantly by itself. Surprisingly, effect sizes favored physical punishment over alternatives for school-age children ($d = .20$), but not for preschool children In general, *severe or predominant* physical punishment was more detrimental than alternatives for younger than for older children.") (emphasis added).

240. See *supra* note 239 and accompanying text. Larzelere, *Meta-Analysis, supra* note 20 and accompanying text (saying also, "The major exception to this was that the most detrimental effect of [predominant] physical punishment was on self-esteem in older children, based on one study.") (citing S. COOPERSMITH, *THE ANTECEDENTS OF SELF-ESTEEM* (1967) (showing in an uncontrolled, cross-sectional study of sixty-three fifth-graders (between 10 and 12 years old) that their mother's predominant discipline method when rules were violated was associated with different levels of self-esteem. The predominant use of love withdrawal was associated with the lowest self-esteem, then physical punishment, then "restraint, denial, isolation," then the predominant use of discussion and reasoning being associated with the highest self-esteem)).

241. See, e.g., Straus, *ROUNDTABLE, supra* note 68, at 36-37 (mentioning his surveys of teenagers, which found links to spousal assault and abusing one's child later in life. Dr. Straus then presumed that such links apply to all spanking); STRAUS & DONNELLY, *supra* note 17, at xx (referring often to his surveys of teenagers). *But see* Jennifer E. Lansford, Kirby Deater-Deckard, Kenneth A. Dodge, John E. Bates & Gregory S. Pettit, *Ethnic Differences in the Link Between Physical Discipline and Later Adolescent Externalizing Behaviors*, 45 J. CHILD PSYCHOL. & PSYCHIATRY 809 (2004) ("Instead, for African American children, physical punishment is related to fewer externalizing behavior problems. This pattern of findings held for both developmental periods but was more consistent across outcomes for physical discipline administered during early adolescence than for physical discipline during the child's first five years of life. Later physical

Diagram 4.3. Typical Effectiveness of Corporal Punishment by Age

Age	2	3	4	5	6	7	8	9	10	11	12	13	14+
<i>1st Stage: More Effective than Only Mental Punishments</i>	←————→												
<i>2nd Stage: Slightly More Effective than Only Mental Punishments, If at All</i>						←————→							
<i>3rd Stage: Less Effective than Mental Punishments</i>											↔		

Now, this is just a general pattern. Not every study fits it precisely. For example, a recent study by Dr. Marjorie Gunnoe indicates that those who received their last spanking between ages 2 and 6 reported the best overall development—including the highest academic achievement, lowest promiscuity, and highest optimism about their future.²⁴² Those who received their last spanking between ages 7 and 11 were doing almost as well, and sometimes better (for example, they tended to volunteer the most).²⁴³

By contrast, those who were still spanked as teens reported high antisocial behavior, aggression, and depressive symptoms.²⁴⁴ And children who were never spanked had the lowest academic rank, sense of purpose, and optimism.²⁴⁵

discipline appears to be more protective for African American adolescents than does early physical discipline.”).

242. M.L. Gunnoe, Spanking Per Se Is Not a Risk During Childhood: Replication Across 11 Outcomes in 6 Demographic Groups, Address at the Society for Research in Child Development 2009 Biennial Meeting, A.G. Fauchier (Chair) (Apr. 2009).

243. *Id.*

244. *Id.*

245. *Id.*

Other studies indicate that, within the context of a good parent-child relationship, corporal punishment is harmless at any stage—even for teens.²⁴⁶ But on the whole, it appears that spanking can suit young children well, and may gradually lose its effectiveness as they age.²⁴⁷

This generally mirrors the child's natural orientation toward concrete thought.²⁴⁸ Physical discipline can be quite effective when kids rely on tangible experiences the most, when they are the most self-centered, and as Dr. Baumrind noted, when they have “a unilateral respect for adults extending to an uncritical acceptance of the legitimacy of adult rules.”²⁴⁹ It is only as children develop an abstract understanding of rules and justice that the effectiveness of corporal punishment seems to be displaced by that of mental punishments.²⁵⁰

V. WHY SPANKING CAN BE HELPFUL DURING THE PRIMITIVE STAGES

Illness is the doctor to whom we pay most heed: to kindness, to knowledge we make promises only: pain we obey.

~ Marcel Proust²⁵¹

Authoritative families comprise about 18% of all families.²⁵² So, while they are not a majority, it is not hard to find examples of their successes.²⁵³ Take, for instance, Citigroup Chairman Richard Parsons.²⁵⁴

246. See, e.g., Ronald L. Simons, Christine Johnson & Rand D. Conger, *Harsh Corporal Punishment Versus Quality of Parental Involvement as an Explanation of Adolescent Maladjustment*, 56 J. MARRIAGE & FAM. 591 (Aug. 1994).

247. Gunnoe, *supra* note 239, at 773 (researching “a sort of ‘moving window’ view across three overlapping age categories (4-7, 6-9, and 8-11 years)”).

248. Compare *supra* Diagram 4.3, with *supra* Diagram 3.1.

249. Compare *supra* note 248 and accompanying text, with Baumrind, *Discipline Controversy*, *supra* note 195, at 407-08.

250. Compare *supra* Diagram 4.3, with *supra* Diagram 3.3.

251. MARCEL PROUST, C.K. SCOTT-MONCRIEFF & STEPHEN HUDSON, *REMEMBRANCE OF THINGS PAST* 131 (Andreas Mayer trans., 2006).

252. Estimates are between 6.1% and 30%, depending on the population. See *supra* Diagram 4.1; LAURENCE STEINBERG & WENDY STEINBERG, *CROSSING PATHS* 217 (1995) (thirty percent of their sample); Laurence Steinberg, Nina Mounts, Susan Lamborn & Sanford Dornbusch, *Authoritative Parenting and Adolescent Adjustment Across Varied Ecological Niches*, 1 J. RES. ADOLESCENCE 25 (1991) (reporting between 6.1% and 25%, depending on various “ecological niches” like ethnicity, socioeconomic status, and family structure). Eighteen percent refers to the median.

253. See, e.g., W. Bradford Wilcox, *Conservative Protestant Childrearing: Authoritarian or Authoritative?*, 63 AM. SOC. REV. 796 (Dec., 1998) (“[T]his subculture is characterized both by strict discipline and an unusually warm and expressive style of parent-child interaction.”).

254. EVE TAHMINCIOGLU, *FROM THE SANDBOX TO THE CORNER OFFICE: LESSONS LEARNED ON THE JOURNEY TO THE TOP* 13-15 (2006); *Citigroup Chairman Richard Parsons*, TIME, Jan. 21, 2009, available at <http://www.time.com/time/printout/0,8816,1873165,00.html>.

When he was a boy, his father was very demanding, and even gave the New York City school system express permission to spank him. At home, he was disciplined with a switch from a tree. “I got more spankings than the other four kids together. I was always getting spanked, mainly because of misbehavior at school”²⁵⁵

Then, when he was caught shoplifting at 10 years old, he was not spanked; he was grounded for a month. And when he turned 13, his dad announced that all spankings and other punishments would stop entirely. “It was almost like a religious experience,” recalls Parsons. “He tells me, ‘Today you’re a man and I expect you to start acting like one.’ . . . But that was my dad’s whole orientation. He looked at life as steps on stairs. I was moving a step up in the maturation process.”²⁵⁶

Parsons’ dad was not only highly demanding, he was also highly responsive. “It was just clear to me,” explains Parsons, “that both my parents were focused on my well-being, my happiness, my prospects for success, satisfaction, contentment Love is an intangible thing. There are people who think they are loved by their parents but don’t feel it. I felt it.”²⁵⁷ High demands and high responsiveness: Richard Parsons came from an Authoritative family.

But seeing Authoritative parenting in action is one thing, explaining why it tends to work so well is another. Dr. Piaget seemed to view the combination of punishment and love as a necessary evil.²⁵⁸ He disliked that “the vast majority of adults still look upon punishment, corporal or otherwise, as perfectly legitimate.”²⁵⁹ Yet, he could not ignore what his research indicated: that the very existence of retributive punishments exposed not so much the parent’s perspective, but *the child’s*.²⁶⁰

For instance, when given a choice of punishments, Dr. Piaget found that young children consistently prefer “expiation” (paying a penalty through deprivation or pain) over other kinds of punishment.²⁶¹ This

255. See TAHMINCIOGLU, *supra* note 254, at 13-14.

256. *See id.* at 14-15.

257. *See id.* at 15.

258. *But see* PIAGET, *supra* note 107 (“The question may, of course, be raised whether [rational mentality] could ever develop without a preliminary stage, during which the child’s conscience is molded by his unilateral respect for the adult. As this cannot be put to the test by experiment, it is idle to argue the point.”).

259. *See id.*

260. *See id.*

261. *See id.* (saying they consistently set the need for punishment “above equality of any sort. In the choice of punishments, expiation takes precedence over punishment by reciprocity [suffering the social or natural consequences of misbehavior].”).

suggests that the parent's inclination toward "primitive" punishment is itself a remnant of childhood's primitive belief that justice is retributive:

[A]s the child loves his parents . . . punishment appears to him as morally obligatory and necessarily connected with the act that provoked it. Disobedience is a breach of the normal relations between parent and child The pain inflicted [by punishment] seems to reestablish the relations that had momentarily been interrupted, and in this way the idea of expiation becomes incorporated in the values of the morality of authority. In our view, therefore, this "primitive" and materialistic conception of expiatory punishment is not imposed as such by the adult upon the child, and it was perhaps never invented by a psychologically adult mind; but it is the inevitable product of punishment as refracted in the mystically realistic mentality of the child.²⁶²

True, kids dislike discipline on the surface. But on a deeper level, they value it because they want to be accepted and it teaches them the behaviors that their loved ones accept.²⁶³ An adult may not feel this way. But if we are interested in the development of children, we have to meet them where they are—not where we want them to be.

A. *Punishment Discourages Bad Behavior, While Rewards and Praise Encourage Good Behavior*

Some of our most idyllic interventions just do not get through to children.²⁶⁴ For example, "removing the source of trouble, coaxing, and

262. See *id.* (saying also, "It is obviously these adult reactions due generally to fatigue or impatience, but often, too, coldly thought out on his part that are the psychological starting point of the idea of expiatory punishment.").

263. See, e.g., DUSKA & WHELAN, *supra* note 107, at 53.

264. See, e.g., Nathan J. Blum, M.D., George E. Williams, Ph.D., Patrick C. Friman, Ph.D. & Edward R. Christophersen Ph.D., *Disciplining Young Children: The Role of Verbal Instructions and Reasoning*, 96 PEDIATRICS 340 (1995) (saying that warnings or explanations provide "the child with attention for misbehaving. Despite the fact that this attention seems 'negative,' it has been repeatedly shown that this type of attention is likely to increase the frequency with which a child misbehaves. Even when the child stops misbehaving at the time of the command, he or she may be more likely to misbehave in the future."); GARY C. WALTERS & JOAN E. GRUSEC, PUNISHMENT 115 (1977) ("A large body of research, all of it carried out with children, suggest that punishment for incorrect behavior leads to faster learning than does reinforcement for correct behavior, and a combination of reinforcement and punishment is no better than punishment alone." Also saying this research "holds for both normal and mentally retarded children . . .") (citations omitted); Lee A. Rosén, Susan G. O'Leary, Susan A. Joyce, Glenn Conway & Linda J. Piffner, *The Importance of Prudent Negative Consequences for Maintaining the Appropriate Behavior of Hyperactive Students*, 12 J. ABNORM. CHILD PSYCHOL. 581, 585-86 (1984) (experimenting with "No Negative Consequences" days in school. "Negative consequences were withdrawn and the teacher was instructed to ignore all inappropriate behavior. He was also instructed to increase his rate of

soothing” often seems to encourage things like “frequent outbursts [of anger].”²⁶⁵ Warnings too, even though many adults now use them to deal with wrongdoing, sometimes appear to increase the frequency of wrongdoing.²⁶⁶

According to Drs. Gary Walters and Joan Grusec of the University of Toronto, “a large body of research, all of it carried out with children, suggest that punishment for incorrect behavior leads to faster learning than does reinforcement for correct behavior, and a combination of reinforcement and punishment is no better than punishment alone.”²⁶⁷

Take the studies of Dr. Mark Roberts of Idaho State University.²⁶⁸ Dr. Roberts ran a clinic for particularly noncompliant 2- to 7-year-olds (that is, children in the 1st Stage).²⁶⁹ One of the goals of the clinic was to discover which discipline interventions get kids to comply, and which do not.²⁷⁰

In one experiment, parent-child pairs were randomly assigned to one of four groups.²⁷¹ The parents in each group gave their kids the same commands.²⁷² The difference was whether they punished or praised their kids.

- *Control Group.* Parents neither enforced their commands nor rewarded compliance.²⁷³
- *Praise Only.* Parents did not enforce their commands, but did praise compliance by saying things like “Super!” “Great!” and “You’re a good helper!”²⁷⁴

academic instructions to keep the total amount of teacher interaction constant. . . . During the No Negative phase, the percentage of on-task behavior dropped significantly to 35% . . .”).

265. GOODENOUGH, *supra* note 29, at 217.

266. Blum, *supra* note 264 and accompanying text.

267. *See, e.g.*, WALTERS & GRUSEC, *supra* note 264 and accompanying text.

268. Mark W. Roberts, Linda C. Hatzenbuehler & Arthur W. Bean, *The Effects of Differential Attention and Time Out on Child Noncompliance*, 12 BEHAV. THERAPY 93, 93 (1981) (“To qualify for the study each child displayed a ‘clinically deviant’ (Forehand, 1977) compliance ratio of 60% or less in response to 30 standardized maternal commands issued during the baseline session.”).

269. *Id.* at 94 (“To qualify for the study each child displayed a ‘clinically deviant’ (Forehand, 1977) compliance ratio of 60% or less in response to 30 standardized maternal commands issued during the baseline session.”).

270. *See id.* at 93-94.

271. *Id.* at 94-95 (“[E]ach group was balanced for sex and age of the child.”).

272. *Id.* at 95-96.

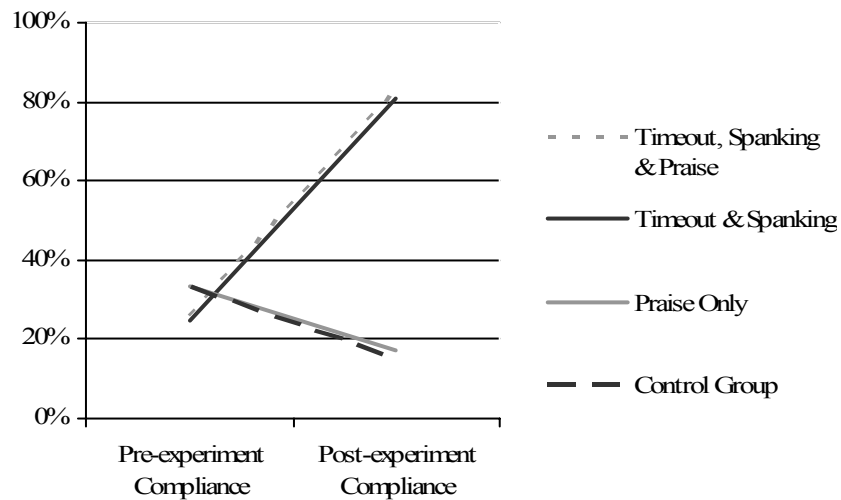
273. *Id.*

274. *Id.* at 95.

- *Timeout and Spanking.* Parents did not praise compliance, but did enforce their commands with timeout, and prevented timeout escapes with backup spanking.²⁷⁵
- *Timeout, Spanking and Praise.* Parents enforced their commands like the Timeout and Spanking group did, but also rewarded compliance with verbal praise.²⁷⁶

Overall, praise did almost nothing.²⁷⁷ Compliance in the Control Group decreased by 18.1% from where the children started.²⁷⁸ That was just slightly worse than the Praise Only group, in which compliance decreased by 16.1%.²⁷⁹ By contrast, compliance increased by 56% in the Timeout and Spanking group, and by 56.6% in the Timeout, Spanking and Praise group.²⁸⁰

Diagram 5.1. Positive Reinforcement Does Not Discourage Misbehavior



275. *Id.* at 95-96 (“*Time out condition.* . . . If the child left the time-out chair without permission, the mother guided the child back to the chair and said, ‘Since you left the chair, I am going to spank you.’ She then spanked the child twice on the buttocks with her hand, placed the child back on the chair and repeated the instruction, ‘Stay here until I tell you to leave.’ All other child behavior during the time out period, other than escape behavior was ignored.”).

276. *Id.* at 96.

277. *Id.* at 93, 97 diag.

278. *Id.*

279. *Id.*

280. *Id.*

Studies like this indicate that, even when positive reinforcement accompanies punishment, there is almost no more deterrence than with punishment alone.²⁸¹ And many others suggest that, “[f]or a discipline technique to be effective,” it must cause some kind of pain.²⁸² True, some researchers hesitate to use the word “pain,” preferring euphemisms like “aversion,” “negative consequence,” “emotional arousal,” or “distress.”²⁸³ But the idea is the same: the child is made to associate misbehavior with some kind of pain, aversion, or distress in order to stop the misbehavior.

Positive interventions like praise just do not do this.²⁸⁴ It is not that they are worthless. Quite the opposite. Praise and rewards tend to build positive characteristics like self-esteem and sociability.²⁸⁵ But they do not deter bad behavior.²⁸⁶

The reverse is true of punishments—*all* punishments seem to detract from positive development. And studies that compare corporal and mental punishments find that they *both* detract from positive development similarly.²⁸⁷ Whether physical or mental, punishments simply are not designed to build things like self-esteem and sociability.²⁸⁸ They are designed to discourage bad behavior, which

281. WALTERS & GRUSEC, *supra* note 264, at 115.

282. *See, e.g.*, Elizabeth T. Gershoff, *Corporal Punishment by Parents and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review*, 128 PSYCHOL. BULL. 539, 554 (2002) (“For a discipline technique to be effective, it must evoke some emotional arousal or distress in the child to ensure that he or she attends to the disciplinary message (Hoffman, 1983; Lepper, 1983).”).

283. *See, e.g., id.*; Joseph C. LaVoie, *Aversive, Cognitive, and Parental Determinants of Punishment Generalization in Adolescent Males*, 124 J. GENETIC PSYCHOL. 29 (1974); REX LLOYD FOREHAND & NICHOLAS JAMES LONG, *PARENTING THE STRONG-WILLED CHILD* 125 (2002).

284. *See, e.g.*, WALTERS & GRUSEC, *supra* note 264, at 115.

285. *See, e.g.*, PARENTING AND CHILDREN’S INTERNALIZATION OF VALUES: A HANDBOOK OF CONTEMPORARY THEORY 145 (Joan E. Grusec & Leon Kuczynski eds., 1997) (“Deci, Nezlek, and Sheinman (1981), for example, found that teachers’ orientations toward supporting autonomy (vs. controlling behavior) were positively related to late-elementary students’ intrinsic motivation, perceived competence, and self-esteem.”).

286. *See, e.g.*, *supra* note 264 and accompanying text.

287. *Cf., e.g.*, Larzelere, *Meta-Analysis*, *supra* note 20, at 28 (“Two previous conclusions were supported in this meta-analysis. First, physical punishment, like other forms of punishment, does not enhance positive development, but only inhibits inappropriate behavior, such as defiance and antisocial behavior. Second, most types of nonphysical punishment had similar associations with outcomes as did physical punishment, although they had better outcomes only in comparisons with overly severe or predominant physical punishment.”); WALTERS & GRUSEC, *supra* note 264, at 251 (reviewing the research and finding that “it is important to note that all stimuli, whether reinforcing or punishing, have distracting properties.”).

288. *Cf., e.g.*, Baumrind, *Discipline Controversy*, *supra* note 195, at 411 (“The crucial factor in behavior management is contingent use of positive or negative reinforcers immediately following desired or prohibited child behavior, respectively.”).

often has to be done before you can effectively encourage good behavior.²⁸⁹

This seems to be one reason that kids from Authoritative families do so well: they get lots of positive *and* negative interventions, thus deterring lots of bad behavior, and encouraging lots of good behavior.²⁹⁰

B. *Not All Punishments are Painful*

So, to stop misbehavior, we know that we have to associate it with some kind of pain—some kind of distress.²⁹¹ The question, then, is what kind of pain? Most of us would probably prefer to give the mildest pain possible that still gets the message across.²⁹² The problem is that we do not always know what that is, because everyone is different, and everyone finds different things to be painful.²⁹³

Take, for example, what is probably Dr. Roberts' most famous study, in which he tried to fix the common problem of children escaping timeout.²⁹⁴ Here, mother-child pairs were randomly assigned to one of four different timeout procedures:

- *Child Release.* When the child was sent to timeout, the mother said, "You may leave the chair when you decide to do as you're told." When the child left the chair, the mother said, "Since you left the chair, that means you have decided to do as you're told."

289. See, e.g., WALTERS & GRUSEC, *supra* note 264, at 124; Baumrind, *Ordinary Physical Punishment*, *supra* note 234, at 586 ("Behavioral parent trainers see the task of improving compliance to normal levels as a crucial initial step for decreasing other forms of antisocial behavior. From this perspective, children must improve their compliance to parents to normal levels before parents can begin to have a positive influence on increasing their prosocial behavior and decreasing their referral problems (e.g., aggression, noncompliance with medical regimens).") (citations omitted).

290. See, e.g., Baumrind, *Discipline Controversy*, *supra* note 195, at 412; Baumrind, *Influence*, *supra* note 199, at 69-71 tbl.3 (showing low problems and high achievements of children from Authoritative families).

291. See *supra* Diagram 5.1 (suggesting that distress helps kids correct disobedience).

292. See, e.g., Baumrind, *Discipline Controversy*, *supra* note 195, at 411 (citing Lepper).

293. See, e.g., *id.* at 409 ("In view of the complexity of the childrearing process, parents need access to a wide range of nonabusive, effective disciplinary responses that fit their child's unique attributes and the family's shared values and cultural contexts.")

294. Arthur W. Bean & Mark W. Roberts, *The Effect of Time-Out Release Contingencies on Changes in Child Noncompliance*, 9 J. ABNORMAL CHILD PSYCHOL. 95 (1981); Roberts & Powers, *supra* note 20, at 257-71 ("[A] good case has been repeatedly made for the necessity of constructive discipline in teaching oppositional children to obey adult requests. Unfortunately, as our laboratory has demonstrated, noncompliant preschoolers often resist chair timeouts (TO), despite our best efforts to prepare them for changed contingencies. Fortunately, at least two viable procedures have been found to suppress child escape efforts from TO chairs: spanking and brief room TOs (i.e., 'barrier enforcement'.") (citations omitted).

If the child stayed in timeout for 10 minutes, he was reminded then, and every minute thereafter until he got up, that he could get up when he wished to obey.

- *Hold*. When the child prematurely escaped timeout, the mother firmly said, "Since you left the chair, I will have to hold you." Then she replaced the child on the chair, crossed his arms, and held him by the wrists from behind the chair. She then counted to 10; said, "Now stay there and be quiet!"; and released his wrists.
- *Spank*. When the child prematurely escaped timeout, the mother firmly said, "Since you left the chair, you must be spanked." She then swatted the child's rear twice with an open hand, replaced the child on the chair, and said, "Now stay there and be quiet!"
- *Barrier*. When the child prematurely escaped timeout, the mother firmly said, "Since you left the chair, you will have to stay by yourself." She then put the child in a small, empty, carpeted room (4 × 5 feet). The light was on, the door open, and a 4-foot-high plywood sheet was slid into the door slot. The mom then leaned against the plywood to keep the child inside, and to provide visual assurance that she hadn't left. After 60 seconds, she removed the barrier, put the child back in the chair, and said, "Now stay there and be quiet!"²⁹⁵

Of course, the kids misbehaved, had to sit in timeout, and tried to escape timeout.²⁹⁶ However, if they tried to escape frequently enough, the overseeing psychologist had the mom switch to another one of the enforcement procedures.²⁹⁷

Each procedure worked for at least some children.²⁹⁸ The Hold method worked on a few.²⁹⁹ Child Release, believe it or not, worked for two kids (although, the average kid in Child Release left timeout in about 9 seconds, and did not become compliant).³⁰⁰

295. Roberts & Powers, *supra* note 20, at 260; Bean & Roberts, *supra* note 294, at 98.

296. Roberts & Powers, *supra* note 20, at 262 tbl.1.

297. *Id.* at 258.

298. *Id.* at 267.

299. *Id.*

300. *Id.*; Bean & Roberts, *supra* note 294, at 103.

However, by far the most effective methods were the Spank and Barrier.³⁰¹ For all children, one of these two worked well.³⁰² Children who violently resisted the Barrier accepted the Spank, and vice versa.³⁰³ Once a mother found the enforcement method that worked for her child, it usually took just three weeks before her child displayed near-zero levels of timeout resistance.³⁰⁴

Studies like this indicate that different children learn from different discipline methods. Some seem to need the mental pain of isolation, and others seem to need the physical pain of a spank. And either way, some sort of painful backup was needed to enforce timeout.³⁰⁵

This makes sense considering the child's developmental need for concrete communication. According to Dr. Lawrence Kohlberg of Harvard University, most kids learn what's good and bad by "the physical or the hedonistic consequences of action (punishment, reward, exchange of favors) or [by] the physical power of those who enunciate the rules"³⁰⁶ Thus, whether a child thinks something is good or bad depends largely on its "physical consequences . . . [not] the [adult] meaning or value of these consequences."³⁰⁷

That is, a child first understands things through his physical senses.³⁰⁸ Then his mind can play around with his memory of those physical senses to develop abstract concepts.³⁰⁹ But kids cannot leap right to the abstract concepts, because the mental is built on the physical.³¹⁰

To illustrate, let us say we put a newborn in timeout, reason with him, or take away his privileges. What happens? Nothing. There is no physical sensation, and thus no distress. If someday these actions are to

301. Roberts & Powers, *supra* note 20 at 267.

302. *Id.* at 269 ("Intriguingly, one of the two basic procedures (Spank or Barrier) worked well for all subjects in this sample.").

303. *Id.*

304. *Id.* at 257.

305. *See, e.g., id.* Although mental punishments can be used even for toddlers, there still must be some sort of reinforcement if the child does not comply with, say, a timeout. Larzelere, *Punishment, supra* note 20. When punishment—such as a two-swat spank—is used at least 10% of the time, repeated misbehavior is reduced most dramatically over a twenty-month-period. *Id.* However, those children whose mothers rarely enforce reasoning with punishment show the greatest increase in disruptive behavior during that same time. *Id.*

306. Kohlberg & Turiel, *supra* note 131.

307. *Id.*

308. *See id.*; *supra* note 93-101.

309. *See supra* Part III.

310. *See id.*

feel like punishments, children must learn to dislike them through a foundation of tangible experiences.³¹¹

Now, to be clear, nobody's advocating punishment of newborns. The point is just that abstract things need to be developed, often over a course of years—they are not just delivered with the baby. Indeed, Dr. Roberts' research indicates that most kids find nothing inherently distressing about timeout at all. They can simply leave whenever they want.³¹² But when it hurts to leave, timeout becomes distressing—and eventually, so does the misbehavior.³¹³

C. *Not All Punishments Deter Misbehavior*

As noted by Drs. Robert Wahler and Greta Smith of the University of Tennessee and Cherokee Health Systems, kids learn to “appreciate abstract rule functions” through “concrete contingencies”—like tangible rewards and punishments.³¹⁴ For instance, young children seldom know that sharing is good unless they are made to feel good when they share.³¹⁵ They seldom know that stealing someone's wallet or playing with an electrical socket is bad unless such things are made to feel

311. Cf., e.g., Gershoff, *supra* note 282, at 557; Larzelere, *Punishment*, *supra* note 20 (finding that reasoning can become a conditioned punisher. By being paired with punishment, reasoning becomes a signal that continued misbehavior will be punished. If reasoning is never combined with punishment, then it becomes meaningless. Preschoolers can easily ignore such reasoning, which is likely to develop into nattering—nagging or irritable scolding. Nattering is a common but ineffective disciplinary tactic used by parents of preadolescent antisocial boys.).

312. Indeed, in some countries that have outlawed spanking, the ban is so severe that it arguably does not let the parent stop her child from getting up. See, e.g., *Most Extreme Anti-Smacking Law in World*, SCOOP INDEP. NEWS (May 13, 2007), available at <http://www.scoop.co.nz/stories/PO0705/S00223.htm> (saying New Zealand criminally punishes anyone who treats her kid in a way that she wouldn't publicly treat her neighbor. Because an adult wouldn't pull another adult where he doesn't want to go, a parent can't do that to her child.).

313. Cf., e.g., *supra* note 275 and accompanying text (describing the Spank method).

314. See, e.g., Robert G. Wahler, Ph.D. & Greta D. Smith, Ph.D., *Effective Parenting as the Integration of Lessons and Dialogue*, 8 J. CHILD & FAM. STUDIES 135, 137 (1999).

315. See, e.g., *id.* at 138 (saying that, because rules—like cooperation, sharing, self care, empathy, and tolerance—have “reference to social experiences eliciting pleasure and pain, they are highlighted by feeling states such as joy, sorrow, anger, jealousy, warmth, loneliness . . .”).

bad.³¹⁶ They just do not have the “higher intelligence” or “better language skills” that make older children “easier to discipline.”³¹⁷

Thus, several studies indicate that some young children simply do not understand abstract mental punishments very well.³¹⁸ What they do understand, it seems, is whatever directly affects them at any given moment.³¹⁹

Say a parent is trying to teach her child that running into the street can hurt. She could try timeout, and her child will understand whatever is happening to him at the moment: “I’m running into the street . . . I’m being taken away . . . I’m stuck in a chair . . . this isn’t fun.” Whether he thinks that running into the street hurts depends on how well he can link “this isn’t fun” all the way back to “running into the street.”³²⁰ And not everyone can make this link, perhaps because the punishment is too far removed from the wrongdoing.³²¹

But say the parent tries corporal punishment. Again, her child will perceive whatever is happening at the moment: “I’m running into the street . . . ouch.” That is more direct, more simple. It tells him that running into the street hurts, without expecting him to remember a more roundabout series of events. This could be why several studies indicate

316. See generally, e.g., WALTERS & GRUSEC, *supra* note 264 (reviewing scores of studies and finding that punishment is effective in controlling behavior. Also, the reviewed studies suggested that the negative side effects often credited to punishment—emotional problems, trauma, aggression, avoidance, reduces positive behaviors—are false.); *id.* at 253 (concluding that “a good case can be made that punishment is a more effective technique for behavior change than is reinforcement.”).

317. See, e.g., Barbara J. Howard, *Advising Parents on Discipline: What Works*, 98 PEDIATRICS 809 (1996) (citing A.M. Graziano & D.M. Diament, *Parent Behavioral Training, an Examination of the Paradigm*, 16 BEHAV. MODIF. 1992, 3-38); DUSKA & WHELAN, *supra* note 107, at 16 (“If you can mentally place yourself in a situation where you are in a group that is discussing a topic in your language, but in an area of very complex subject matter foreign to you, you have the cognitive set of the egocentric child. He has the tools to speak and to hear the language, but he cannot absorb all that is spoken to him and all that happens around him.”).

318. See, e.g., *supra* note 317 and accompanying text; Glen R. Davies, Robert J. McMahon, Eugene W. Flessati & Georgia L. Tiedemann, *Verbal Rationales and Modeling as Adjuncts to a Parenting Technique for Child Compliance*, 55 CHILD DEV. 1290-91 (1985) (comparing kids aged 3-4½ and 5½-7½ in their ability to understand and comply with “ignoring training, ignoring plus verbal rationale, ignoring plus verbal rationale and modeling, or control”).

319. See, e.g., Rosén, *supra* note 264 (documenting experiments suggesting that prudent negative consequences—consequences that are calm, consistent, immediate, and concrete—are extremely effective in shaping appropriate social and academic behaviors, and are necessary to control inappropriate behavior. Consequences that are positive or imprudent—i.e., explosive, inconsistent, late, and not concrete—are not sufficient.).

320. See, e.g., *id.*

321. See, e.g., *supra* notes 288, 319 and accompanying text.

that spanking helps many kids decrease misbehavior and noncompliance.³²²

1. Some Punishments Can Be Confused As Rewarding

Aside from being less direct, mental punishments can sometimes be more rewarding than painful.³²³ For example, children tend to misbehave more frequently when their parents are not paying attention to them.³²⁴ This can happen when a parent is on the phone, making dinner, or caring for a sibling. Sometimes kids act up because they know they can get away with it.³²⁵ Other times they just want to get the attention of a disinterested or busy parent.³²⁶

When a parent's time is at a premium, she is more likely to give her child attention only to correct his behavior.³²⁷ Because the child wants his parent's attention, and sometimes desperately so, he may think some punishments are worth the attention.³²⁸ In turn, he associates bad behavior with attention, which is counterproductive.³²⁹

322. Cf., e.g., *supra* notes 20, 288, 319, and accompanying text; Bean & Roberts, *supra* note 294, at 104; Larzelere, *Meta-Analysis*, *supra* note 20, at 27 (reviewing research that suggests spanking is more effective than mental punishments when used in response to defiance, and further stating, "Conditional spanking produced effect sizes more favorable than alternative tactics for subsequent school aggression in 4-year-olds and for concurrent antisocial behavior in 2-14-year-olds. Customary physical punishment was associated with lower substance abuse than were other tactics. Even overly severe or predominant physical punishment predicted less antisocial aggression than did alternative tactics, based on two longitudinal studies and one cross-sectional study. Four other studies found that physical punishment and alternative tactics did not differ in their associations with antisocial behavior.") (citations omitted); Baumrind, *Discipline Controversy*, *supra* note 195, at 409 ("When certain forms of behavior produce an aversive outcome, children are motivated to initiate the self-controlling mechanisms that will enable them to avoid the negative outcome. Such self-regulating mechanisms result in reliable internalized habits of prosocial conduct that then become strengthened, not diminished, as a result of external incentives.").

323. See, e.g., Blum, *supra* note 264, at 339 ("In behavioral theory, a response to a particular behavior is not identified as a reinforcer or a punisher based on the intent of the responder, but on the effect of the response on future behavior. In fact, a single type of response can serve as a reinforcer or punisher under some conditions but not others.").

324. See, e.g., PIAGET & INHELDER, *PSYCHOLOGY*, *supra* note 127 ("[T]he power of orders is initially dependent upon the physical presence of the person who gives them. In his absence the law loses its force and its violation is accompanied only by a momentary uneasiness.").

325. *Id.*; Blum, *supra* note 264, at 339.

326. Cf., e.g., Blum, *supra* note 264, at 339.

327. *Id.* ("In this context, undesired behaviors may be much more effective than desired behaviors in eliciting adult attention, which then reinforces the inappropriate behavior.") (citation omitted).

328. *Id.*

329. *Id.*

This has been demonstrated in the literature on the use of time-out as a punishment. When a child has access to time-in (e.g., frequent adult attention, praise, and fun toys) while engaging in appropriate behavior, time-out is often an effective punisher for inappropriate behavior. However, when the child's access to time-in is limited, time-out may not be as effective. When time-out allows children to escape from a situation or task that they want to avoid, it may increase the inappropriate behavior.³³⁰

Spanking, by contrast, is less likely to be confused as a reward, because physical pain tends to outweigh the enjoyment of attention.³³¹ And because it is best to associate bad behavior with punishment instead of a reward, spanking can be more effective than alternatives in these contexts.³³²

2. Children Need Consistent and Immediate Consequences

If a given form of behavior on the part of the child brings forth a spanking today, a reward tomorrow, and is ignored on the third day, it is not surprising if the child fails to see any very consistent relationship between cause and effect. If, for the same activity, a child is spanked by his father, soothed and petted by his mother, and given a bribe by his nurse, it is perhaps not unreasonable to assume that at least a part of his difficulties have arisen through lack of opportunity to learn by consistent experience.

~ Florence L. Goodenough³³³

Most researchers agree that effective punishment should be consistent, and should immediately follow misbehavior.³³⁴ Inconsistent or delayed discipline tends to adversely affect children.³³⁵ Kids who are disciplined inconsistently “become angry more frequently and . . . more likely to show evidences of resentment afterwards than the children who are subjected to more even and regular methods of discipline.”³³⁶ Even

330. *Id.*

331. *Cf., e.g.,* Gershoff, *supra* note 282, at 554 (“In using corporal punishment, parents inflict momentary pain to stop children’s misbehaviors. On feeling pain, children stop the misbehavior either to get the painful stimulus to stop or to restore a sense of security with the parent. . . . Pain typically provokes a motivation to escape the painful stimulus”) (citations omitted).

332. *See, e.g., supra* note 220 and accompanying text.

333. GOODENOUGH, *supra* note 29, at 220.

334. *See supra* Part V.B; *supra* note 288 and accompanying text.

335. *See, e.g., supra* note 288 and accompanying text.

336. *See, e.g.,* GOODENOUGH, *supra* note 29, at 241.

if a parent's demands and punishments are unusually rigid, her child rarely resents these things if they are consistent.³³⁷

Take Kaye/Bassman International Chief Operating Officer Nick Turner, who credits his success to consistent discipline.³³⁸ When he was young, he never went a month without a spanking, and often got them on consecutive days.³³⁹

You were expected to say, 'Yes, ma'am' and 'Yes, sir.' You eat at 5:30, and you don't eat with your fingers. You knew if you didn't mow the yard right away or chop wood or feed horses, you were going to get a spanking, period. . . . I certainly wouldn't have [become self-disciplined or goal-oriented] if I had grown up with Mary Poppins.³⁴⁰

Consistency gives children a sense of security and confidence.³⁴¹ The rules are clear, the world makes some sense, and children learn that they can do it—they can do what is expected of them and please their loved ones.³⁴²

Inconsistent punishment is different. While kids are focused on learning the rules, inconsistency sends mixed messages about what those rules are.³⁴³ Sometimes lying is okay, and sometimes it is not.³⁴⁴ Sometimes disobedience is okay, and sometimes it is not. This can be very frustrating for kids.³⁴⁵ It encourages bad behavior because it keeps them guessing about when occasionally punished behavior is okay, and when it is not.³⁴⁶

337. See, e.g., *id.* at 228-29 (recounting one child subject whose family "successfully maintain[ed] a far higher standard of conduct than is usual for children of his age." Once, the child resisted having his face washed; he screamed, stamped, jumped up and down, and threw himself on the floor. His father spanked him, and the outburst was over in about 30 seconds, with no negative aftereffects.)

338. Del Jones, *Hit with the Question: Were You Spanked? CEOs Say Yes*, USA TODAY, Oct. 9, 2006, at Money; http://www.kbic.com/nick_turner.html.

339. Jones, *supra* note 338.

340. *Id.* (crediting corporal punishment for his success).

341. See, e.g., Baumrind, *Discipline Controversy*, *supra* note 195, at 407 ("During the preschool years, adult constraint-expressed as consistent contingent reinforcement and regularity helps promote the child's sense of security and her belief that the world can be a safe, predictable place."); Trumbull, *supra* note 71 ("Actually, a spanking can break the escalating rage of a rebellious child and more quickly restore the relationship between parent and child.")

342. See, e.g., *supra* note 341 and accompanying text.

343. Cf. e.g., GOODENOUGH, *supra* note 29, at 223.

344. See *supra* note 150 and accompanying text.

345. See, e.g., Trumbull, *supra* note 71; Baumrind, *Discipline Controversy*, *supra* note 195, at 411 ("A noncontingent caregiver produces a defiant child who induces the caregiver to punish harshly and who coercively controls other family members by temper tantrums and physical attacks (Snyder & Patterson, 1995).")

346. Cf. e.g., GOODENOUGH, *supra* note 29, at 220, 223.

Of course, a parent can corporally punish just as inconsistently as she can mentally punish.³⁴⁷ Some parents just do not have the time or desire to use any discipline method consistently.³⁴⁸ But the most successful parents, like Authoritative parents, find a way to be consistent.³⁴⁹ They are characterized by a willingness to use whatever works best for their child.³⁵⁰ And many of them find that this involves at least some physical discipline, especially in the 1st Stage.³⁵¹

Perhaps this is because spanking facilitates discipline when space or time is limited.³⁵² In the car, in the store, at the park. It may help a parent give her kids the immediate, consistent discipline they need, in the event that nothing else can.³⁵³ Consider, for instance, this police officer's experience when he was assigned the parking ticket detail:

Suddenly, the air was shattered by a bloodcurdling scream. "No, no, no" the young voice bellowed. It seemed to be a small child in distress I raced toward the commotion as fast as I could as the child's voice screamed "No, stop." . . .

What I observed in the parking lot didn't exactly settle my mind. A well-dressed woman was struggling to wedge a child of about three years of age into the front seat of a car. She was having a difficult time accomplishing her objective due to the thrashing legs and arms of the child. Every time the adult would gain the upper hand, the child would manage to land a pretty good shot with a fist or foot. . . .

347. See, e.g., Gershoff, *supra* note 282, at 567 ("Although corporal punishment was used as the main example throughout the discussion of this model, it is equally applicable to other forms of parental discipline. The potential for other discipline techniques, if misused, to lead to negative child outcomes must also be examined.").

348. See, e.g., *supra* note 198 and accompanying text.

349. See, e.g., Baumrind & Black, *supra* note 181, at 325-26 ("In the home setting, parents of these children were consistent, loving, and demanding. They respected the child's independent decisions, but were very firm about sustaining a position once they took a stand. They accompanied a directive with a reason. Despite vigorous and at times conflictful interactions, their homes were not marked by discord or dissensions. These parents balanced high nurturance with high control and high demands with clear communication about what was required of the child.").

350. See *supra* note 221 and accompanying text.

351. See, e.g., Larzelere, *supra* note 50, at 9 ("Dr. Diana Baumrind's (1973) authoritative parenting, which combines nurturance, good communication, and firm control, has consistently been associated with optimal child outcomes. Firm control was enforced at least occasionally with spanking in all Baumrind's original authoritative families."); *supra* Diagram 4.2 (showing that 90% of Authoritative parents were at or above average spanking frequency when their children were about 4-years-old).

352. See, e.g., Baumrind, *Ordinary Physical Punishment*, *supra* note 234 ("It remains to be studied whether parents can and will use an alternative back-up such as a barrier with a defiant child, especially in homes where space and time are limited.").

353. *Id.*

The woman spun around, her flushed face an indication of how high her blood pressure was reaching. . . . “Oh officer,” she exclaimed, “thank God you’re here! . . . [W]ould you please make my daughter get in her car seat?” . . .

“Sweetheart,” I began. . . . “You know that mommy doesn’t want you to get hurt now, don’t you?” “Shut up!” was the reply. My recoil caused the back of my head to crack on the inside of the roof of the car. The child stuck her tongue back out and blew saliva all over my face. . . .

I quickly exited the car to avoid the saliva spray coming my way. The mother, standing nearby, leaned down and yelled “If you don’t get in that seat, I am going to have this policeman take you to jail!” That threat didn’t even phase the little demonette as she continued to shout “no” and “shut up.” The mother stood up, wringing her hands. “I have no idea what to do with her,” she moaned. “I’ve tried everything, and she just won’t do what I say.” . . . “Why don’t you try spanking her,” I suggested.

There was a long pause as the woman’s eyes narrowed to slits. She took a deep breath and clenched her teeth. “That’s all you guys with guns think about,” she growled, “is violence.” . . . “Look honey,” she said, “if you get into the car seat, I’ll give you a nice treat when you get home.” This attempt also failed, as the youngster stuck out her tongue and shouted, “No!” The mother tossed the child’s seat into the rear of the vehicle and slammed the door. “Excuse me, ma’am,” I said softly. “You are aware that it is against the law to allow your child to ride in your car in that manner?” The mother crossed her arms (much like the little demonette had) and sighed. “Well,” she said, “you’ll just have to give me a ticket then, won’t you!”

I didn’t give the woman a ticket. I ended up shaking my head as the car drove away, the woman screaming at the child to let go of the steering wheel as they pulled out of the lot. I actually felt sorry for her.³⁵⁴

Punishments like timeout or the Barrier are seldom available in situations like this.³⁵⁵ (Indeed, sitting in a chair was the desired behavior here, not the punishment.)

And these limitations are not unique to timeout. Every punishment has its drawbacks.³⁵⁶ Say the parent lets her child carry a favorite toy, and takes it away for public misbehavior.³⁵⁷ Once that toy is taken, it is hard to counter another bout of bad behavior.

354. SURGENOR, *supra* note 2, at 1-3 (some hard returns omitted).

355. *Cf., e.g., supra* note 352 and accompanying text.

356. *See, e.g., supra* note 287 and accompanying text.

357. *See, e.g.,* CAROL KEOUGH, *NEW BABY BOOK* 154 (1998).

This is why parents need a whole range of childrearing tools.³⁵⁸ Unless the parent has all day to sit in the parking lot with her defiant child, she may have to use some sort of concrete, physical discipline. Otherwise, her efforts may be inconsistent or unconvincing, and thus risk confusing her child's budding understanding of the rules.³⁵⁹

VI. CONCLUSION

[W]e must ourselves adopt the point of view, not of the adult conscience, but of child morality.

~ Dr. Jean Piaget³⁶⁰

As I was working on this article one April afternoon, I heard a knock at my front door.³⁶¹ It was Jessica from down the street, a tenth-grader who had been walking home from school. As my wife opened the door, Jessica was looking over her shoulder at three teenagers across the street that had been pestering her and calling her names. She asked to come in until they passed.

So, my wife let her in, and they sat on the couch and talked about whatever Jessica wanted to talk about—which ended up being school, MySpace, and her cousin. “He’s just not nice. He does a lot of things he shouldn’t for a 9-year-old. And when I was at his house last week, he slapped me and called me the b-word. He needs to be on medication.”

“Sounds like a lack of self-control to me,” my wife pointed out. Jessica stared back, expressionless. “What’s that mean?” she asked. Her question was genuine, and this young woman was about to graduate the tenth grade.

Today, more and more adolescents are in the same position: self-control is a foreign concept to them.³⁶² Youth dysfunction is now

358. See, e.g., Sacha Coburn, *Smack on the Hand Worth Time in Jail*, NEW ZEALAND HERALD, Feb. 26, 2008, at National.

359. See, e.g., Baumrind, *Discipline Controversy*, *supra* note 195, at 407-08 (“During this period, children have what Piaget terms a ‘heteronomous’ belief in rules, with a unilateral respect for adults extending to an uncritical acceptance of the legitimacy of adult rules. The probability that children will repeat either prosocial or antisocial acts is determined to a large extent by the reinforcing responses of their socializing agents . . .”).

360. PIAGET, *supra* note 107.

361. This was at about 3:45 p.m., on Thursday, April 16, 2009.

362. See, e.g., PAUL L. ADAMS & IVAN FRAS, BEGINNING CHILD PSYCHIATRY 550 (1988) (“Violence by children was practically unheard of two decades ago. It has become an increasingly frequent presenting complaint for psychiatric referral. When the parent is unable to deal with it, it becomes an emergency.”); ALAN E. KAZDIN, CONDUCT DISORDERS IN CHILDHOOD AND ADOLESCENCE (1987) (citing sources indicating that twenty-five years ago, the number of children referred for a conduct disorder grew to between 4% and 10%); RUSSELL A. BARKLEY & CHRISTINE

rampant and longer lasting.³⁶³ Over half of them admit to theft, 35% admit to assault, and 45% admit to destroying property.³⁶⁴ Between a third and a half of all children referred for psychological treatment now have some type of unusually “repetitive and persistent pattern” of misbehavior.³⁶⁵ And the list goes on and on.³⁶⁶

We can be grateful that some kids may “grow out” of these problems; but many do not.³⁶⁷ Antisocial behavior tends to stabilize after age 8.³⁶⁸ So, children who do not grow out of it by then are at a high risk for delinquency and crime.³⁶⁹ Indeed, Dr. Kohlberg’s research indicates that over 80% of juvenile delinquents seem to be “locked in” to

M. BENTON, YOUR DEFIANT CHILD: 8 STEPS TO BETTER BEHAVIOR 19, 20 (1998) (saying that the estimates of those with conduct disorder “vary pretty widely”—between 2% and 16%). *But see* Rolf Loeber, Ph.D. et al., *Oppositional Defiant and Conduct Disorder: A Review of the Past 10 Years, Part I*, 39 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 1473 (2000) (saying that changes in the diagnosis criteria from edition to edition of the DSM causes the appearance of large changes in the prevalence of conduct disorder—like a 44% drop from DSM-III to DSM-III-[Revised]).

363. *See, e.g., supra* note 362 and accompanying text; BARKLEY & BENTON, *supra* note 362, at 19-20 (“Defiance seems to be on the rise among children today. That is the impression among my colleagues, and it is supported by a recent study conducted at the University of Vermont in which two generations from around the state were surveyed.”).

364. *See, e.g.,* KAZDIN, *supra* note 362 (listing citations).

365. *See, e.g.,* ALAN CARR, ABNORMAL PSYCHOLOGY 15 (stating also that “conduct problems are the single most costly disorder of adolescence for three reasons (Kazdin, 1995). First, they are remarkably unresponsive to traditional individual approaches to treatment. . . . Adolescents with chronic conduct disorder turn to adult criminality and develop antisocial personality disorders, alcohol-related problems and a variety of psychological difficulties. They also have more problems with health, educational attainment, occupational adjustment, marital stability and social integration.”); Loeber, *supra* note 362; *id.* at 1469 (saying “the essential features of [conduct disorder] are a repetitive and persistent pattern of behavior in which the basic rights of others and major age-appropriate societal norms or rules are violated (American Psychiatric Association, 1994).”). *See also, e.g.,* John V. Lavigne, H.J. Binns & K.K. Christoffel, *Behavioral and Emotional Problems Among Pre-School Children in Pediatric Primary Care: Prevalence and Pediatricians’ Recognition*, 91 PEDIATRICS 649-55 (1993) (saying 13% of 2- to 5-year-olds now meet criteria for at least one diagnosis in the *Diagnosis and Statistical Manual of Mental Disorders*).

366. *See, e.g.,* KAZDIN, *supra* note 362; *supra* Part I.

367. *See, e.g.,* Alan E. Kazdin, *Treatment of Antisocial Behavior in Children: Current Status and Future Directions*, 102 PSYCHOL. BULL. 187 (1987) (“Among childhood disorders, antisocial behavior tends to be relatively stable over time. . . . Thus, when children evince such consistent antisocial behavior as aggressive acts toward others, it is unlikely that they will simply grow out of it.”) (citations omitted); *id.* (“[C]onduct problems in childhood and adolescence portend problems in adulthood, including criminal behavior; alcoholism; antisocial personality (i.e., continued conduct disorder); other diagnosable psychiatric disorders; and poor work, marital, and occupational adjustment.”) (citations omitted).

368. *See, e.g.,* Sylvania M. Côté, Tracy Vaillancourt, Edward D. Barker, Daniel Nagin & Richard E. Tremblay, *The Joint Development of Physical and Indirect Aggression: Predictors of Continuity and Change During Childhood*, 19 DEV. & PSYCHOPATHOLOGY 37, 44-49 (2007); Dan Olweus, *Stability of Aggressive Reaction Patterns in Males: A Review*, 86 PSYCHOL. BULL. 852, 863 (1979).

369. *See, e.g., supra* note 367 and accompanying text; 368 and accompanying text.

the self-centered, concrete development stages of early childhood.³⁷⁰ And their undeveloped mindset is more likely to make them a part of our criminal justice system “well into adulthood.”³⁷¹

Some childrearing professionals look at this problem with regret, believing that “[t]he significance of conduct disorder is heightened by the absence of clearly effective interventions.”³⁷² But this overlooks the various studies that document how spanking interventions have helped kids with this very type of problem.³⁷³

For whatever reason, many people overlook Dr. Roberts’ research—“the only four randomized clinical trials of spanking” ever done.³⁷⁴ They overlook the many Authoritative families who use physical discipline to raise the most confident, friendly, and academically successful kids.³⁷⁵ And while most agree that spanking brings immediate compliance, many ignore that this very quality seems

370. See, e.g., *supra* note 171 and accompanying text; *supra* note 367 and accompanying text; BARKLEY & BENTON, *supra* note 362, at 21 (“Defiant behavior very often leads to later adjustment problems. The stubbornness, temper outbursts, defiance, arguing, irritability, and blaming that begins at ages 4 through 6 eventually give way to disruptive acts like bullying, vandalism, truancy, and running away by age 9 or 10. Untreated children may, as teens, turn to criminal activity and substance abuse. They perform poorly academically and are not well accepted by their peers. They are at higher risk than others for depression and suicide attempts.”).

371. See, e.g., KAZDIN, *supra* note 362, at 17; Lee N. Robins, *Making Sense of the Increasing Prevalence of Conduct Disorder*, in RESEARCH AND INNOVATION ON THE ROAD TO MODERN CHILD PSYCHIATRY 120 (Jonathan Green & William Yule eds., 2001) (“[C]onduct disorder predicts adult fighting and weapon use even when the conduct disorder symptoms did not include fighting”); GEOFFREY T. HOLTZ, WELCOME TO THE JUNGLE 80 (saying the amount spent on residential treatment centers for emotionally disturbed children increased from \$123 million in 1969 to \$1.969 billion in 1990) (citing U.S. Department of Health and Human Services); *id.* 92 (saying the number of 18- to 29-year-old state prison inmates nationwide increased from 90,934 in 1970 to 323,798 in 1991) (citing U.S. Department of Justice); PATRICIA COHEN, CHERYL SLOMKOWSKI & LEE N. ROBINS, HISTORICAL AND GEOGRAPHICAL INFLUENCES ON PSYCHOPATHOLOGY 53 (1999) (“This increase [in the prevalence of Conduct Disorder over the past 70 years] has been matched by an increase in a host of adult problems that may be consequences of the increase in conduct disorder—arrests, violence, marital instability, promiscuity, substance abuse, depression, youthful suicides, and parenting a new generation of children with conduct disorder.”).

372. See, e.g., KAZDIN, *supra* note 362, at 17 (listing citations).

373. Compare, e.g., *id.* (never once citing studies where spanking has been used as an effective intervention), with *supra* note 20.

374. Compare, e.g., Straus, *supra* note 44, at 26, with ROBERT E. LARZELERE, THERE IS NO SOUND SCIENTIFIC EVIDENCE TO SUPPORT ANTI-SPANKING BANS 12, ¶ 39 (Apr. 2007), and Robert E. Larzelere & Diana Baumrind, *Are Spanking Injunctions Scientifically Supported?*, 73 LAW & CONTEMP. PROBS. 57, 70-75 (Spring 2010), and Parts V.A-B.

375. Compare, e.g., KATHLEEN STASSEN BERGER, THE DEVELOPING PERSON THROUGH CHILDHOOD AND ADOLESCENCE 289 (claiming, somehow, that Authoritative parents “are usually forgiving (not punishing)”), with *supra* note 203 and accompanying text.

to help reduce the need for punishment and give Authoritative families a “more rapid re-establishment of affection[]”.³⁷⁶

We should not overlook excellent results just because they come from uncomfortable techniques. Sure, most adults would be offended if corporally punished. But many kids are not.³⁷⁷ They do not have adult emotions, adult reactions, or adult minds.³⁷⁸ They learn from the simple to the complex, the tangible to the intangible, the concrete to the abstract.³⁷⁹ So, rather than trying to ban corporal discipline, maybe we should “seriously ask ourselves the question whether we no longer really understand the needs of children.”³⁸⁰

376. Compare, e.g., Baumrind, *Influence*, *supra* note 199, at 69-71, and Diana Baumrind, PhD, *Effects of Authoritative Parental Control on Child Behavior*, 37 *CHILD DEV.* 887, 896 (Dec. 1966), available at <http://persweb.wabash.edu/facstaff/hortonr/articles%20for%20class/baumrind.pdf>, and John P. Bartkowski, Xiaohu Xu & Martin L. Levin, *Religion and Child Development: Evidence from the Early Childhood Longitudinal Study*, 37 *SOC. SCI. RES.* 18 (2008) http://cassian.memphis.edu/efiles/08march31/pdfs/levin_article.pdf (“Subsequent research has revealed, rather paradoxically, that more spanking in conservative Protestant homes is coupled with less yelling, more positive emotion work (i.e., hugging and praising of children), and higher levels of paternal involvement.”) (citations omitted), and Baumrind, *Causally Relevant Research*, *supra* note 78, at 14, and *supra* note 203 and accompanying text, with Gershoff, *supra* note 282, at 541 (agreeing that spanking induces immediate compliance).

377. See, e.g., Thomas F. Catron & John C. Masters, *Mothers’ and Children’s Conceptualizations of Corporal Punishment*, 64 *CHILD DEV.* 1815 (1993); Baumrind, *Causally Relevant Research*, *supra* note 78, at 12 (“The majority of U.S. adults questioned in a recent survey by Yankelovich continue to regard it as ‘appropriate to spank a child as a regular form of punishment’ (Question 41), and their position is shared by most children and adolescents. Several studies report a high level of acceptance by young adults, including college students, of the use of spanking by their parents during childhood, and respondents generally state that they intend to spank their own children.”) (citations omitted); Michael Siegal & M.S. Barclay, *Children’s Evaluation of Father’s Socialization Behavior*, 21 *DEV. PSYCH.* 1090 (1985), and Michael Siegal & J. Cowen, *Appraisals of Intervention: The Mother’s Versus the Culprit’s Behavior as Determinants of Children’s Evaluations of Discipline Techniques*, 55 *CHILD DEV.* 1760-66 (1984) (both discussing surveys of 340 working class Australian children ages 5 to 17, all of whom approved spanking and reasoning with a 4-year-old more than they approved permissiveness and love withdrawal); Gershoff, *supra* note 282, at 554-55 (“If the use of corporal punishment is normative in the family’s culture, children will be inclined to view their parents’ use of corporal punishment as legitimate; indeed, children in the United States as young as 4 years old adopt their parents’ views that corporal punishment is an acceptable form of discipline.”) (citations omitted); Baumrind, *Discipline Controversy*, *supra* note 195, at 412 (“Within the context of an authoritative childrearing relationship, aversive discipline is well accepted by the young child, effective in managing short-term misbehavior, and has no documented harmful long-term effects.”).

378. Cf., e.g., Baumrind, *Discipline Controversy*, *supra* note 195, at 405 (recognizing that the “child-centered rights position . . . demands for children the same civil rights as are possessed by adults (Cohen, 1980).”); *id.* at 406 (“Arguing that youngsters have the same right as adults to be self-determining and free of constraint or externally imposed discipline, children’s rights advocates of the 1970s claimed that ‘we must change our orientation from protecting children to protecting their rights.’”) (citations omitted).

379. See *supra* Parts III, V.

380. Cf. Lord, *supra* note 1 and accompanying text.

An absolute rule that “physical punishment is always inappropriate” would represent a widespread insensitivity to the concrete, tangible needs of at least some children.³⁸¹ If spanking is part of what these kids need, we should not ignore that. Maybe their primitive learning style is not pleasant. Maybe it is not the same as the learning style of our children, or even of most children. But these kids still matter.

We should not let our adult biases get in the way of their primitive development stages, or of their understanding of society’s basic rules. And we should not just leave them to learn at the hands of the criminal justice system.

All children have a right to learn in a way they can understand. But if we ban spanking, we risk robbing some of them of the fundamental human right to learn and mature normally.

381. *Cf., e.g., supra* Part V; *supra* note 20 and accompanying text (showing that spanking can be developmentally appropriate for young children); Ahn, *supra* note 179, at 50 (“Social workers have launched the antispanking movement as a genuine effort to prevent child abuse because they are deeply concerned with the welfare of children. Physical abuse generates grave problems, and abuse in every form must be avoided. Laying down absolute rules such as ‘physical punishment is always inappropriate,’ however, does not seem to address the complexity that surrounds the problem of child abuse nor the diverse meaning cultures give to physical discipline in family life. Findings from this study suggest that it is too simplistic to take physical discipline in a vacuum, isolated from all other variables, and declare it harmful.”); *id.* at 52 (“Although it is difficult to accept the idea, professionals may need to recognize that for some parents physical punishment has helped to achieve their objectives as parents.”); *supra* notes 221, 293.