

**THE SCIENCE AND STATISTICS BEHIND
SPANKING SUGGEST THAT LAWS ALLOWING
CORPORAL PUNISHMENT ARE IN THE BEST
INTERESTS OF THE CHILD**

*Jason M. Fuller**

I. Introduction.....	244
II. Background: The Movement to Gradually Eliminate Spanking in the Home.....	249
A. The Movement to Change Public Opinion	249
B. How Foreign Governments Are Gradually Outlawing Corporal Punishment.....	252
C. The U.N. Convention on the Rights of the Child Is Being Used to Abolish Spanking Worldwide	256
D. America Is Following the Incremental Path that Leads to a Ban on Spanking in the Home	259
III. The Problems Associated with Anti-Spanking Laws: A Look at the First Country to Ban All Physical Discipline	264
A. A Little Less Spanking, A Lot More Child Abuse	266
B. A Little Less Spanking, A Lot More Teen Violence	271
C. Reflecting on Sweden’s Spanking Ban: More Harm than Good.....	274

* J.D. Candidate 2009, The University of Akron School of Law; Symposium Editor, *Akron Law Review*; B.A. 2004, The Ohio State University, Phi Beta Kappa. For his indispensable research and comments, I thank Dr. Robert E. Larzelere. For her help with Swedish information and translation, I thank Attorney Ruby Harrold-Claesson. Please direct questions to law.fuller@gmail.com.

IV. Misleading Research and Media Coverage Virtually Monopolize the Spanking Debate.....	277
A. The Research “Should Be Closely Examined for Evidence of Bias”	278
B. “The Methodological Flaws in the Cited Evidence Are of Concern”	281
C. “Avoid the Insidious Evils of . . . Propaganda Favoring Particular Points of View”	292
D. “Risk . . . Alone Is Insufficient to Support Regulation” Because “It Is Always a Doubtful Course, to Argue Against the Use or Existence of a Power, from the Possibility of Its Abuse”	305
V. The Most Comprehensive Child Development Study Validates the Body of Research that Suggests Spanking Is Harmless.....	306
A. Sound Research Indicates that Physical Discipline Does Not Inherently Harm Children.....	309
B. Sound Research Indicates that Children with the Highest Optimism, Academic Achievement, and Self-Esteem Have Been Spanked.....	311
VI. Conclusion	315

I. INTRODUCTION

In 2005, a group of thirteen-year-old Swedish boys began terrorizing a family by threatening to kill the family’s son, forcing the mother’s car off the road and ripping open her rear door, publicly humiliating them, damaging and stealing their property, emptying and sabotaging their mailbox, brandishing planks at them, and surrounding them with weapons.¹ Over the next two years, the harassment became so intolerable that the father shot at the group of teens, killing one.²

Were such a killing to occur in the U.S., the popular reaction would have been, “How can we prevent this from happening again?”³ In

1. *Murder Suspect’s Family Speak Out*, THE LOCAL: SWEDEN’S NEWS IN ENGLISH, Oct. 8, 2007, available at <http://www.thelocal.se/8728/20071008> (reporting the family’s harassment at the hand of thirteen-year-old moped riders).

2. *Teenage Boy Shot Dead*, THE LOCAL: SWEDEN’S NEWS IN ENGLISH, Oct. 6, 2007, available at <http://www.thelocal.se/8706/20071006/>.

3. *Cf., e.g.*, Pat Wingert, *How to Prevent a Tragedy*, NEWSWEEK, Dec. 31, 2007-Jan. 7, 2008 (discussing the Apr. 16, 2007 Va. Tech. shootings).

Sweden, however, youth violence and aggression has gotten so out-of-control that the reaction was, “Shoot another [one].”⁴ Sadly, many policymakers fail to realize how Swedish laws have contributed to growing youth violence, and consequently, to public resentment of Swedish youths.

In 1979, Sweden started an international trend by becoming the first country to ban spanking.⁵ Since then, twenty-three more countries have outlawed it.⁶ The European Committee of Social Rights currently is urging all forty-five of its member nations to ban corporal punishment.⁷ In 2007 alone, the Netherlands, New Zealand, Portugal, Uruguay, Venezuela, Spain, and Chile each enacted laws forbidding parents from using physical discipline.⁸ In that same year, California and Massachusetts also introduced legislation to ban spanking.⁹

Anti-spanking laws are proposed and passed with the hope that they will create a “cultural spillover” of non-violence, and a society that does not need correction.¹⁰ For instance, when Italy’s Supreme Court

4. See *Dödsskjutningen splittrar Rödeby* [*Lethal Shooting Divides Rodeby*], NYHETER FRÅN SVERIGES RADIO – EKOT, Oct. 12, 2007, available at <http://www.sr.se/cgi-bin/ekot/artikel.asp?artikel=1652116> (“Bland vissa är förståelsen för pappan som dödade den 15-årige pojken stor. Flera dagar den här veckan har Rödebyskolans personal fått plocka ner lappar från skolan där det stått bland annat ‘Skjut en mopedist till.’” [“Among some, there is great understanding for the father who killed the 15-year-old boy. Several days this week Rodeby school staff has had to take down signs from the school that said, among other things, ‘Shoot another moped rider.’”]).

5. See U.N. Children’s Fund (UNICEF), *Children and Violence*, 7, INNOCENTI DIGEST NO. 2 (Sept. 1997) [hereinafter U.N., *Children and Violence*] (“In 1979, Sweden became the first country to ban all physical punishment of children.”).

6. See EPOCH-Worldwide, *Legal reforms: Corporal punishment of children in the family* (2008), available at <http://www.stophitting.com/index.php?page=laws-main> (listing twenty-four countries that have banned spanking: Sweden (1979), Finland (1983), Norway (1987), Austria (1989), Cyprus (1994), Denmark (1997), Latvia (1998), Croatia (1999), Israel (1999), Germany (2000), Bulgaria (2000), Iceland (2003), Romania (2004), Ukraine (2004), Hungary (2004), Greece (2006), Netherlands (2007), New Zealand (2007), Portugal (2007), Uruguay (2007), Venezuela (2007), Spain (2007), Chile (2007), and Costa Rica (2008)).

7. U.N. Children’s Fund (UNICEF), *A League Table of Child Maltreatment Deaths in Rich Nations*, 28, INNOCENTI REP. CARD NO. 5 (Sept. 2003) [hereinafter U.N., *League Table*] (“Europe’s Social Rights Committee is pushing its 45 member countries [to legislate against spanking] whether at school . . . in the home or elsewhere.”).

8. See *supra* note 6 and accompanying text.

9. Assem.B. 755, Reg. Sess. (Cal. 2007) (proposing to ban physical discipline using an implement); H.B. 3922 (Mass. 2007) (proposing to ban corporal punishment).

10. 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); U.N., *Children and Violence*, *supra* note 5, at 7 (“[I]n 1996, Italy’s Supreme Court . . . declared unlawful any use of violence for educational purposes within the family or in schools, affirming that ‘the very

declared spanking unlawful, it said the very expression “correction of children” was both “culturally anachronistic and historically outdated.”¹¹

While such lawmaking may seem harmless, even commendable, the empirical data indicate that a spanking ban is a grave mistake. With spanking bans have come increased rates of child abuse, aggressive parenting, and youth violence.¹² Indeed, criminal records suggest that children raised under a spanking ban are much more likely to be involved in crime than other children.¹³

This makes sense. To function well in society, children need to learn that misbehavior has negative consequences.¹⁴ But not every child learns this the same way.¹⁵ If one child learns best about misbehavior through physical punishment, he should receive a spanking. If another

expression *correction of children* . . . expresses a view of child-rearing that is both culturally anachronistic and historically outdated.”).

11. *See id.*

12. *See, e.g.,* Sweden’s rate of child abuse has risen almost six times since the spanking ban. *See, 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]; U. Wittrock, *Barnmisshandel, 1984-1994 [Violent Crimes Against Children, 1984-1994]*, KR Info. 1-6 (1995) (Swed.), available at <http://ches.okstate.edu/facultystaff/Larzelere/sweden84.html> [hereinafter Wittrock, 1984-1994] (collectively showing the rates of indoor abuses when the perpetrator personally knows the child 0-6 years old rising every year, from 99 in 1981 to 583 in 1994). Sweden’s rate of juvenile assaults has risen more than seven times since the spanking ban in 1979. *See id.* (collectively showing assaults by juveniles under fifteen on their peers rose from 93 in 1981 to 718 in 1994); ROBERT E. LARZELERE, PH.D., SWEDEN’S SMACKING BAN: MORE HARM THAN GOOD 14 (2004) (saying “the incidents requiring medical attention doubled for 16-20 year-olds. The latter trend suggests that the average victimization incident is getting more severe and not less severe Their rates of physical child abuse and criminal assaults by minors against minors have increased at least five- or six-fold since the smacking [i.e., spanking] ban.”); *infra* Part III.

13. *See, e.g., supra* note 12 and accompanying text; *infra* Part III.B-C.

14. *See, e.g.,* RAY BURKE, PH.D., RON HERRON & BRIDGET A. BARNES, COMMON SENSE PARENTING 140-41 (2006) (saying that negative consequences for misbehavior help children understand what their limits are, cause them not to test those limits as often, and greatly reduce their frequency of misbehavior).

15. *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*] (“Disciplinary tactics with equivalent effectiveness overall may each show superior effectiveness for some children in some situations. Indeed, the barrier method, the most effective disciplinary tactic in this meta-analysis, was ineffective with some children, and a child-determined release from time-out, a relatively ineffective disciplinary tactic, was effective for some clinically oppositional children. When one disciplinary tactic is not working, parents would benefit from having a range of effective alternatives to turn to”) (citations omitted).

learns this best through mental punishment,¹⁶ she should get a timeout. To keep any helpful discipline method from a child may restrict his ability to mature, and could make him an unnecessary burden on society.

Yet many people want to deprive children of spanking, even though the most sound research suggests it is not harmful, and is often more helpful than other common discipline methods.¹⁷ On average, spanking

16. The terms “mental punishment” and “mental discipline” are synonymous with “non-physical punishment” and “non-physical discipline.” Just as physical punishment is intended to distress a child through physical pain, mental punishment is intended to distress a child through mental pain.

17. See, e.g., Larzelere, *Meta-Analysis, supra* note 15, at 4 (surveying every child discipline study between 1979 and 2005 that analyzed: (1) spanking and at least one mental discipline tactic using similar research methods; (2) children that were, on average, less than thirteen years old when disciplined; and (3) at least one child outcome. This meta-analysis compares outcomes of physical and mental discipline methods, and finds that outcomes rarely favor mental discipline methods, whereas customary spanking typically reduces noncompliance or antisocial behavior more than mental discipline methods); 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); Elizabeth Oddone Paolucci & Claudio Violato, *A Meta-Analysis of the Published Research on the Affective, Cognitive, and Behavioral Effects of Corporal Punishment*, 138 J. PSYCHOL. 197 (2004) (concluding that “corporal punishment does not substantially increase the risk to youth of developing affective, cognitive, or behavioral pathologies”); Robert E. Larzelere & G.L. Smith, *Controlled Longitudinal Effects of Five Disciplinary Tactics on Antisocial Behavior*, Presentation at the annual meeting of the American Psychological Association, D.C. (Aug. 2000) [hereinafter Larzelere, APA] (replicating Dr. Straus’ strongest causal evidence against customary spanking, but showing the same apparently detrimental outcomes of all four types of nonphysical punishment and for taking a child to a psychiatrist); 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 the child outcome is based on a source of information other than the parent, physical discipline reduces aggression in African-American men and rarely increases aggression); 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*] (reporting that, for older children, grounding was more beneficial than spanking; however, for younger children, spanking was more effective than nine other common punishments—including timeout, physical restraint, reasoning, and nonphysical punishment); 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 conditional spanking to be more effective than reasoning or verbal prohibition when dealing with noncompliance); S. COOPERSMITH, *THE ANTECEDENTS OF SELF-ESTEEM* (1967) (showing that even severe or predominate physical punishment is more beneficial than love withdrawal for developing self-esteem and aspirations); D.P. Crowne, L.K. Conn, D. Marlowe & C.N. Edwards, *Some Developmental Antecedents of Level of Aspiration*, 37 J. PERSONALITY 73 (1969) (showing the same as COOPERSMITH, *supra*); 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) (showing that even severe or predominate physical punishment is more beneficial than reasoning for children who are antisocial or have a need for power); 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) (showing that conditional spanking is more effective

seems to reduce aggression, defiance, and antisocial behavior better than mental punishments like timeout, reasoning, privilege removal, threats, verbal power assertion, ignoring, love withdrawal, or diverting.¹⁸

than reasoning alone when dealing with noncompliance, that conditional spanking stopped defiance much better than ignoring, and that conditional spanking is more effective than reasoning alone to control a child's aggression); H. Lytton, *Correlates of Compliance and the Rudiments of Conscience in Two-year-old Boys*, 9 CAN. J. BEHAV. SCI. 242 (1977) (showing customary spanking to be more beneficial than verbal punishment, love withdrawal, or psychological punishment to gain compliance or to positively affect the conscience); D.C. McClelland & D.A. Pilon, *Sources of Adult Motives in Patterns of Parent Behavior in Early Childhood*, 44 J. PERSONALITY & SOC. PSYCHOL. 564 (1983) (showing that even severe or predominate physical punishment is more beneficial than reasoning or privilege removal for children who are antisocial or have a need for power. Also showing that such physical punishment is more effective than love withdrawal to deal with aggression or a need for power); K.L. Ritchie, *Maternal Behaviors and Cognitions During Discipline Episodes*, 35 DEV. PSYCHOL. 580 (1999) (showing conditional spanking to be more effective than reasoning when dealing with defiance. Also showing that spanking stops defiance more effectively than threats, verbal power assertion, timeout, privilege removal, ignoring, restraint, or physical power assertion); R.R. Sears, *Relation of Early Socialization Experiences to Aggression in Middle Childhood*, 63 J. ABNORMAL & SOC. PSYCHOL. 466 (1961) (showing that even severe or predominate physical punishment is more beneficial than privilege removal for aggressive children or children with a need for power); Murray A. Straus & V.E. Mouradian, *Impulsive Corporal Punishment by Mothers and Antisocial Behavior and Impulsiveness of Children*, 16 BEHAV. SCI. & LAW 353 (1998) [hereinafter Straus, *Impulsive*] (showing that conditional spanking is more beneficial than reasoning or nonphysical punishment to improve antisocial impulsivity, and that even severe or predominate physical punishment is more beneficial than reasoning or nonphysical punishment 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 customary spanking to be more beneficial than non-contact punishment to reduce aggression or substance abuse); 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 customary spanking to be more beneficial than privilege removal to improve antisocial behavior or to reduce alcohol usage. Also showing that customary spanking is more positively associated to academic achievement than privilege removal); M.R. YARROW, J.D. CAMPBELL & R.V. BURTON, *CHILD REARING* (1968) (showing conditional spanking is more effective than reasoning, isolation, love withdrawal, isolation, diverting, or scolding to control a child's aggression); C. Zahn-Waxler, M. Radke-Yarrow & R. King, *Prosocial Initiations Toward Victims of Distress*, 50 CHILD DEV. 319 (1979) (showing that even severe or predominate physical punishment is more beneficial than verbal prohibition for developing prosocial behavior).

18. See, e.g., Larzelere, *Meta-Analysis*, *supra* note 15, 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); *id.* at 1 (finding that conditional spanking reduced noncompliance and antisocial behavior in more than ten of thirteen mental punishments, and was equivalent to the other three); Larzelere, *Review*, *supra* note 17, at 827 (finding that, for young children, spanking was more beneficial than all seven alternative discipline responses—physical restraint, a child-determined release from time out, reasoning without punishment, punishment without reasoning,

Nevertheless, spanking's successes are largely ignored. Many philosophically oppose corporal punishment and praise spanking bans, but few honestly consider the entire body of child discipline statistics.¹⁹ Therefore, in this rapidly changing area of the law that lies at the heart of our children's education and future, only one side of the story is being told.²⁰ This paper helps expose that other side. And if we continue to ignore that side, our children may be the ones that suffer.

II. BACKGROUND: THE MOVEMENT TO GRADUALLY ELIMINATE SPANKING IN THE HOME

Spanking is a discipline method defined as striking a child on the buttocks or extremities "without inflicting physical injury" and with the intent to modify behavior.²¹

A. *The Movement to Change Public Opinion*

Many people think Dr. Benjamin Spock started the anti-spanking movement in the 1940s.²² This is not really true. Dr. Spock did not

discipline responses other than punishment or reasoning, ignoring, and love withdrawal. 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.)

19. See, e.g., Susan H. Bitensky, *Spare the Rod, Embrace Our Humanity*, 31 U. MICH. J.L. REFORM 353, 361 (1998) (discussing various European spanking bans before 1998) ("Of the six countries that have enacted statues prohibiting all corporal punishment of children, four countries have lived with these laws for ten years or more."). Ms. Bitensky then suggested, without discussing any criminal statistics, that such longevity was a positive sign. *Id.*

20. See, e.g., Murray A. Straus, *Corporal Punishment by Parents*, 8 VA. J. SOC. POL'Y & L. 7, 60 (2000) [hereinafter Straus, *Corporal Punishment*] (saying "[a] society that brings up children by nonviolent methods is likely to be less violent, healthier, and wealthier." Although he mentioned Sweden as an example, he never mentioned the rise in crime.); Judge Leonard P. Edwards, *Corporal Punishment and the Legal System*, 36 SANTA CLARA L. REV. 983, 1021 (a U.S. judge relying only on anti-spanking research to propose that it "should be illegal to use corporal punishment on all children under five years of age.").

21. 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 1 (Aug. 24, 2001) [hereinafter Baumrind, *Causally Relevant Research*] ("[T]he term 'spanking' [refers] to striking the child on the buttocks or extremities with an open hand without inflicting physical injury with the intention to modify behavior.") (citing S. Friedman & S.K. Schonberg, *Consensus Statements*, 98 PEDIATRICS 853 (1996)) (emphasis in original).

22. See, e.g., Daniel Costello, *Spanking Makes a Comeback: Tired of Spoiling the Child, Parents Stop Sparing the Rod; Dr. Dobson vs. Dr. Spock*, WALL ST. J., June 9, 2000, at W1 (saying the notion that children are too fragile to spank "took hold after World War [] II as Benjamin Spock,

oppose corporal punishment until the late 1980s—the twilight of his life.²³ For most of his career, he believed physical discipline could be helpful, depending on the parent’s temperament.²⁴

What Dr. Spock did urge since the 1940s was a parenting philosophy that balanced firm and consistent discipline with love.²⁵ This was a wise response to the prevailing childrearing advice from the 1920s that mothers were not to express love toward their children.²⁶

By the 1950s, young parents increasingly relied on childrearing professionals like Dr. Spock to understand how to raise children.²⁷ Dr. Spock opposed such reliance, saying:

In the 20th century parents have been persuaded that the only people who know for sure how children should be managed are the child psychiatrists, psychologists, teachers, social workers and pediatricians—like myself. This is a cruel deprivation that we

the influential pediatrician, began warning that corporal punishment can traumatize children and trigger more aggressive behavior.”).

23. Compare BENJAMIN SPOCK, M.D., DR. SPOCK ON PARENTING 151-52 (1988) (saying that in earlier decades and earlier editions of *Baby and Child Care*, he never opposed spanking, but now he had changed his position), with Eric Pace, *Benjamin Spock, World’s Pediatrician, Dies at 94*, N.Y. TIMES, Mar. 17, 1998, at Obituary.

24. See, e.g., Benjamin Spock, M.D., *What I Said in February About Raising Children—And What I Did Not Say*, REDBOOK, June 1974, at 31 (“[W]hen I gave talks about child rearing, at least one of the reporters attending a press conference would ask immediately whether I believed in spanking children—as if this were by far the most crucial issue in child care. I would have to disappoint him by discussing all the other more important factors that go into good behavior, such as the child’s love of parents, wanting to be like the parents, the clarity and consistency of the parents’ leadership. Even when the question about spanking was repeated, I’d have to say that it depended on whether the spanking parent was generally kind and devoted or merely expressing ill temper that had little to do with the child’s behavior.”).

25. See, e.g., *id.*; Benjamin Spock, M.D., *How Not to Bring Up a Bratty Child*, REDBOOK, Feb. 1974, at 29 [hereinafter Spock, *Bratty Child*] (“Inability to be firm is . . . the commonest problem of parents in America today.”).

26. Compare *id.* at 29 (“I’ve never considered myself even remotely a permissivist. . . . There might have been a slight excuse for such an interpretation when the first edition was published, in 1946. Pediatrics advice was generally quite rigid then . . . I was one of the first pediatricians to advocate a reasonable respect for individual differences in babies’ readiness.”), with, 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).

27. 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> (“But by the early 1950s, young couples increasingly began to look to child-rearing ‘experts’—authors like Benjamin Spock, whose manual *Baby and Child Care* counseled against the punitive child-raising practices of earlier generations. Spock, a believer in firm and consistent parenting, did not rule out spanking in his book’s early editions.”).

professionals have imposed on mothers and fathers. . . . We didn't realize, until it was too late, how our know-it-all attitude was undermining the self-assurance of parents.

. . . And because this is a forward-looking, innovative country, there has always been less respect for the wisdom of the older generation.²⁸

Nevertheless, childrearing professionals in the 1970s and 80s began using their influence to press an intensely child-centered view of the family—swinging the pendulum from the detached view of the 1920s to virtually the opposite extreme.²⁹ One of the more popular child-centered books, Thomas Gordon's *Parent Effectiveness Training*, said parents should treat children like “a friend or a spouse.”³⁰ Such authors thought spanking may promote aggression, and a few now are trying to stop all punishments, even mental punishments like timeout.³¹

Today, the most influential spanking opponent is probably Dr. Murray Straus of the University of New Hampshire.³² Dr. Straus thinks physical discipline can doom children to “*major*, and often life-long, social psychological problems,” like crime and mental illness.³³ While

28. Spock, *Bratty Child*, *supra* note 25, at 31.

29. *See, e.g., id.*; Rosellini, *supra* note 27 (revealing that psychologists and child-development authorities during the 1970s and 80s advocated “a new, child-centered view of family. The locus of power should shift, these experts seemed to suggest, so that kids are equal members of the household.”); *see, e.g.,* WATSON, *supra* note 26 and accompanying text.

30. *See, e.g.,* Rosellini, *supra* note 27 (saying Thomas Gordon's 1970 best-seller, *Parent Effectiveness Training*, advised parents to stop punishing kids and to start treating them “much as we treat a friend or a spouse”).

31. *See, e.g., id.* (reporting that many writers during the 1970s and 80s warned that strict parenting, and particularly punishments like spanking, could promote aggression and discourage children from cooperating with others) (“More recently, writers like Nancy Samalin and Barbara Coloroso counseled an end to punishment altogether.”).

32. *See, e.g., id.* (reporting that Dr. Straus' *Beating the Devil Out of Them* “seemed to solidify the antspanking consensus”); MARY ANN LAMANNA & AGNES RIEDMANN, MARRIAGES & FAMILIES: MAKING CHOICES IN A DIVERSE SOCIETY 314 (2005) (“A leading domestic violence researcher, sociologist Murray Straus (1996, 1999a), advises parents never to hit children of any age under any circumstances.”). Dr. Straus is “Professor of Sociology and founder and Co-Director of the Family Research Laboratory, University of New Hampshire (since 1968).” Dr. Straus' Biographical Summary, *available at* <http://pubpages.unh.edu/~mas2/bio-sum.pdf>. He “[p]reviously taught at the Universities of Minnesota, Cornell, Wisconsin, Washington State, York (England) Bombay (India), and the University of Ceylon (now Sri Lanka).” *Id.* He is a recipient of the Ernest W. Burgess Award of the National Council of Family Relations (1977), the Distinguished Contribution Award, New Hampshire Psychological Society (1992), and the Research Career Achievement Award, American Professional Society on the Abuse of Children (1994). *Id.*

33. *See, e.g.,* Straus, *Corporal Punishment*, *supra* note 20, at 9 (saying his longitudinal research shows that spanking “is associated with an increased risk of the child experiencing *major*, and often life-long, social and psychological problems. . . . such as delinquency and adult crime, low educational attainment, physical assaults on spouses, and mental illness.”); *id.* at 53 (suggesting

spanking opponents have gained much support over the past few decades, public support for physical discipline is still relatively high (around eighty percent).³⁴ Indeed, a growing number of parents that were never spanked themselves are beginning to spank their children.³⁵

B. How Foreign Governments Are Gradually Outlawing Corporal Punishment

While most people support corporal punishment in the home, those who oppose it have done a remarkable job chipping away at its legality. For decades, spanking opponents have been influencing government officials around the world to abolish spanking gradually.³⁶ The trend has been to outlaw physical discipline in schools and institutions, and then whittle away its scope in the home.³⁷

This is typically a slow, incremental process that allows each little spanking restriction to seem innocuous to much of the public.³⁸ As

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.”); MURRAY A. STRAUS & DENISE A. DONNELLY, *BEATING THE DEVIL OUT OF THEM* xx (2001); Rosellini, *supra* note 27 (saying Dr. Straus concluded spanking “can doom a child to a lifetime of difficulties ranging from juvenile delinquency to depression, sexual hangups, limited job prospects, and lowered earnings.”).

34. *See, e.g.*, Clifton P. Flynn, *Regional Differences in Attitudes Toward Corporal Punishment*, 56 J. MARRIAGE & FAM. 314, 314 (1994) (“The data indicate that the vast majority of Americans favor the physical punishment of children. In 1986, a National Opinion Research Center survey found that 84% of Americans either agreed or strongly agreed that ‘it is sometimes necessary to discipline a child with a good, hard spanking.’”) (citations omitted).

35. *See, e.g.*, Costello, *supra* note 22 (“[S]panking is making a comeback. A growing number of parents—many of whom were never spanked themselves—are shunning the experts, defying disapproving friends and neighbors, and giving their kids a slap on the bottom, the hand or the leg.”).

36. *See, e.g.*, *supra* note 6 and accompanying text; Edwards, *supra* note 20 and accompanying text; THE CENTER FOR EFFECTIVE DISCIPLINE, *DISCIPLINE AND THE LAW*, available at <http://www.stophitting.com/index.php?page=laws-main> (listing the 113 countries that have banned spanking in schools).

37. *See, e.g.*, GLOBAL INITIATIVE TO END ALL CORPORAL PUNISHMENT OF CHILDREN, GLOBAL PROGRESS, available at <http://www.endcorporalpunishment.org/pages/frame.html> (follow “Global progress” hyperlink; then follow the online global tables) (showing that, internationally, spanking bans tend to occur first in schools and institutions, and lastly in the home).

38. *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 not opposed by the public.), *with, e.g.*, K.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”).

restrictions become more commonplace, it becomes easier to turn public opinion against spanking.³⁹ Ultimately, this ends in a total ban of physical discipline, even in the home.⁴⁰

This counter-majoritarian phenomenon is what led Sweden to become the first country to completely ban spanking.⁴¹ In 1928, the Swedish government prohibited physical discipline in secondary schools through an amendment to the Education Act.⁴² In 1957, it removed the corporal punishment defense from the Penal Code, thus allowing courts to equate criminal assault with spanking by caregivers.⁴³ By 1960, physical discipline was officially abolished in all child care institutions and reform schools.⁴⁴

The government enacted these restrictions with the expectation that “Swedes would now understand that corporal punishment was no longer an acceptable practice.”⁴⁵ Even so, by 1965, over half the Swedish population still thought children needed an occasional spanking.⁴⁶ The next year, despite majority support for physical discipline, the

39. See, e.g., *id.* at 7-8 (reporting that the Swedish government’s increasing restrictions on corporal punishment were “intended to alter attitudes toward the use of physical force of children.”); ERICA R. MEINERS, *RIGHT TO BE HOSTILE 171 (2007)* (“Corporal punishment such as caning or paddling, even though it is still practiced in private and parochial schools, and is not banned in all school districts, is a rarity. Yet, the United States and parts of Australia are still among the ‘thirty-five industrialized countries who do not ban this disciplinary technique.’ 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).

40. See, e.g., *supra* note 37 and accompanying text.

41. See, e.g., DURRANT, *supra* note 38, at 7 (giving a history of the 1979 spanking ban); 6 kap. 1 para. 2 füm ôrûm âldrabalken [Swedish Children and Parents Code ch. 6, 1, ¶ 2] (Swedish Ministry of Justice trans.) (Swed.), in PETER NEWELL, *CHILDREN ARE PEOPLE TOO: THE CASE AGAINST PHYSICAL PUNISHMENT 73 (1989)* (“The parent or guardian shall exercise necessary supervision in accordance with the child’s age and other circumstances. The child may not be subjected to physical punishment or other injurious or humiliating treatment.”); Straus, *Corporal Punishment*, *supra* note 20, at 54 (“The Swedish legislation was initially greeted with derision and scorn.”).

42. See, e.g., DURRANT, *supra* note 38, at 7.

43. See, e.g., *id.*

44. See, e.g., *id.*

45. See, e.g., *id.* (after delineating the above restrictions, saying, “It was expected that Swedes would now understand that corporal punishment was no longer an acceptable practice.”).

46. See *supra* note 38 and accompanying text.

government removed from the Parents' Code an explicit authorization of spanking by parents, while not expressly banning it.⁴⁷

Over the next fourteen years, the Swedish government conducted a massive advertising campaign against corporal punishment, and in favor of mental punishment.⁴⁸ In 1977, the Minister of Justice created a Commission on Children's Rights to further review and modify the Parents' Code.⁴⁹ Within a year, the Commission unanimously proposed an explicit spanking ban.⁵⁰ By 1978, public support for spanking had dropped to twenty-six percent.⁵¹ Nevertheless, ninety-eight percent of Parliament voted to ban all spanking in 1979.⁵²

Immediately after the ban, the Swedish government again campaigned against physical discipline, this time through "the most expensive pamphlet distribution yet conducted in Sweden."⁵³ A sixteen-page tract entitled "Can you bring up children successfully without spanking and smacking?" went to all parents with young children.⁵⁴ It was translated into all immigrant languages, and coincided with anti-spanking advertisements on everyone's milk cartons.⁵⁵ Sweden also tried to teach its citizens how to raise children using only mental

47. See, e.g., DURRANT, *supra* note 38, at 7.

48. See, e.g., Evelyn Gordon, *The Supreme Court In Loco Parentis*, in AZURE: IDEAS FOR THE JEWISH NATION 55 (Winter 2001), available at http://www.azure.org.il/magazine/popUp_print.asp?ID=30&member_Id= ("Sweden, which in 1979 became the first country to ban spanking by parents, did so only after a fourteen-year campaign in which successive governments carried out massive public education efforts to inform parents concerning alternative methods of discipline, while the parliament gradually amended family law to place increasing restrictions on corporal punishment.").

49. See, e.g., DURRANT, *supra* note 38, at 7.

50. See, e.g., *id.*

51. See Ziegert, *supra* note 38, at 921 (saying that, by 1979, 26% of Swedes thought corporal punishment was necessary "from time to time").

52. See, e.g., DURRANT, *supra* note 38, at 7.

53. See, e.g., U.N., *League Table*, *supra* note 7, at 24 (saying the new spanking ban was not a "stand-alone measure but the symbolic centerpiece of a public education campaign.").

54. See, e.g., *id.* ("A 16-page pamphlet – 'Can you bring up children successfully without spanking and smacking?' – was sent to all parents with young children."); DURRANT, *supra* note 38, at 7-8 (saying this was "the most expensive pamphlet distribution yet conducted in Sweden.").

55. See, e.g., DURRANT, *supra* note 38, at 8 (saying that the pamphlet was translated into "[a]ll major immigrant languages In addition, information about the law was printed on milk cartons for two months, in order to have information about the law present at mealtimes, when parents and children are together, so that families could discuss the issue. As a result of these measures, by 1981 99 per cent of Swedes knew about the law—a level of knowledge unmatched in any other study of knowledge about law in industrialised societies.").

punishments through “responsible parenthood” classes—classes that remain part of Swedish education to this day.⁵⁶

Whether by legislation or Supreme Court ruling, twenty-three other countries have similarly abolished spanking,⁵⁷ including Finland,⁵⁸ Norway,⁵⁹ Germany,⁶⁰ Italy,⁶¹ and Israel.⁶² For example, Denmark passed a law to discourage spanking in the home, and then twelve years later banned it altogether.⁶³ Austria likewise repealed an explicit

56. See, e.g., U.N., *League Table*, *supra* note 7, at 24 (“Non-violent ways of bringing up children also entered the syllabus in ‘responsible parenthood’ lessons that are a part of Swedish education at all levels.”).

57. See, e.g., *supra* note 6 and accompanying text (listing twenty-three countries, but not Italy’s judge-made ban); Gordon, *supra* note 48, 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 Bitensky, *supra* note 19, at 371-73).

58. Laki lapsen huollosta ja tapaamisoikeudesta, 1 luku, 1, 3 mom. [Finnish Child Custody and Right of Access Act, ch. 1, 1, subsec. 3] (Finnish Dep’t of Legislation, Ministry of Justice trans.) (saying a child “shall be brought up with understanding, security and gentleness. He shall not be subdued, corporally punished or otherwise humiliated.”). This vote was unanimous. Bitensky, *supra* note 19, at 368 n. 53. The lack of controversy may have been because the prohibition was only one part of a comprehensive overhaul of children’s law that diverted public attention through other controversial measures in the reform legislation. See NEWELL, *supra* note 41, at 86-87.

59. Endring I 1987 av barnlovenes 30, 3. ledd (Lov av 6.feb. 1987 nr 11 om endring I barnloven 30) [Norwegian Parent and Child Act art. 30, 3, as amended by the Amending Act no. 11, Feb. 6, 1987] (Finn Erik Engzelius trans.) (“The child shall not be exposed to physical violence or to treatment which can threaten his physical or mental health.”).

60. See U.N., *League Table*, *supra* note 7, at 23 (saying the new legislation written into the *Bürgerliches Gesetzbuch* (civil law), and ratified Nov. 2000, prohibits “the physical punishment of children”).

61. Cambria, Cass., sez VI, 18 marzo 1996, [Supreme Court of Cassation, 6th Penal Sec., Mar. 18, 1996], Foro It. II 1996, 407 (Italy) (Triangle Translation trans.) (on file with U. MICH. J.L. REFORM), at 4 (announcing as a new juridical principal that “the use of violence for educational purposes can no longer be considered lawful.”).

62. *Plonit v. State* (CA 4596/98), Jan. 25, 2000, Isr. S.Ct., at ¶¶ 29-30 (holding that “the use of corporal punishment . . . is forbidden today in our society. There are more than a few parents among us who use non-excessive force towards their children (such as a light slap on the rear or hand) in order to educate and discipline them We must not endanger the physical and emotional integrity of a minor by administering any corporal punishment at all. The yardstick must be clear and unequivocal, and the message is that corporal punishment is not permitted.”) (also saying physical punishment “distances us from our aspirations to be a society free from violence”).

63. *Compare* Lov nr. 387 af 14. juni 1995 om forældremyndighed og samvær, jf. 2, stk. 2 [Danish Act on Parental Custody and Conviviality no. 387, 2, subsec. 2 (June 14, 1995)] (revision of 1985 law) (Kromann & Mûm ûnter trans.), in NEWELL, *supra* note 41, at 91 (“Parental custody implies the obligation to protect the child against physical and psychological violence and against other harmful treatment.”), with 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 &

authorization of spanking twelve years before outlawing it completely.⁶⁴ New Zealand joined this group in 2007, criminalizing virtually every form of physical restraint such that a parent cannot even take her child's hand to bring him where he does not want to go.⁶⁵

C. The U.N. Convention on the Rights of the Child Is Being Used to Abolish Spanking Worldwide

Many countries have felt compelled to ban spanking since 1989, when the United Nations wrote the Convention on the Rights of the Child (the "Convention")—a "treaty" that has been ratified by all U.N. member nations except the U.S. and Somalia.⁶⁶ The U.N. has made

Mûm ûnter trans.) ("The child has the right to care and security. It shall be treated with respect for personality and may not be subjected to corporal punishment or any other offensive treatment.").

64. See, e.g., Bitensky, *supra* note 19, at 376 ("In 1977, Austria repealed an explicit authorization of parents to corporally punish their children. Austrian civil law experts believed that this repeal meant that all parental corporal punishment of children had been forbidden except to restrain a child in an emergency situation. However, other experts disagreed that the repeal had had such an effect, and the 1989 express prohibition was, in part, a response to this confusion; it was hoped that the 1989 reform would produce consistency in judicial decisions on this issue."); 146a ABGB [Austrian Civil Code 146a] (Berlitz Translation Services trans.) ("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.").

65. See 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)."); *Most Extreme Anti-Smacking Law in World*, SCOOP INDEP. NEWS (May 13, 2007), available at <http://www.scoop.co.nz/stories/PO0705/S00223.htm> [hereinafter *Most Extreme Law*] (saying New Zealand criminally punishes anyone that treats her child in a way that she would not publicly treat her neighbor. Because an adult would not pull another adult where he does not want to go, a parent cannot do that to her child.).

66. Compare Convention on the Rights of the Child, G.A. Res. 44/25, Preamble, U.N. GAOR, 61st plen. mtg., U.N. Doc. A/RES/44/25 (Nov. 20, 1989) [hereinafter *Convention*] ("Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person . . ."), with, e.g., U.N., *League Table*, *supra* note 7, at 3 ("Several more countries are close to introducing similar measures. If and when these countries move to bring in the necessary legislation, they will be showing the world that they are taking their obligations under the Convention on the Rights of the Child seriously, and strengthening the message that the goal of ending violence towards children in all its forms can be advanced by every parent in every country and that a culture of non-violence towards children can and should be built from the ground up."); U.N. Comm. on the Rights of the Child, *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, ¶¶ 35-38, U.N. Doc. CRC/C/15/Add.188 (Oct. 9, 2002) [hereinafter *Concluding Observations: U.K.*] (criticizing Great Britain for allowing spanking and urging it to prohibit "reasonable chastisement"). Indeed, the U.N. has clearly and consistently called for the banning of spanking. See, e.g., U.N. Comm. on the Rights of the Child, *Concluding Observations: Canada*, ¶¶ 4-5, U.N. Doc. CRC/C/15/Add.215 (Oct. 27, 2003). See Mary Ann Mason, *The U.S. and the International*

clear that it intends to use the Convention to prohibit all forms of physical discipline everywhere, even within families.⁶⁷

The U.N. monitors compliance with the Convention through the ten-person Committee on the Rights of the Child.⁶⁸ This committee interprets the Convention and instructs nations how better to comply with its tenets.⁶⁹ Additionally, each ratifying country must regularly report to the committee to describe how it is upholding the treaty.⁷⁰

In most nations, the Convention can only be used to make “suggestions and general recommendations.”⁷¹ However, the U.S. Constitution honors treaties as binding over both state and federal law.⁷²

Children’s Rights Crusade: Leader or Laggard?, 38 J. SOC. HIST. 955, 955 (July 1, 2005) (saying “all the U.N. member countries have ratified this treaty, with the notable exceptions of Somalia and the United States”).

67. See, e.g., U.N., *Children and Violence*, *supra* note 5, at 2-3 (“Leading this trend is the Committee on the Rights of the Child, the international monitoring body for the convention, which has consistently challenged laws that permit any physical punishment of children, recommending clear legal reform and educational programmes.”); U.N., *League Table*, *supra* note 7, at 31 (“The United Nations Committee on the Rights of the Child has no doubts on the issue. It has called on all governments to prohibit all forms of physical punishment, including within the family, the education system, child care institutions, and the judicial system.”).

68. *Convention*, *supra* note 66, at art. 44 ¶ 2 (requiring that reports made to the committee “shall indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.”); *id.* at art. 43 (establishing that the committee “shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties . . .”).

69. *Id.* at art. 45(d) (saying that the committee “may make suggestions and general recommendations based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned.”).

70. *Id.* at art. 44 ¶ 1(b) (requiring each nation to “submit to the Committee, through the Secretary-General of the United Nations, reports on the measure they have adopted” every five years).

71. See *supra* note 69 and accompanying text.

72. See U.S. CONST. art. VI, § 2 (stating that “all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding”). *But see* Reid v. Covert, 354 U.S. 1, 16-17 (1957) (“There is nothing in [Article VI] which intimates that treaties and laws enacted pursuant to them do not have to comply with the provisions of the Constitution. Nor is there anything in the debates which accompanied the drafting and ratification of the Constitution which even suggests such a result.”). While there are several arguments as to why the Convention contradicts the Constitution, that subject is not addressed in this paper.

Therefore, if America were to ratify the Convention, it could have tremendous influence over U.S. family law.⁷³

For instance, the Convention could be used so that every U.S. child has access to virtually anyone and anything he wants, regardless of moral turpitude.⁷⁴ It could be used to hinder a parent from choosing where her child goes to school.⁷⁵ And, almost certainly, it would be used to insist on a U.S. spanking ban.⁷⁶

Currently, the U.N. is urging America to ratify the Convention “as a matter of priority.”⁷⁷ However, U.S. courts have already begun using

73. See, e.g., ABA Center on Children and the Law & Defence for Children International, *Children's Rights in America: United Nations Conventions on the Rights of the Child Compared with United States Law*, at 35 (Cynthia Price Cohen & Howard Davidson eds., 1990) (saying that when a country adopts the Convention, the U.N. “requires a State Party to take positive measures, legislative and otherwise, to make sure that the [child’s] right can be effectively exercised”). Note that Howard Price is director of the ABA Committee on Children in the Law and Cynthia Price Cohen is a member of the Ad Hoc Non-Governmental Group on the Drafting of the Convention on the Rights of the Child.

74. See *Convention*, *supra* note 66, at art. 17 (requiring that the member government “recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources”); *id.* at art. 13 ¶ 1 (saying “[t]he child shall have the right to freedom of expression”); *id.* at art. 14 ¶ 1 (obliging the member government to “respect the right of the child to freedom of thought, conscience and religion”); *id.* at art. 15 (requiring that the member government “recognize the rights of the child to freedom of association and to freedom of peaceful assembly” and that “[n]o restriction may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security or public safety, public order (ordre public), the protection of public health or morals, or the protection of the rights and freedoms of others”); *id.* at art. 16 ¶ 1 (“No child shall be subjected to arbitrary or unlawful interference with his or her privacy.”).

75. Compare, *Concluding Observations: U.K.*, *supra* note 66, at ¶¶ 15, 29, 52 (saying the committee is concerned that English parents can control where their children attend school and how they act at home), with *Convention*, *supra* note 66, at art. 12 ¶ 1 (“State Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child.”).

76. See, e.g., *supra* note 67 and accompanying text; COUNCIL OF EUROPE, ELIMINATING CORPORAL PUNISHMENT 87 (2007) (“The human rights obligations of member states require that their domestic law prohibits all corporal punishment and other degrading or humiliating treatment or punishment of children. . . . In common-law countries, any common-law defence (defences developed by court decision, like the ‘reasonable punishment’ defence in English law) should also be explicitly removed.”); MALCOLM HILL & JANE ALDGATE, CHILD WELFARE SERVICES 76-77 (1996) (“On 7 June 1995, the *Daily Telegraph* reported that a call for the reintroduction of flogging of young offenders who commit violent crimes was defeated in the House of Commons by a vote of 153 to 58. . . . [T]he report . . . could also have argued that it would have contravened the United Nations Convention on the Rights of the Child which the UK ratified in 1991.”) (citation omitted).

77. See, e.g., G.A. Res. S-27/2, ¶ 29, U.N. GAOR, 27th Spec. Sess., U.N. Doc. A/RES/S-27/2, *A World Fit for Children* (May 10, 2002) (urging “all countries to consider, as a matter of priority, signing and ratifying or acceding to the Convention on the Rights of the Child”). While the U.N. urges “all countries” to ratify the Convention, only two U.N. countries have not done so:

it as persuasive authority, under the doctrine of “customary international law.”⁷⁸ The Supreme Court also has used the Convention when determining whether a minor may get the death penalty.⁷⁹ Thus, regardless of whether the U.S. ratifies the Convention, its philosophies are influencing American law.⁸⁰

D. America Is Following the Incremental Path that Leads to a Ban on Spanking in the Home

Laws in the U.S. have always allowed parents to use discipline methods that meet the special needs of their children, including spanking.⁸¹ At the same time, those laws prohibit physical and mental child abuse.⁸²

Somalia (which does not have a standing government) and the U.S. *Compare* Mason, *supra* note 66, with William Foreman, *3 Chinese Navy Ships Leave for Somalia*, CHICAGO SUN-TIMES, Dec 25, 2008, available at <http://www.suntimes.com/news/world/1350108,w-china-navy-pirates-somolia-122608.article#> (saying Somalia “has not had a functioning government since warlords overthrew a dictator in 1991 and then turned on each other.”). Thus, the above plea was directed at the U.S.

78. *See, e.g.*, *Nicholson v. Williams*, 203 F.Supp.2d 153, 234 (E.D.N.Y. 2002) (saying, somewhat misleadingly with regard to the U.S.’s stance on the Convention, “the Convention on the Rights of the Child (CRC), which the United States has signed and which some courts have found to be evidence of customary international law binding on United States courts.”).

79. *Roper v. Simmons*, 543 U.S. 551, 576 (2005) (“Article 37 of the United Nations Convention on the Rights of the Child, which every country in the world has ratified save for the United States and Somalia, contains an express prohibition on capital punishment for crimes committed by juveniles under 18.”).

80. *Compare* Press Release, U.N. Comm. on the Rights of the Child, Committee on Rights of Child to Hold Tenth Session at Geneva 30 Oct.-17 November, U.N. Doc. HR/4197 (Oct. 24, 1995) (saying the U.S. is not a part to the Convention), *with, e.g.*, *Roper v. Simmons*, 543 U.S. 551, 554, 576 (2005) (considering the Convention, and then saying the “overwhelming weight of international opinion against the juvenile death penalty [is] not controlling [in the U.S., but] does provide respected and significant confirmation for [the Court’s determination that the penalty is disproportionate punishment for offenders under 18].”).

81. *See* ALA. CODE §§ 13a-3-24(1) (1977), 13A-13-6(b) (1977); ALASKA STAT. § 11.81.430(a)(1) (1993); ARIZ. REV. STAT. ANN. § 13-403(1) (1978); ARK. CODE ANN. §§ 5-2-605(1) (West 2007), 9-27-303(B) (West 2007); CAL. PENAL CODE §§ 11165.4 (West 1987), 11165.6 (West 2007); CAL. WELF. & INST. CODE § 300(a) (West 2005); COLO. REV. STAT. §§ 18-1-703(1)(a) (West 1981), 19-1-103(1)(b) (West 2008); CONN. GEN. STAT. ANN. § 53a-18 (West 1992); DEL. CODE ANN. tit. 11, § 468 (1995); D.C. CODE § 16-2301(23)(B) (2007); FLA. STAT. § 39.01(2) (West 2008); GA. CODE ANN. §§ 16-3-20(3) (West 1999), 19-7-5(b)(3)(A) (West 2006), 19-15-1(3)(A) (West 2001), 49-5-180(5)(A) (West 1996); HAW. REV. STAT. § 703-309(1) (2001); IDAHO CODE § 16-2002 (2005); 325 ILL. COMP. STAT. 5/3 (West 2008); IND. CODE ANN. § 31-34-1-15 (West 2008); IOWA CODE § 726.6 (West 2007); KAN. STAT. ANN. § 21-3609 (1995); KY. REV. STAT. ANN. § 503.110(1) (West 1982); LA. REV. STAT. ANN. § 14:18(4) (2007); ME. REV. STAT. ANN. tit. 17-A, §§ 106(1) (2007), 554(1)(B-1) (2005); MD. CODE ANN. FAM. LAW § 4-501(b)(2) (2006); MASS. GEN. LAWS ch. 111 § 72F (West 1998); MICH. COMP. LAWS ANN. § 750.136(b) (West 2004); MINN. STAT. §§ 609.377(1) (West 2000), 609.379 (West 1999); MISS. CODE ANN. §§

43-21-105(m) (West 2005), 97-5-39(2)(a) (West 2005); MO. REV. STAT. § 210.110(1) (West 2005), 563.061 (West 1979); MONT. CODE ANN. §§ 45-3-107 (1973), 41-3-102(19) (2005); NEB. REV. STAT. §§ 28-710 (2005), 28-1413 (1988), 28-1414 (1975); NEV. REV. STAT. §§ 128.013 (West 2001), 432B.150 (West 1985); N.H. REV. STAT. ANN. § 627:6(I) (2002); N.J. STAT. ANN. §§ 2C:3-8 (West 1979), 2C: 3-9 (West 1981), 9:6-1 (West 1987), 9:6-8.9 (West 1987); N.M. STAT. §§ 32A-4-2 (West 1999), 30-6-1 (West 2005); N.Y. PENAL LAW § 35.10(1) (McKinney 2004); N.Y. FAM. CT. ACT § 1012(f)(1)(B) (McKinney 2006); N.C. GEN. STAT. § 7B-101(1) (West 2005); N.D. CENT. CODE §§ 12.1-05-05(1) (1999), 50-25.1-02 (2007); OHIO REV. CODE ANN. § 2151.05 (West 1975), 2151.031(B) (West 1989), 2919.22; 21 (West 2006); OKLA. STAT. ANN. tit. 21 § 844 (West 1963); OKLA. STAT. ANN. tit. 10 § 7115 (West 2008); OR. REV. STAT. § 161.205(1) (West 1981); 18 PA. STAT. ANN. § 509(1) (West 1992); 23 PA. STAT. ANN. § 6302(c) (West 1999); R.I. GEN. LAWS §§ 11-9-5.3 (2001), 40-11-2(1)(i) (2006); S.C. CODE ANN. § 20-7-490(3)(a) (2002); S.D. CODIFIED LAWS §§ 22-18-5 (2005), 26-10-1 (2008); TENN. CODE ANN. §§ 39-15-401 (West 2008); TEX. FAM. CODE ANN. § 261.001(1)(C) (Vernon 2007); TEX. PENAL CODE ANN. § 9.61 (Vernon 1994); UTAH CODE ANN. § 76-2-401(1)(c) (2000); WASH. REV. CODE §§ 9A.16.100 (West 1986), 26.44.015 (West 2005); WIS. STAT. ANN. § 939.45 (West 2005); WYO. STAT. ANN. §§ 6-2-503(b) (1998), 14-3-202 (2007).

82. *See* ALA. CODE §§ 26-14-1 (1993), 26-14-2 (1975); ALASKA STAT. §§ 47.17.010 (1990), 47.17.290 (2000); ARIZ. REV. STAT. ANN. §§ 13-3620 (2003), 13-3623(2006), 8-201 (2003); ARK. CODE ANN. §§ 12-12-501 (West 2003), 12-12-503 (West 2007); CAL. PENAL CODE §§ 11164 (West 2000), 11165.4-11165.6 (West 1987), 11166.05 (West 2004); COLO. REV. STAT. §§ 19-1-103 (West 2008), 19-3-100.5 (West 1998), 19-3-301 (West 1987), 19-3-302 (West 1987); CONN. GEN. STAT. ANN. §§ 17a-100 (West 1996), 46b-120 (West 2007); DEL. CODE ANN. tit. 16, § 901 (1997); D.C. CODE § 4-1301.02 (2007); FLA. STAT. §§ 39.201 (West 2008), 39.202 (West 2006), 39.205 (West 2008), 39.01(2) (West 2008); GA. CODE ANN. § 19-7-5 (West 2006), 19-7-4 (West 1933); HAW. REV. STAT. § 350-1 (1988); IDAHO CODE § 16-1601 (2003), 16-1602 (2007); 325 ILL. COMP. STAT. 5/1 (West 1975), 5/3 (West 2008); IND. CODE ANN. §§ 31-33-1-1 (West 2005), 31-33-22-3 (West 2005), 31-9-2-14 (West 2007), 31-34-1-2 (West 2007), 31-33-22-1 (West 1997); IOWA CODE §§ 232.67 (West 1998), 232.68 (West 2008); KAN. STAT. ANN. §§ 38-2201 (2006), 38-2202 (2006); KY. REV. STAT. ANN. §§ 620.010 (West 1987), 620.990 (West 2008), 600.020 (West 2008); LA. REV. STAT. ANN. § 14:403 (1992); LA. CHILD. CODE ANN. arts. 603 (2008), 609 (1993); ME. REV. STAT. ANN. tit. 22 §§ 4002 (2007), 4011 (2007), 4009 (1979); MD. CODE ANN. FAM. LAW § 5-701 (2006); MASS. GEN. LAWS chs. 119 § 51A (West 2008), 119 § 21 (West 2008); MICH. COMP. LAWS ANN. §§ 722.621 (West 1975), 722.622 (West 2005), 722.623 (West 2008), 722.633 (West 2002); MINN. STAT. §§ 626.556 (West 2007), 626.5572 (West 2008); MISS. CODE ANN. § 43-21-353 (West 2007), 43-21-105 (West 2005); MO. REV. STAT. § 210.110 (West 2005); MONT. CODE ANN. §§ 41-3-101 (2003), 41-3-102 (2005), 41-3-201 (2007); NEB. REV. STAT. §§ 28-707 (2006), 28-710 (2005), 28-717 (2005); NEV. REV. STAT. §§ 432B.010 (West 1995), 432B.020 (West 2004), 432B.070 (West 1985), 432B.090 (West 1997); N.H. REV. STAT. ANN. §§ 169-C:3 (2008), 169-C:29 (1979); N.J. STAT. ANN. §§ 9:6-8.8 (West 1999), 9:6-8.9 (West 1987); N.M. STAT. §§ 32A-4-1 (West 1993), 32A-4-2 (West 1999); N.Y. SOC. SERVICES. §§ 411 (McKinney 1973), 412 (McKinney 2006), 428 (McKinney 1973); N.C. GEN. STAT. §§ 7B-100 (West 2003), 7B-101 (West 2005); N.D. CENT. CODE §§ 50-25.1-01 (1995), 50-25.1-02 (2007); OHIO REV. CODE ANN. §§ 2151.011 (West 2006), 2921.14 (West 1991), 2151.421 (West 2008); OKLA. STAT. ANN. tit. 10 §§ 7102-7105 (West 2008); OR. REV. STAT. § 419B.005-100 (West 2005); 23 PA. STAT. ANN. § 6303 (West 2007); R.I. GEN. LAWS §§ 40-11-1 (1976), 40-11-2 (2006); S.C. CODE ANN. §§ 20-7-480 (1997), 20-7-490 (2002); S.D. CODIFIED LAWS §§ 26-8A-1 (1991), 26-8A-2 (2008); TENN. CODE ANN. §§ 37-1-401 (West 1996), 37-1-402 (West 1977); TEX. FAM. CODE ANN. § 261.001 (Vernon 2007); UTAH CODE ANN. §§ 62A-4a-401 (2008), 62A-4a-402 (2008); VT. STAT. ANN. tit. 33, § 4911 (2008); VA. CODE ANN. §§ 63.2-1501 (West 2002), 63.2-100 (West 2008); WASH. REV. CODE §§ 26.44.010 (1999),

While states restrict the force with which a parent uses a physical or mental discipline method, they do not abolish the method itself. For example, states restrict the force of timeout to deter a parent from, say, locking her child in a room for days without food;⁸³ but states don't outlaw the use of timeout entirely. They restrict excessive child labor, like working sixteen-hour days in a coal mine;⁸⁴ but they don't ban a child from cleaning his room.

Likewise, most states hold that "corporal punishment by a parent is not per se child abuse."⁸⁵ They do say, however, that a parent cannot use "punishment which would exceed 'that properly required for disciplining purposes' or which would extend beyond the bounds of moderation."⁸⁶ Accordingly, states do not ban parents from physically disciplining children within the bounds of moderation and reason.⁸⁷

Yet, for decades now, America has been going down the same gradual path toward a total spanking ban that other countries have.⁸⁸ In 1977, the Supreme Court upheld the use of corporal punishment in schools.⁸⁹ But since then, twenty-one states and counting have outlawed it expressly.⁹⁰ Even where physical discipline is still legal, more and

26.44.020 (2008); W. VA. CODE ANN. §§ 49-6A-1 (West 1977), 49-1-1 (West 1999), 49-1-3 (West 2007); WIS. STAT. ANN. §§ 48.981 (West 2008), 48.01 (West 2008), 48.02 (West 2008); WYO. STAT. ANN. §§ 14-3-201 (2005), 14-3-202 (2007).

83. See, e.g., *Hill v. State*, 881 S.W.2d 897 (Tex. Ct. App. 1994) (affirming a conviction of appellants that put a boy through extreme confinement).

84. See, e.g., *Humphrey v. Virginian Ry. Co.*, 54 S.E.2d 204, 211 (W. Va. 1949) (quoting "Barnes' Code, 1923, Chapter 15H, Section 72, which provided that 'no child under the age of sixteen years shall be employed, permitted, or suffered to work in any mine, quarry, tunnel or excavation'").

85. *Brown v. Brown*, 68 S.W.3d 316, 322 (Ark. App. 2002). See also, e.g., *In re Welfare of Children of N.F.*, 749 N.W.2d 802, 810 (Minn. 2008) ("We are unwilling to establish a bright-line rule that the infliction of any pain constitutes either physical injury or physical abuse, because to do so would effectively prohibit all corporal punishment of children by their parents."); *Hildreth v. Iowa Dep't of Human Servs.*, 550 N.W.2d 157, 158-59 (Iowa 1996) (reversing an administrative ruling that a father had abused his eight-year-old by spanking her three times with a wooden spoon, causing red marks).

86. See, e.g., *Bowers v. State*, 389 A.2d 341, 348 (Md. 1978).

87. See, e.g., *Carpenter v. Commw.* 44 S.E.2d 419, 423 (Va. 1947) (recognizing that "[c]ourts are agreed that a parent has the right to administer such reasonable and timely punishment as may be necessary to correct faults in his growing children"); *State v. Arnold*, 543 N.W.2d 600, 603 (Iowa 1996) (saying "parents have a right to inflict corporal punishment on their child, but that right is restricted by moderation and reasonableness").

88. Cf. *supra* Part II.B.

89. *Ingraham v. Wright*, 430 U.S. 651 (1977).

90. 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);

more schools themselves are either prohibiting it outright, or seldom using it at all.⁹¹

Now, “even among adults who spank their own child, 67 percent say grade-school teachers should not be permitted to spank children at

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); OR. REV. STAT. § 339.250(12) (West 2001); VT. STAT. ANN. tit. 16, § 1161a(c) (2003); VA. CODE ANN. § 22.1-279.1 (West 1995); WASH. REV. CODE § 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). *But see* H.B. 406 (Ohio 2008) (proposing to ban spanking in schools). *See* 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 . . .”).

91. *See, e.g.,* MEINERS, *supra* note 39 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 5,245 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).

school.”⁹² At the same time, many Americans think “lack of discipline” has become the biggest problem in public education.⁹³

While physical discipline has been going extinct in schools, it has also been abolished in virtually every institution, daycare facility, and foster home throughout the country.⁹⁴ Social workers are even being trained to think that spanking in the home is harmful and should be stopped.⁹⁵ They are being taught to advocate against physical discipline both publicly and on private home visits.⁹⁶

92. See, e.g., *Most Say Spanking's OK by Parents But Not by Grade-School Teachers*, ABC NEWS, Nov. 8, 2002, available at <http://abcnews.go.com/images/PollingUnit/903a1Spanking.pdf>.

93. See, e.g., *School Poll*, THE WASHINGTON TIMES, Aug. 28, 1995, at A-2.

94. See, e.g., EPOCH-USA, *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.’”).

95. See, e.g., RICHARD P. BARTH, JILL DUERR BERRICK & NEIL GILBERT, *CHILD WELFARE RESEARCH REVIEW* 49-50 (1994) (“[T]he National Association of Social Workers has openly taken a firm position against parental use of physical punishment, declaring that all physical punishment of children has some harmful effects and should be stopped (NASW 1989).”); 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.”).

96. Compare, e.g., *supra* note 95 and accompanying text (showing that social workers are taught that spanking is wrong), and *HELPING IN CHILD PROTECTIVE SERVICES: A COMPETENCY-BASED CASEWORK HANDBOOK* 519 (Charmaine R. Brittain, MSW, PhD & Deborah Esquibel Hunt, LCSW, PhD eds., 2004) (“Some abusing parents mistakenly believe that corporal punishment is the only way to discipline children, and some child development specialists believe that almost all parents must occasionally resort to corporal punishment to discipline or train children. Other professionals believe that corporal punishment is never advisable.”), with 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 teacher 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)).

We have come to the point that some legislators feel comfortable proposing an explicit ban on spanking in the home.⁹⁷ In January 2007, for example, a California legislator proposed a bill that contained a total ban on spanking children under four years old.⁹⁸ Within one month, public outcry forced the removal of the ban from the bill; but the legislator countered by inserting a rebuttable presumption that “physical pain or mental suffering” is “unjustifiable” when caused by spanking.⁹⁹

In May 2007, the California Assembly Appropriations Committee rejected the bill entirely because it lacked support.¹⁰⁰ Even so, the legislator introduced yet another proposal to criminalize spanking, this time with a penalty of up to one year in prison and termination of the parent-child relationship.¹⁰¹

Such actions show that opposition to spanking is gaining more and more influence in America. Thus, it is important to consider whether the reasons for that opposition are valid. Just because spanking is often couched in terms like “torture” and “abuse” does not mean such language is appropriate.¹⁰² Just because some think physical discipline violates human rights does not mean this view is correct or well reasoned.¹⁰³ Indeed, the idea that spanking is harmful is contradicted by much of the research, and by the data on existing spanking bans.

III. THE PROBLEMS ASSOCIATED WITH ANTI-SPANKING LAWS: A LOOK AT THE FIRST COUNTRY TO BAN ALL PHYSICAL DISCIPLINE

Of the two dozen countries that have totally outlawed spanking, Sweden was the first.¹⁰⁴ Historically, Sweden has been remarkably non-

97. See, e.g., H.B. 3922 (Mass. 2007) (proposing to ban corporal punishment everywhere).

98. E.g., Jennifer Steinhauer, *A Proposal to Ban Spanking Sparks Debate*, N.Y. TIMES, Jan. 21, 2007, at National (reporting a proposal “that California become the first state in the nation to make spanking of children 3 years old and under a misdemeanor.”).

99. See Assem.B. 755, Reg. Sess. (Cal. 2007).

100. See Jim Sanders, *Spanking Bill Rejected*, THE SACRAMENTO BEE, June 1, 2007, at A4.

101. See Assem.B. 2943, Reg. Sess. (Cal. 2008).

102. See, e.g., *Convention*, *supra* note 66, at art. 37(a) (forbidding “torture”); *id.* at art. 19 ¶ 1 (requiring “measures to protect the child from all forms of . . . abuse [and] maltreatment . . .”); *Concluding Observations: U.K.*, *supra* note 66, at ¶¶ 15, 29, 52 (consistently using the terms “torture” and “abuse” and saying physical discipline qualifies as “physical abuse”).

103. See, e.g., U.N. Comm. on the Rights of the Child, *Report on the Seventh Session, Geneva, 26 Sept.-14 Oct. 1994*, 63, U.N. Doc. CRC/C/34 (Nov. 8, 1994) (“In the framework of its mandate, the Committee [of Ten] has paid particular attention to the child’s right to physical integrity. In the same spirit, it has stressed that corporal punishment of children is incompatible with the Convention and has often proposed the revision of existing legislation . . .”).

104. See *supra* note 6 and accompanying text.

violent.¹⁰⁵ Still, many people welcomed Sweden's 1979 spanking ban as a much-needed law to reduce child abuse.¹⁰⁶

In many respects, Sweden is an ideal laboratory to study spanking bans.¹⁰⁷ Sweden knew its legislation was groundbreaking, and therefore has implemented many programs to support the ban.¹⁰⁸ Also, researchers have been collecting extensive data on the law's effects.¹⁰⁹ Accordingly, Sweden has been the subject of to the most comprehensive and widely discussed spanking ban study to date.¹¹⁰

Many think Sweden's efforts to stop spanking have been successful—the world's role model for childrearing.¹¹¹ But a generation now has grown up under Sweden's spanking ban, and the results are not so promising.¹¹²

105. See U.N., *League Table*, *supra* note 7, at 9 fig. 5 (showing one child maltreatment death annually per 100,000 children between 1971-75. This was the eleventh lowest rate among rich nations.); LARZELERE, *supra* note 12, at 4 ("Sweden has historically been a very non-violent country, especially compared to the United States.").

106. See, e.g., Warren W. Deley, *Physical Punishment of Children: Sweden and the U.S.A.*, 19 J. COMP. FAM. STUD. 419 (1988); Ziegert, *supra* note 38 (both welcoming the Swedish ban).

107. See Robert E. Larzelere, *Differentiating Evidence from Advocacy in Evaluating Sweden's Spanking Ban*, July 2005, at 1 [hereinafter Larzelere, *Differentiating*], available at <http://ches.okstate.edu/facultystaff/Larzelere/rdurrn1.75.pdf> ("Sweden has more relevant evidence available from their country than any other country that has banned spanking.").

108. See *supra* note 53 and accompanying text.

109. See, e.g., Deley, *supra* note 106; C. Pritchard, *Children's Homicide as an Indicator of Effective Child Protection: A Comparative Study of Western European Statistics*, 22 BRIT. J. SOC. WORK 663 (1992); Joan S. Solheim, *A Cross-cultural Examination of Use of Corporal Punishment on Children: A Focus on Sweden and the United States*, 6 CHILD ABUSE & NEGLECT 147 (1982); Murray A. Straus & R.J. Gelles, *Societal Change and Change in Family Violence from 1975 to 1985 as Revealed by the National Surveys*, 48 J. MARRIAGE & FAM. 465 (1986); *supra* note 107 and accompanying text.

110. See, e.g., U.N., *League Table*, *supra* note 7, at 24-25 (discussing Sweden's laws, attitudes, legal cases, progress, and problems. The discussion on Sweden is one of only three highlights of countries in the entire report and is about twice as long as the two others—Germany (at 23) and Italy (at 30).); *supra* note 107 and accompanying text.

111. 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 48 ("Sweden's success with the ban on parental use of physical punishment may both encourage and enlighten a U.S. journey toward a public education campaign to discourage parental use of physical punishment.").

112. 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 . . .").

A. A Little Less Spanking, A Lot More Child Abuse

In the thirty years since the Swedish spanking ban, the prevalence of physical discipline has decreased only slightly; but its frequency has dropped such that those who are spanked are spanked only once or twice in their lives.¹¹³ Nevertheless, many more Swedish children now endure helpless, explosive, and counterproductive parenting.¹¹⁴

Professor Adrienne Haeuser of the University of Wisconsin-Milwaukee took two professional trips to Sweden: the first in 1981 and the second in 1988.¹¹⁵ While there, she interviewed parents and government personnel throughout Sweden.¹¹⁶ Professor Haeuser explicitly wanted to “promote positive visibility of,” and gain U.S. support for, Sweden’s spanking ban.¹¹⁷

Two years after the ban, she discovered that parents had not yet found constructive alternatives to physical discipline.¹¹⁸ Instead, most parents resorted to “yelling and screaming at their children, and some believed this was equally, perhaps more, destructive.”¹¹⁹

113. See 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) [hereinafter Statistics Sweden] (summarizing that the prevalence and frequency of physical punishment dropped dramatically before the spanking ban, but only slightly thereafter); Larzelere, *Differentiating*, *supra* note 107, at 4 (saying that, in the vast majority of cases, children were spanked only once or twice); LARZELERE, *supra* note 12, at 6-7 (In a 1994-95 survey, 34% of respondents agreed partly or fully with the statement: “Mild or moderate physical punishment is sometimes necessary as a child rearing method, but should be carefully considered and not the result of anger.” 22% were “in principle against all forms of physical punishment, but can use such punishment if upset enough.” 11% were “positively inclined to . . . physical punishment.”).

114. See generally Wittrock, *1981-1991*, *supra* note 12; Wittrock, *1984-1994*, *supra* note 12 and accompanying text.

115. See Haeuser, *supra* note 111, at ii (saying that she traveled across Sweden in 1981 and 1988 to determine the effects of the 1979 spanking ban).

116. See *id.* at 4 (saying that she interviewed about seventy parents, government personnel, health professionals, and teachers).

117. See *id.* at 2 (wanting to “promote positive visibility of this Swedish law in the U.S. and garner U.S. support for the possibility of promoting U.S. parenting norms which avoid physical punishment”).

118. See *id.* at 22 (saying that parents and professionals agreed that, in 1981, parents had not found “constructive alternatives” to physical punishment). Instead, most parents simply overlooked misbehavior. See *id.* at 23 (“What by American standards would clearly be misbehavior or an unreasonable demand is often patiently tolerated or overlooked.”).

119. See *id.* at 22.

By her second trip, many Swedish parents immobilized their child by grabbing his upper arms firmly, sometimes painfully.¹²⁰ While the child was immobilized, the parent made eye contact with him and talked to him about changing his behavior.¹²¹ Thus, even when mental punishments are emphasized heavily, many parents still seem to have difficulty controlling their children without physical intervention.¹²²

Indeed, without corporal punishment, Swedish parents resort to more physical restraint and angry yelling than U.S. parents, and also use timeout much less.¹²³ As the following account from a New Zealand lawyer-mother indicates, making a child sit—whether in a timeout chair or a car seat—becomes more difficult with a ban on spanking (there called “smacking”):

Smacking my son was a parenting strategy of last resort and was immediately effective when dealing with defiance and dangerous situations. I’ve never smacked in anger and never without issuing a final warning first. I’m a text-book smacker. . . .

120. See *id.* (saying that in 1988 “nearly all parents reported that when necessary, a parent holds a child still by firmly grasping the upper arms”); *id.* at 22 (“A few parents agreed with some professionals that occasionally the immobilizing arm hold might be slightly painful but they do not define this as physical punishment since the intent is to get the child’s attention.”). Note that New Zealand’s spanking ban does not allow even the Swedish immobilization technique. See *Most Extreme Law*, *supra* note 65 and accompanying text. Instead, New Zealand criminally punishes anyone that treats her child in a way that she would not publicly treat her neighbor. *Id.*

121. See Haeuser, *supra* note 111, at ii (“This includes stopping unwanted behavior by immobilizing a child through a firm hold on the child’s arms and insisting on eye contact during discussion. Most parents believe it is important to discuss feelings; the child should know the parent is angry and why. Some parents admit discussion may escalate to yelling.”).

122. See *id.* at 26 (saying a few parents used “mild physical force, perhaps giving a quick shake or pulling on a lock of hair, to get a child’s attention.” One father reported spanking his “very aggressive son” once or twice a year, but did so because a “good smack says more than hours of talk . . .”).

123. See, e.g., Kerstin Palmerus & Sandra Scarr, *How Parents Discipline Young Children: Cultural Comparisons and Individual Differences*, Paper Presented at the Biennial Conference of the Society for Research in Child Development, Indianapolis, Ind. (1995) (reporting that, compared to U.S. parents, Swedish parents use much less physical punishment, but they also report somewhat less use of reasoning, much less use of timeout, and more use of physical restraint and coercive verbal admonitions); cf. Den A. Trumbull, M.D. and S. DuBose Ravenel, M.D., *Spare the Rod? New Research Challenges Spanking Critics*, 9 FAM. POL’Y 5 (Oct., 1996) (saying a spanking ban would not eliminate explosive scenarios) (“When effective spanking is removed from a parent’s disciplinary repertoire, he or she is left with nagging, begging, belittling, and yelling, once the primary disciplinary measures—such as time-out and logical consequences—have failed. By contrast, if proper spanking is proactively used in conjunction with other disciplinary measures, better control of the particularly defiant child can be achieved, and moments of exasperation are less likely to occur.”).

But now, with my precious Portia, aged 2 years 8 months, my tool box is looking a little empty.

“No,” she says. “I won’t put my seat belt back on.” Try reasoning, Auntie Sue B suggests. “If we crash, you’ll get hurt.”

“No, I didn’t.”

Try praising the good behaviour, says Auntie Cindy K.

“Mummy loves it when you wear your seatbelt.”

“No! I love Daddy!”

Wait out the bad behaviour, advises Auntie Dianne L.

Good idea until my phone rings: “Hello Sacha, are you coming to get your son from school today? It’s 5:30pm and the cleaners are going home.”

“Not yet,” I reply. “Just wearing Portia down, should be there by midnight.”

....

The problem for me is that I love the law and the democratic process. As a lawyer, I understand the benefits of obeying the law and the potential consequences of disregarding it. I want to parent within the law and I want to be able to use smacking as one of many parenting tools.

....

Sue Bradford told us that we had to stop treating our children as property. They are people too, with their own minds and their own rights. Illuminating stuff. But the police officer who pulled me over and asked why my child was wandering willy-nilly around the backseat didn’t buy it. I am apparently totally responsible for her well-being and behaviour, but not to be trusted when it comes to making parenting decisions about how to develop her sense of right and wrong.¹²⁴

Without physical reinforcement like spanking, such exchanges become increasingly frustrating and common.¹²⁵ As Dr. Spock observed, “[t]he wear and tear on the parents from this kind of low-key battling is painful and exhausting, [and] only invites more demands and arguments.”¹²⁶

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

125. See, e.g., Roberts, *supra* note 17 (showing that an effective disciplinary enforcement such as nonabusive spanking is essential for defiant two- to six-year-olds to cooperate with timeout, which in turn was necessary for their parents to regain normal levels of cooperation from them).

126. See Spock, *Bratty Child*, *supra* note 25; *id.* at 29 (after describing a similarly wearing child discipline battle, saying that the “parent looks dismayed and gives in promptly. . . . [M]ost

To avoid this downward spiral, clinical researchers have found only one punishment to be as effective as spanking to get a child to comply with timeout: barricading him in a small room with a piece of plywood across the door.¹²⁷ However, a barricade may be entirely impractical in a natural setting due to lack of space or time.¹²⁸ Thus, parents generally prefer spanking to enforce timeout.¹²⁹

Without physical discipline, many Swedish children simply are left to their own misbehavior.¹³⁰ This has come at a grave cost. Now physical force is more often used abusively, when parents get “upset enough.”¹³¹ Since the spanking ban, although the Swedish population has remained relatively stable, child abuse rates have increased by over five-hundred percent, as shown in the following tables.¹³²

parents who are submissive to their children don't realize clearly that they have this problem at all—they just find their children difficult and tiring to manage.”)

127. See, e.g., Roberts, *supra* note 17 (reporting results from four randomized clinical studies of defiant children two to six years old. These studies examined which enforcement procedures were effective at making defiant children comply with timeout. The new “barrier method” (placing the child in a small room while holding a piece of plywood across the open door) worked when a two-swat spank did not, and a two-swat spank worked when the barricade did not.)

128. See, e.g., Diana Baumrind, Robert E. Larzelere, Philip A. Cowan, *Ordinary Physical Punishment: Is It Harmful? Comment on Gershoff*, 128 PSYCHOL. BULL. 580, 586 (2002) [hereinafter, Baumrind, *Ordinary Physical Punishment*] (“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.”); cf. Palmerus, *supra* note 123 and accompanying text.

129. E.g., Roberts, *supra* note 17 (finding mothers of defiant two- to six-year-old children preferred a “two-swat” back-up rather than a barrier or restraint back-up to enforce timeout).

130. See, e.g., Haeuser, *supra* note 111, at 23 (saying that Swedish parents routinely overlooked misbehavior shortly after the spanking ban).

131. See, e.g., Statistics Sweden, *supra* note 113 and accompanying text.

132. The population has remained relatively stable over the past thirty years, increasing from 8,323,033 in 1981 to 8,861,426 in 1999—an increase of just over six percent, a far cry from the several hundred percent increases in youth violence and child abuse. SCB Statistics Sweden, Swedish Population (in one-year groups) 1860-2007, available at <http://www.scb.se/statistik/BE/BE0101/2007A01a/Be01010Folkmängd1860-2007eng.xls>.

Table 3.1: In-Home Abuse of Children 0-6 Years Old in Sweden ¹³³		Table 3.2: General Abuse of Children 0-6 Years Old in Sweden ¹³⁴	
Year	Indoor Abuses of a Known Victim	Year	All Abuses Registered by Police
1981	99	1981	196
1982	98	1982	187
1983	96	1983	167
1984	127	1984	222
1985	128	1985	236
1986	122	1986	211
1987	153	1987	264
1988	142	1988	266
1989	184	1989	365
1990	248	1990	437
1991	304	1991	517
1992	378	1992	603
1993	407	1993	642
1994	583	1994	838
1995	560	1995	824
1996	—	1996	825*
1997	—	1997	820*
1998	—	1998	810*
1999	622	1999	879

One year after the spanking ban, not only were Swedish parents resorting to pushing, grabbing, and shoving more than U.S. parents, but

133. Wittrock, *1981-1991*, *supra* note 12; Wittrock, *1984-1994*, *supra* note 12 (it seems there are no pre-1981 tables); Staffan Janson, *Barn och misshandel: En rapport om kroppslig bestraffning och annan misshandel i Sverige vid slutet av 1900-talet* [*Children and Physical Abuse: A Report About Corporal Punishment and Other Physical Abuse in Sweden at the End of the 20th Century*], 18 STATENS OFFENTLIGA UTREDNINGAR [SOU] 35 tbl. 2 (2001) (Swed.) (providing data from only 1990, 1994, 1995, and 1999). Janson's compilation seems to be the most recent available.

134. Wittrock, *1981-1991*, *supra* note 12; Wittrock, *1984-1994*, *supra* note 12; Janson, *supra* note 133 and accompanying text; *id.* at 34 diag. 2 (conveying data from 1996-98 by bar graph only). Data from 1996-98 (indicated by "*" above) is approximated from Janson's bar graph.

they were also beating their children twice as often.¹³⁵ By 1988, rates of physical child abuse in Sweden had risen to three times the U.S. rate.¹³⁶ Moreover, from 1979 to 1994, Swedish children under seven endured an almost six-fold increase in physical abuse.¹³⁷

Accordingly, many Swedes do not believe the spanking ban has reduced child abuse.¹³⁸ Indeed, researchers are now realizing that permissive parents are the most likely to resort to injurious, “explosive attacks of rage.”¹³⁹ Such parents apparently become violent because they feel they can “neither control the child’s behavior nor tolerate its effect upon themselves.”¹⁴⁰

B. A Little Less Spanking, A Lot More Teen Violence

In recent years, Sweden has seen a wave of youth violence:¹⁴¹ “hooliganism, excessive [celebrations], acts of violence with racist and

135. See, e.g., Richard J. Gelles & Ake W. Edfeldt, *Violence towards Children in the United States and Sweden*, 10 CHILD ABUSE & NEGLECT 501, 506 (1986) (reporting their study of thousands of Swedish and American parents. Gelles and Edfeldt found that 0.4% of Swedish parents “threatened with a weapon” and “used a weapon” against their children, compared to 0.2% in the U.S., and that “Swedish parents report more pushing, grabbing or shoving than American parents . . . and double the rate of beating children . . .”); LARZELERE, *supra* note 12, at 12-13 (after examining the Gelles-Edfeldt survey regarding the difference between telephone interviews versus face-to-face interviews, saying that “the fairest and most conservative” estimate was that the Swedish rate of beating children was 49 percent higher in 1980 than comparable American rates).

136. Compare Haeuser, *supra* note 111, at 34 (showing that the 1988 physical child abuse rate, as reported to Swedish police, was 6.5 per 1,000 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 112 (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.)).

137. See, e.g., *supra* note 133 and accompanying text (showing that, by 1999, child abuse leveled out at about six times as many cases as in 1981).

138. See, e.g., Haeuser, *supra* note 111, at iii (suggesting that most, if not all, Swedes believe the spanking ban has not reduced the incidence of child abuse); tpls. 3.1-3.2, *supra*.

139. See, e.g., Lyons, *supra* note 112 (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).

140. See, e.g., *id.*

141. See, e.g., H. von Hofer, *Criminal Violence and Youth in Sweden in a Long-term Perspective*, Presentation at the Tenth Workshop for Juvenile Criminology, Siena 1 (1995) (“In light

xenophobic motives, squatters' actions, street fights between politically opposed groups, violence at school, and recurrent [tumults] between [gangs,] skinheads and groups of young female 'kickers.'"¹⁴²

By the 1990s, Sweden's "growing propensity for violence" finally prompted two comprehensive studies of teen violence.¹⁴³ These studies have revealed that violence in Sweden now starts young. Since Sweden banned spanking, toddlers and young children have begun hitting their parents often.¹⁴⁴ Indeed, the more a child has grown up under the spanking ban, the more likely he is to be violent, as indicated by the following table.¹⁴⁵

Table 3.3: Frequency of Criminal Assaults Against 7- to 14-year-old Children in Sweden¹⁴⁶

Age of Suspect	# of 1984 Suspects/ (Birth Year)	# of 1994 Suspects/ (Birth Year)	% Increase
Under 15	116 (1970+)	718 (1980+)	519
15-19	107 (1965-69)	354 (1975-79)	231
20-24	12 (1960-64)	28 (1970-74)	133
25-29	19 (1955-59)	29 (1965-69)	53
30-39	68 (1945-54)	151 (1955-64)	122
40-49	47 (1935-44)	116 (1945-54)	147
50+	25 (< 1935)	57 (< 1945)	128

of this, it seems difficult to deny that the Swedish society in recent years has been hit by a wave of juvenile violence.”).

142. See, e.g., von Hofer, *supra* note 141 (describing the rising concern over youth violence).

143. See, e.g., Larzelere, *Differentiating*, *supra* note 107, at 7 (“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.’”).

144. See, e.g., Haeuser, *supra* note 111, 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 annoying enough to be clearly annoying.”).

145. See, e.g., Wittrock, *1981-1991*, *supra* note 12; Wittrock, *1984-1994*, *supra* note 12, at tbl. 1 (collectively showing that the youths raised after the spanking ban are more likely to perpetrate assault); LARZELERE, *supra* note 12, at 9 (saying “the largest increases occurred for perpetrators under 15 years of age, who were born after the ban on smacking. The second largest percentage increase occurred for 15-19 year-old perpetrators, who were aged 0-4 when the law was passed.”).

146. Wittrock, *1984-1994*, *supra* note 12 and accompanying text. More recent compilations do not contain an “Age of Suspect” breakdown, but they do suggest that youth violence is still rising. See Janson, *supra* note 133 (reporting that outdoor assaults by people unacquainted with a seven- to fourteen-year-old victim rose from 848 in 1994 to 1147 by 1999).

Swedish teen violence skyrocketed in the early 1990s, when children that had grown up entirely under the spanking ban first became teenagers.¹⁴⁷ Preadolescents and teenagers under fifteen started becoming even more violent toward their peers.¹⁴⁸ By 1994, the number of youth criminal assaults had increased by six times the 1984 rate (see Table 3.3, above).

Youth violence rates have been soaring even though Sweden has conducted national campaigns to stop it since the mid-1980s.¹⁴⁹ These campaigns have required, for example, that school officials report any fighting immediately to the police.¹⁵⁰ By 2000, however, the Swedish government said there has been “no tendency to a decrease in bullying at school or in leisure time during the last twenty years.”¹⁵¹

Not only is there no decrease, but the assaults are getting more severe.¹⁵² For instance, the rate of sixteen- to twenty-year-old victims that require medical attention has doubled.¹⁵³ Without physical discipline, many youths seem to act violently because they don’t understand when to stop dangerous behavior—they don’t understand how to deal with limits.¹⁵⁴

147. See, e.g., LARZELERE, *supra* note 12, at 13-14 (“Children whose preschool years from 2-6 were entirely under the ban on smacking first became teenagers in 1990.”) (Also saying crime statistics “increased relatively little during the 1980s and then increased sharply at an accelerating rate in the 1990s . . . From 1984-1989 the average annual increase in assaults by minors against minors was 3.4%. From 1990-1994, the average annual increase was 17.9%.”).

148. See, e.g., Wittrock, 1984-1994, *supra* note 12.

149. See, e.g., 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.”).

150. See, e.g., Joan Durrant, *Evaluating the Success of Sweden’s Corporal Punishment Ban*, 23 CHILD ABUSE & NEGLECT 435, 445 (1999) (“Indeed, a recent campaign against bullying in Sweden has resulted in school bans on all forms of aggressive behaviour; principals now routinely report to the police any instances brought to their attention . . .”).

151. U.N., *League Table*, *supra* note 7, at 24.

152. See, e.g., von Hofer, *supra* note 141.

153. See, e.g., *id.*

154. Cf., e.g., Peter Sandström, *Barn och ungdom har förlorat känslan för var gränsen går. “Oskyldiga lekar” kan urarta i allt grövre våld [Children and Youngsters Have Lost the Feeling for Limits. “Innocent Games” Can Turn into Severe Violence]* (Swed.), available at http://web.abo.fi/meddelanden/forskning/1998_13_barnvald.sht (reporting, based on the findings of Finnish psychologist Vappu Viemerö, that Swedish children have lost their sense of limits, and hypothesizing that such loss is attributable to television).

C. Reflecting on Sweden's Spanking Ban: More Harm than Good

Since the spanking ban, most Swedish children no longer think they should be punished at all for their misbehavior, not even by grounding.¹⁵⁵ About half of them even think their parents don't have a right to withhold their allowance.¹⁵⁶ Having left so many children effectively unrestrained, Sweden's spanking ban has failed to meet its expectations.¹⁵⁷ Whereas its proponents hoped for a "cultural spillover" of nonviolent values, the ban seems to have backfired.¹⁵⁸

Some may suspect that the increases in child abuse and youth violence are due to changes in reporting procedures, definitions of abuse, or generational attitudes. But such factors fail to give the full account.¹⁵⁹ First, each survey comparing the U.S. and Sweden used the same standards to achieve an accurate comparison.¹⁶⁰ Yet, such surveys reveal that child abuse rates in Sweden have risen more than in countries like the U.S.¹⁶¹

Second, the rate of teenage victims who need medical attention has increased, a change that is unaffected by different reporting procedures or definitions of abuse.¹⁶²

155. See Janson, *supra* note 133, at 58 (saying the percentage of Swedish children who think their parents have the right to use any kind of disciplinary enforcement continues to fall. By 2000, only thirty-one percent of ten- to twelve-year-olds thought parents had the right to ground them, and only fifty-three percent thought parents had the right to withhold their allowance.).

156. See, e.g., *id.*

157. See, e.g., Diana Baumrind, *The Discipline Controversy Revisited*, 45 *FAM. RELATIONS* 405, 412 (1996) [hereinafter Baumrind, *Discipline Controversy*] (saying that the "ban against spanking and a nonconfrontational and lenient approach to childrearing has not reduced abusive violence by children brought up under the *aga* law.").

158. Compare, *supra* note 10 and accompanying text, with, e.g., Baumrind, *Discipline Controversy*, *supra* note 157 at 412 ("The marked increase in youth-on-youth violence suggests that the ban on corporal punishment in Sweden has not resulted in cultural spillover of the adult culture's nonviolent values to a segment of the youth."); Lyons, *supra* note 112 and accompanying text; *supra* note 12 and accompanying text.

159. See, e.g., Larzelere, *Differentiating*, *supra* note 107, at 9 (saying changes in what gets reported to the police may, but doubting that they do, account for the statistical differences).

160. See, e.g., Gelles, *supra* note 135 and accompanying text (the 1981 study using Dr. Straus' Conflict Tactics Scale to survey both countries); *supra* note 136 and accompanying text (the 1988 studies relying on the same definitions to study police records from both countries).

161. See, e.g., Lyons, *supra* note 112 (reviewing all available evidence in English which found no evidence that any measure of physical child abuse had decreased as a result of the spanking ban. Two studies by spanking opponents reported some Swedish child abuse rates that were from two to five times higher than comparable U.S. rates.).

162. See, e.g., von Hofer, *supra* note 141 (showing that from 1984-94, twice as many sixteen- to twenty-year-old victims needed medical attention, although the rate of victims remained stable).

Third, if changes in reporting procedures artificially inflated Sweden's rates of violence, those rates should have increased remarkably once Sweden implemented social programs like its anti-bullying campaign.¹⁶³ But that didn't happen. Sweden started such programs in the early 1980s, but teenage assault rates didn't rise remarkably until the early 1990s—the same time that children who grew up entirely under the spanking ban became teenagers.¹⁶⁴

Sweden's problems with youth violence cannot just be explained away. It has gotten so out-of-hand that even international travel organizations are warning their customers to avoid Swedish children:

There are two dominant international guidebooks that many young people use when they travel. One is Lonely Planet and the other is Rough Guide. The latter is more complete, more detailed and its latest edition was published only recently in Scandinavia.

Rough Guide takes pleasure in rating countries. They have a top-ten list and they have a bottom-ten list.

On the top-ten list you will find Gamla Stan (the Old City) and the Ice cave in Joukkasjärvi.

The interesting thing about this new edition is however the bottom-ten list. . . .

163. See, e.g., LARZELERE, *supra* note 12, at 13-14 (saying “the timing and suddenness of the increase does not support a reporting interpretation. Durrant implies that the ban on smacking and the 1982 changes in social services had the commendable purpose of enhancing an early warning system for violence before it got more serious. That would suggest a sharp increase during the 1980s. If this was in fact preventative, then criminal statistics for physical child abuse and assaults by minors should level off or decrease subsequently. However, both statistics increased relatively little during the 1980s and then increase sharply at an accelerating rate in the 1990s.”).

164. See, e.g., Limber, *supra* note 149 (saying that the anti-bullying campaign began in the early 1980s); Larzelere, *Differentiating*, *supra* note 107, at 7 (rejecting the idea that the dramatic increase in teenage criminal assaults is due to police enforcement of anti-bullying measures in schools. “One way to corroborate the effect of the anti-bullying campaign on criminal statistics would be to identify the year the campaign was initiated, which should correspond with a sharp increase in criminal assault statistics, hopefully followed by a reduction thereafter.”); *supra* note 147 and accompanying text. Note that, in the late 1960s, the Swedish tax and benefit system changed to assume that every adult was responsible to support himself. See, e.g., Haeuser, *supra* note 111, at 10 (citing B. WISTRAND, SWEDISH WOMEN ON THE MOVE (1981), at 18). Thus, by 1975—just four years before Sweden banned spanking—the system had forced virtually all Swedish parents to work outside the home. E.g., Siv Westerberg, Lawyer, Med. Dr., The Folly of Sweden's State Controlled Families, Presentation Before the Family Education Trust, London (June 19, 1999) (saying the system “that forces every woman to be away from her home and children all day, was completed around 1975”). It may be, therefore, that teenage assault rates rose remarkably in the early 1990s in part because that is generally when children that had grown up with comparatively less parental interaction became teenagers. However, because the parental involvement shift began over a decade before the spanking shift, we cannot correlate decreased parental involvement and increased youth violence as neatly as we can decreased spanking and increased youth violence.

Rough Guide's conclusion is that the very worst with Scandinavia is Swedish children. Swedish children are at the top of the bottom list.¹⁶⁵

Perhaps this is why Swedish support for spanking seems to be rising.¹⁶⁶ The spanking ban appears to have harmed more children than it has saved.¹⁶⁷ As one lawyer-mother put it, "Children who are violently abused in their homes are no more protected than they were before the law change. But my own daughter is undoubtedly a victim too and our whole family suffers the consequences of her strong sense of self-above-all-else."¹⁶⁸

Countries like Sweden, with historically low violence levels (at least before the ban), may have room to endure the problems that have come with its spanking ban; but countries like the U.S. cannot.¹⁶⁹ The medical, emotional, and governmental costs of a six-fold increase in child abuse and youth violence would be staggering.

165. Roger Lord, *Barnen skämmer ut Sverige [The Children are Embarrassing Sweden]*, REDACTEUR EMERITUS, July 4, 2005 (Swed.).

166. Compare Ziegert, *supra* note 38 (saying, in 1979, 26% thought spanking was sometimes necessary), with LARZELERE, *supra* note 12, at 6-8 (saying, in 1995, 34% think spanking is sometimes necessary). There is some disagreement about this figure because the survey used between 1965-1981 was discontinued and the new survey did not have the exact same questions. *Id.* at 6-7. The most similar survey questions reveal this increase. *Id.* But see U.N., *League Table*, *supra* note 7, at 24 ("A generation ago, 55 per cent of Swedes supported the use of physical punishment. Today support has fallen to just over 10 per cent.").

167. See, e.g., LARZELERE, *supra* note 12 and accompanying text.

168. Coburn, *supra* note 124.

169. See, e.g., LARZELERE, *supra* note 12, at 15 ("As one of the least violent countries in the world, perhaps Sweden can afford a six-fold increase in criminal assaults by minors against minors. Most countries cannot . . .").

IV. MISLEADING RESEARCH AND MEDIA COVERAGE VIRTUALLY MONOPOLIZE THE SPANKING DEBATE

[W]e are witnessing the emergence of a subculture of . . . social scientists, who are no more qualified or equipped to practice statistics than law or medicine, yet who nonetheless do practice it among their circles of nonstatisticians.¹⁷⁰

Despite the sad problems with the Swedish spanking ban, many policymakers still think spanking bans are good.¹⁷¹ This is mainly because spanking opponents have used misleading research to justify their position and make frightening claims—like the outlandish claim that spanking compels people to support international bombing raids.¹⁷²

Ideally, child discipline researchers would compare the behaviors of an “experimental” group against a “control” group.¹⁷³ They would track, say, similarly situated children, some of whom receive spankings, and some of whom do not. Whether one group turns out better indicates whether spanking is helpful, harmful, or insignificant.¹⁷⁴ However,

170. Diana Baumrind, *Specious Causal Attributions in the Social Sciences: The Reformulated Stepping-Stone Theory of Heroin Use as Exemplar*, 45 J. PERSONALITY & SOC. PSYCHOL. 1289, 1295-96 (1983) [hereinafter Baumrind, *Specious Causal Attributions*] (quoting R.F. Ling, *Review of Correlation and Causation*, 77 J. AM. STAT. ASSOC. 489-91 (1982)).

171. See, e.g., Edwards, *supra* note 20, at 1021 (an American judge proposing a spanking ban).

172. See, e.g., Rosellini, *supra* note 27 (“Straus went even further, asserting that spanking helps foster punitive social attitudes, such as support for bombing raids to punish countries that support terrorists. If parents stop spanking, Straus said on ABC-TV news last year, ‘we’ll have . . . lower costs to deal with crime and with mental illness.’”).

173. Cf., e.g., LELA B. COSTIN, HOWARD JACOB KARGER & DAVID STOESZ, *THE POLITICS OF CHILD ABUSE IN AMERICA* 124-25 (1996) (“Questions such as these are best resolved methodologically by a random assignment of subjects to experimental and control groups. . . . Despite the inherent difficulties of experimental studies, such a study is not impossible in social policy. Traditionally, they have been the standard design for biomedical research. Virtually every federal agency that is responsible for the health of Americans uses experimental research methods before clearing new medical and pharmaceutical products for public use. Even in social welfare, experimental methods have been used successfully to understand better difficult questions about human behavior. Since the mid-1980s, for example, the Manpower Demonstration Research Corporation has established a national reputation by using experimental methods to evaluate workfare programs designed to determine if mothers on Aid to Families of Dependent Children could be expected to work.”).

174. Cf., e.g., *id.* at 124 (“Over time the experimental subjects should fare better if the interventions is having the desired effect.”).

many researchers avoid such empirical methods, and instead find other ways to promote their philosophy.¹⁷⁵

*A. The Research “Should Be Closely Examined for Evidence of Bias”*¹⁷⁶

The art of junk science is to brush away just enough detail to reach desired conclusions, while preserving enough to maintain an aura of authoritative science.¹⁷⁷

People tend to adopt a viewpoint based on their feelings, and then search for logic that supports that viewpoint.¹⁷⁸ So, it’s not surprising

175. *Cf., e.g.,* Murray A. Straus & Carrie L. Yodanis, *Corporal Punishment by Parents*, 2 U. CHI. L. SCH. ROUNDTABLE 36-37 (1995) [hereinafter Straus, ROUNDTABLE] (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); STRAUS, *supra* note 33, at 190-92 (proposing his own spank-free communities, rather than observing the use of spanking); COSTIN, *supra* note 173, at 124 (“Many social researchers, however, prefer to use survey methods through which they attempt to simulate experimental and control groups by identifying comparable similarities and differences between groups of subjects. There are several reasons for this preference for surveys over controlled observational methods. For one, they are cheaper and avoid the programmatic rearrangements required by experimental designs. For another, they avoid the moral questions involved in assigning one client to an experimental treatment while diverting another to a control group that is deprived of experimental exposure. . . . The major deficiency of survey research—a deficit that is so significant that experimental designs are always preferred if they can be fielded at all—is that there are always extraneous variables that can be posited to explain the difference between groups but that have not been accounted for in the survey design. This is not to say that survey research has no value. On the contrary, nonexperimental research methods are useful in identifying patterns that may be helpful in developing theory and formulating experimental studies.”). For an introduction to possible motives behind misleading science, *see generally* ROBERT L. PARK, *VOODOO SCIENCE: THE ROAD FROM FOOLISHNESS TO FRAUD* (examining the social, economic, and political forces that elicit or support flawed science and sustain it in the face of overwhelming contrary evidence).

176. *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 432-33 n.30 (1975).

177. PETER WILLIAM HUBER, *GALILEO’S REVENGE: JUNK SCIENCE IN THE COURTROOM* 157 (1993).

178. *See, e.g.,* RIAN E. MCMULLIN, *THE NEW HANDBOOK OF COGNITIVE THERAPY TECHNIQUES* 203-04 (2000) (“Most clients believe in a cognitive fallacy, a fallacy that pollutes the clarity of their thinking. It’s called ‘*finding the good reason*’. . . . The fallacy may be defined as: ‘Defending a position by picking the most favorable sounding argument, rather than choosing the most logical or rational one.’ More simply it means that *clients feel first and reason second*. . . . They simply make up the logic to support their emotions. Their feelings do the driving; their logic hitchhikes along for the ride.

Finding the good reason is a very damaging fallacy. It destroys perception of the truth and implies that one side is correct while the other side is worthless. But the most damaging thing about this fallacy is that clients stop looking for the truth at all. Instead, they spend their time searching for the most convincing way to show that they are right. This leaves little time and less energy to find out whether they were right in the first place.

that if someone feels spanking is wrong, he will tend to perform or interpret research to support that feeling; and likewise with someone who feels spanking is right.¹⁷⁹

Accordingly, many spanking opponents begin their research with a conclusion, not a hypothesis.¹⁸⁰ For instance, Dr. Murray Straus admits that his goal is to prove that spanking, “by itself, has harmful psychological side effects for children and hurts society as a whole.”¹⁸¹ Moreover, a review of the spanking research suggests that eighty-three percent of the corporal punishment articles in clinical and psychosocial journals are “merely opinion-driven editorials, reviews or commentaries, devoid of new empirical findings.”¹⁸²

When scientists begin their research having already formed a conclusion, it’s more likely that their bias “will be confirmed, not amended or rejected by the ensuing evidence.”¹⁸³ Indeed, spanking opponents have been known to design studies that peculiarly suit their bias; they have been known to address problems with their research only

The fallacy . . . can create a personal holocaust that permanently destroys the client’s life. Finding the best reasons for symptoms protects those symptoms from changing. It’s like building a wall around the pathology so that nothing can reach it. An addict who has an excuse to snort cocaine will keep on using . . . a married partner who keeps blaming his or her spouse will end up with a broken marriage. Finding the good reason locks problems in place and keeps people from solving them.” (emphasis in original).

179. See, e.g., Erica Goode, *Findings Give Some Support to Advocates of Spanking*, N.Y. TIMES, Aug. 25, 2001 (quoting Dr. Straus as saying, “as in many scientific debates, each side tended to marshal the evidence that supported its view.”).

180. See, e.g., STRAUS, *supra* note 33, at xx (“the 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”); Trumbull, *supra* note 123 (describing a review that found 83 percent of the 132 identified articles published in clinical and psychosocial journals were merely opinion-driven editorials, reviews or commentaries, devoid of new empirical findings. “[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)).

181. *Id.* (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”).

182. See, e.g., Trumbull, *supra* note 180 and accompanying text; Trumbull, *supra* note 123.

183. Baumrind, *Causally Relevant Research*, *supra* note 21, at 14 (“When a scientist begins his or her research with an already formed conclusion, as Straus does, it is likely that the initial bias will be confirmed, not amended or rejected by the ensuing evidence.”).

in endnotes that fewer people read; and they have been known to simply not report data that are inconsistent with their hypothesis.¹⁸⁴

These practices are “incompatible” with scientific standards.¹⁸⁵ Therefore, we should not sit idly by and accept a researcher’s recommendations about our children’s education and future.¹⁸⁶ Some researchers seem to “emulate political spin doctors by selectively reporting [their] findings or refusing to abandon pre-judgement when faced with ‘equivocal or inconsistent evidence.’”¹⁸⁷ If we really want to serve the best interests of the child, we must work hard—we must investigate how any given study was conducted, how its results were reported, and whether such reporting was truthful.

184. See, e.g., *infra* Part IV.B; 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] (reporting data from one of Dr. Straus’ studies, which data Dr. Straus omitted from the publication of that study. “Relatedly, Straus (personal communication) has reported that, in three of the five cohorts in Straus et al. (1997), the outcomes of spanking frequency depended upon the initial level of the child’s antisocial behavior. Spanking frequency reduced antisocial behavior in the most antisocial children, but increased it in the least antisocial children. This is consistent with the idea that contingent punishment is particularly important for turning around the misbehavior of disruptive children, but that parents should be resorting more often to gentler tactics such as reasoning with better behaved children.”); STRAUS, *supra* note 33, at 285 n.6.2 (“We also could not directly test the part of the model that deals with escalation from the use of corporal punishment such as spanking and slapping.”); *id.* at 150 (explaining a study by LaVoie that described an experiment where children were punished for their misbehavior either by a punishment of a loud noise or by such punishments as timeout. The loud noise was supposed to represent spanking. The children initially modified their behavior more quickly for the loud noise, but in the long-run the timeout was more effective. Then, Dr. Straus extrapolates from this story that spanking may initially be more effective, but in the long-run it is not.). The problem with this story is that a loud noise is not a spanking. It may be deafening, but it is not a spanking.

185. E.g., Diana Baumrind, Ph.D., Univ. Cal., Berkeley, Letter to Robert Larzelere, Ph.D., Univ. Neb. Med. Ctr. (Dec. 1, 1998), available at <http://fractaldomains.com/devpsych/baumrind.htm> [hereinafter Baumrind, Letter] (“When value commitments include (as Straus says his does) willingness to ‘ignore equivocal or inconsistent evidence’ or to put a ‘spin’ on one’s representation of one’s own findings then one’s deep value commitments are indeed incompatible with objective science. To quote Straus, when one ‘knows their theory is right’ one ‘(up to a certain point) may ignore equivocal or inconsistent findings.’ Why bother to collect data at all when one knows from the start one’s theory is right?”).

186. See, e.g., Trumbull, *supra* note 180 and accompanying text; Trumbull, *supra* note 123. For an introduction to how misleading science affects our legal system, see HUBER, *supra* note 177 at 1-8, 137-47 (discussing how junk science has gained status in the modern court system).

187. See Baumrind, Letter, *supra* note 185.

B. “*The Methodological Flaws in the Cited Evidence Are of Concern*”¹⁸⁸

Scientists are beginning to realize that many of the recommendations about spanking are based on “methodologically flawed” research.¹⁸⁹ For example, Dr. Robert E. Larzelere, a professional methodologist from Oklahoma State University, published a comprehensive review of the spanking studies that had been published by 1996.¹⁹⁰ Dr. Larzelere filtered out research that was methodologically poor, like research that did not pass peer-review or failed to separate abuse from physical discipline.¹⁹¹ Of 166 studies, only thirty-five were methodologically sound; and overall, those thirty-five did not reveal any convincing evidence that corporal punishment harms children.¹⁹²

Instead, methodologically sound studies that distinguish abuse from physical discipline tend to indicate that spanking is not harmful, and is

188. *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 205 (1997).

189. *See, e.g.*, Trumbull, *supra* note 180 and accompanying text; Trumbull, *supra* note 123.

190. Larzelere, *Review*, *supra* note 17, at 824 (describing several of the methods he used to find all of the articles possible, such as “a computer search of PsychLit and Medline, a search of the relevant references in the articles found in the computer search, and an author search for all authors with more than one relevant article.”). Much of Dr. Larzelere’s research can be found at <http://ches.okstate.edu/facultystaff/Larzelere/>.

191. *Id.* (“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.”); *see* *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.”) (citing J. ZIMAN, *RELIABLE KNOWLEDGE: AN EXPLORATION OF THE GROUNDS FOR BELIEF IN SCIENCE* 130-33 (1978); Relman & Angell, *How Good Is Peer Review?*, 321 *NEW ENG. J. MED.* 827 (1989)).

192. Larzelere, *Review*, *supra* note 17, 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, ie, 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 usually found detrimental outcomes (retrospective studies being statistically the weakest study type). *Id.*; *see, e.g.*, Baumrind, *Specious Causal Attributions*, *supra* note 170, at 1293 (“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.*, 215-226 (1963)); K.A., Ericsson & H.H. Simon, *Verbal Reports as Data*, 4 *PSYCHOL. REV.*, 59-66 (1980) (showing little confidence can be placed in reports drawing on long-term memory).

even helpful in various contexts.¹⁹³ Such studies reveal that the effects of spanking do not depend on the use of spanking itself, but on factors like the overall parenting style, the child's age, the cultural meaning of spanking, and the accompanying use of explanation and reason.¹⁹⁴ By contrast, many methodologically flawed studies restrict research methods to obtain only expected or misleading results, as the following sections explain.¹⁹⁵

1. "Two Vastly Different Remedies with Vastly Different Consequences"¹⁹⁶: Spanking Does Not Lead to Abuse Any More than Credit Cards Lead to Bankruptcy

Many spanking studies do not distinguish a mild swat on the rear from, say, a violent beating with a strap.¹⁹⁷ If the violent strapping produces any harm, that's enough for some researchers to attribute that harm to spanking.¹⁹⁸ For instance, Dr. Elizabeth Gershoff of the

193. See, e.g., Larzelere, *Review*, *supra* note 17, at 827 ("Those studies that excluded abuse from their measures of physical punishment were more likely to find predominantly beneficial outcomes. Of 11 studies with such exclusions, 6 (55%) had beneficial outcomes, 4 (36%) showed neutral outcomes, and only 1 (9%) had detrimental outcomes.").

194. See, e.g., Larzelere, *Review*, *supra* note 17, 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.").

195. See, e.g., Goode, *supra* note 179 and accompanying text. Compare STRAUS, *supra* note 33, at 230 (saying the Conflict Tactics Scale can be used "to partial out physical abuse in a statistical analysis or to remove abused children from the sample in order to avoid confounding corporal punishment with physical abuse"), with Baumrind, *Ordinary Physical Punishment*, *supra* note 128, at 581 (saying that, although Dr. Straus admits that it is proper to exclude abuse cases when studying normative discipline, he rarely does so).

196. *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962).

197. See, e.g., Rosellini, *supra* note 27 ("Other studies failed to distinguish between one or two taps on the rear end of a preschooler and, say, beating a child with a strap. One 1977 study of 427 third graders who were reinterviewed 10 years later found that those who had been punished more also were more likely than others to push, shove, or start fights over nothing. But 'punishment' was defined as including everything from nonphysical disciplinary steps like reasoning with children or isolating them, to slapping their faces, washing their mouths out with soap, or spanking them until they cried.").

198. See, e.g., *id.*; Baumrind, *Ordinary Physical Punishment*, *supra* note 128, at 581-82 ("Almost two thirds (65.4%) of the 52 aggression composite studies used overly severe [corporal punishment]. . . . This problem of overly severe (and overbroad) [corporal punishment] can best be illustrated with quotes from Gershoff's primary studies. The following descriptions were used to describe at least part of their definition of [corporal punishment]: 'slapped on face, head, and ears' and 'shook'; 'severity of punishment for aggression to parents'; 'throwing something at the child'

University of Michigan claimed that physical punishment is linked to harmful outcomes.¹⁹⁹ However, most of the research she analyzed made that link by studying severe punishments like boxing the ears and whipping.²⁰⁰

Linking such severe punishments to a negative behavior like aggression does not prove that spanking is linked to negative behavior.²⁰¹ Even the U.N. admits that this unwillingness to distinguish abuse from physical discipline makes some spanking studies look “ridiculous.”²⁰²

Nevertheless, many researchers try to justify such flawed methodology through a purely philosophical argument. They insist that

and ‘severe, strict, often physical’ as contrasted with ‘nonrestrictive, mostly positive guidance,’; usage of ‘switch, belt, razor strap, paddle, buggy whip, boxing ears’; and ‘hit with belt, stick’. In all of these five studies, an effect size could have been based on a [corporal punishment] measure that did not include such overly severe components of [corporal punishment]. For example, Mahoney et al. (2000) presented separate data for six tactics included in the revised Conflict Tactics Scale’s [corporal punishment] measure. The corresponding effect sizes (d) ranged from 0.08 for ‘spanked bottom with bare hand’ to 0.58 for ‘slapped on face, head, and ears.’ In other studies, effect sizes could only be based on [corporal punishment] measures contaminated by overly severe components. Examples include ‘slaps in the face’ and ‘beating with a stick, a belt, etc.’; ‘slap him in the face’ and ‘wash out his mouth with soap’; ‘How often were you beaten by your mother (father)?’; ‘kicked, bit, or hit you with a fist,’ causing ‘bruises or cuts,’ and six more violent items; ‘rough handling, shaking’; ‘mom (dad) was a violent or physically abusive person’; and ‘severe punishment, parents very angry or hostile, beatings, . . . “Punished him so he wouldn’t forget it.”’ In at least one other primary study in the meta-analyses, a large majority of those who were physically punished were also physically abused. In Lester’s (1991) study of inmate records, 49% of those who had attempted suicide had been physically punished by their fathers, but almost as many (44%) had been physically abused. Therefore, it would appear that only 5% of the inmates were physically punished without being abused.” (citations omitted).

199. Elizabeth T. Gershoff, *Parental Corporal Punishment and Associated Child Behaviors and Experiences: A Meta-Analytic and Theoretical Review*, 128 PSYCHOL. BULL. 539, 549 (2002) (drawing as her primary conclusion that, although spanking improves compliance, it “is associated with 10 undesirable constructs”). Gershoff admits in her meta-analysis that she cannot establish that spanking *causes* undesirable effects. *Id.* at 551. However, she consistently uses terms like *link* and *associate* in such a way that a lay audience could think spanking causes undesirable effects. *See, e.g., id.* at 549. Such terms are slippery enough that, if pressed, Dr. Gershoff could retreat to her acknowledgement that she cannot prove causation.

200. *See, e.g., supra* note 198 and accompanying text (overviewing some of the studies included in Dr. Gershoff’s meta-analysis).

201. *See, e.g., U.N., League Table, supra* note 7, at 29 (“Links between regular and severe abuse as a child and, say, depression or aggression in later life does not prove that all physical punishment is likely to produce the same result.”).

202. *Id.* (“Should research look for the likely long-term consequences of only severe and regular physical punishment, or should it include physical punishment that is light and infrequent? Unwillingness to draw a distinction between the two on the grounds discussed earlier – that all hitting of children is abuse and that the only effective line is between violence and non-violence – has sometimes left research findings looking ridiculous.”).

spanking is on the same “continuum” as abuse, and therefore parents who spank somehow “transform” into parents that abuse.²⁰³ Yet they virtually admit that they just made up this continuum theory.²⁰⁴ For instance, Dr. Straus supports the continuum theory in the body of his book, but admits in the endnotes that he couldn’t test it: “We also could not directly test the part of the model that deals with escalation from the use of corporal punishment.”²⁰⁵

The objective research does not support the continuum theory. Research that discriminates between abuse and physical discipline indicates that you cannot predict that a child will have behavior problems simply because his parents use spanking.²⁰⁶

Instead, such research suggests that abusive parents tend to share peculiar personality types.²⁰⁷ They tend to have explosive anger and impulsive responses to frustration, as well as an extreme need to control

203. See, e.g., Gershoff, *supra* note 199, at 553 (finding that her research “supports the notion that corporal punishment and physical abuse are two points along a continuum The task for researchers is to determine the exact conditions under which corporal punishment is transformed into abuse.”). Even the research behind the continuum theory makes no sense. Such research typically compares “no” corporal punishment with “lots” of corporal punishment, but excludes moderate corporal punishment. See, e.g., Straus, *Corporal Punishment*, *supra* note 20, at 51 (calling Table 1 “How Much Could Ending Corporal Punishment Decrease Psychological and Social Problems?”). On the chart he has two measures: those who have experienced “High” corporal punishment and those that have experienced “None.” Then, he shows the percentage difference between the likelihood of being depressed, for example.). Dr. Straus uses such percentages to say that society will improve if it bans spanking. But these comparisons merely prove that abuse or borderline abuse causes problems.

204. See, e.g., STRAUS, *supra* note 33, at 285 n.6.2 (“We also could not directly test the part of the model that deals with escalation from the use of corporal punishment such as spanking . . .”).

205. Compare *id. with id.* at 13 (claiming that “most cases of physical abuse are the end point of a continuum that began with corporal punishment and got out of hand.”).

206. See, e.g., Annette Mahoney, William O. Donnelly, Terri Lewis & Carri Maynard, *Mother and Father Self-Reports of Corporal Punishment and Severe Physical Aggression Toward Clinic- Referred Youth*, 29 J. CLINICAL CHILD PSYCHOL. 266 (2000) (distinguishing the outcomes of various types of corporal punishment, from open-handed spanking to beating up a child. The type most consistently associated with later clinical referrals was “slapped on face, head, and ears.” Types that never predicted increased rates of clinical referrals of preschoolers or pre-adolescents included: “[s]panked bottom with bare hand,” “[s]lapped hand, arm, or leg,” “[h]it on bottom with hard object,” and “[p]inched.”).

207. See, e.g., Baumrind, *Ordinary Physical Punishment*, *supra* note 128, at 585 (saying abusive parents are “likely to share a distinctive set of attributes”); David A. Wolfe, *Child-Abusive Parents: An Empirical Review and Analysis*, 97 PSYCHOL. BULL. 462 (1985) (finding that abusive parents are more angry, depressed and impulsive, and emphasize punishment as the predominant means of discipline. In abusive families, there is less interaction and the mothers display more negative than positive behavior. The etiology of abusive parenting is multifactorial with emphasis on the personalities involved, and cannot be simply explained by a parent’s use of spanking.).

and intimidate.²⁰⁸ Also, physically abusive parents tend to engage in unusually high levels of verbal abuse and inconsistent discipline.²⁰⁹

Most parents, by contrast, draw a clear line between abuse and reasonable physical discipline.²¹⁰ Accordingly, there's a great divide between parents that spank and parents that abuse; and there's no substantial in-between group (which there should be if spanking led to abuse on a continuum).²¹¹ In general, parents either spank responsibly, or they cause injury.²¹² These vastly different practices have vastly different results—causing injury is harmful, whereas spanking is either neutral or helpful, depending on the context.²¹³ Because of this qualitative difference, most pediatricians reject the idea that spanking inherently leads to abuse.²¹⁴

208. *E.g.*, Baumrind, *Ordinary Physical Punishment*, *supra* note 128, at 585 (“Abusive parents are more likely to be hyperreactive to negative stimuli and to have an extreme need to control their children. Their punishment is less contingent on the child’s behavior than on their own inner state.”).

209. *See, e.g., id.* (“Thus, in a study of affluent, well-educated families, those parents whose recourse to physical punishment was excessively severe and frequent also engaged in significantly more negative interactions of other kinds including verbal abuse, being significantly less warm, supportive and consistent, and themselves exhibiting more internalizing and externalizing problem behavior.”); Baumrind, *Causally Relevant Research*, *supra* note 21, at 9 (saying Authoritarian-Directive parents were more likely to use overly severe physical discipline).

210. *See, e.g., U.N., League Table*, *supra* note 7, at 28 (“For most parents, there is a clear line between the kind of violence they would consider to be ‘reasonable chastisement’ and the kind of violence which they would regard as ‘abuse.’”).

211. *See, e.g., id.* at 13 (saying studies in the U.S., Canada, and the U.K. revealed that most child abuse deaths contained “no evidence of a pattern of escalating violence”) (emphasis in original); P. CAWSON, C. WATTAM, S. BROOKER & G. KELLY, *CHILD MALTREATMENT IN THE UNITED KINGDOM 97* (2000) (“There appeared to be a divide between the families where children were hit with implements or often hit to a level which caused lasting pain, bruising or other injury, and those where occasional slaps occurred which rarely or never had lasting effects. There was no substantial bridging group in which smacking was regular but not severe, which we would have expected to find if escalation were a common phenomenon.”); *supra* note 210 and accompanying text.

212. *See, e.g., id.* (“In general it seems that parents either hit children rarely and lightly, or they do it to cause serious hurt.”).

213. *See, e.g., Dr. Leonard D. Eron, Theories of Aggression: From Drives to Cognitions, in AGGRESSIVE BEHAVIOR, CURRENT PERSPECTIVES 3* (L.R. Huesmann ed., 1994) (After a decade of longitudinally studying children beginning when the children were in third grade, Dr. Eron found no association between punishment (including spanking) and later aggression. “[U]pon follow-up 10 years after the original data collection, we found that punishment of aggressive acts at the earlier age was no longer related to current aggression, and instead, other variables like parental nurturance and children’s identification with their parents were more important in predicting later aggression.”).

214. *E.g., Kristin White, Where Pediatricians Stand on Spanking, PEDIATRIC MGMT.* 11 (Sept. 1993) (saying more than seventy percent of pediatricians reject the idea that spanking leads to abuse).

Even philosophically, the continuum theory makes no sense.²¹⁵ It's like saying credit cards lead to bankruptcy because buying on credit is on the same continuum as going bankrupt—as though the mere existence of a credit card compels a person to lose control of his sense of responsible debt.²¹⁶ In reality, credit cards are valuable, efficient, and do not lead to bankruptcy if used responsibly. That's why few clamor to ban them. Similarly, spanking should remain legal because it is valuable, efficient, and its mere existence does not compel escalation to abuse.²¹⁷

2. “The Test Is Too Narrow”²¹⁸

Many child discipline researchers are so strongly opposed to spanking that they refuse to study it clinically, or in successful contexts.²¹⁹ Thus, in narrowly tailoring most of their research to contexts in which spanking is unsuccessful, and narrowly tailoring their research methods to exclude clinical studies, they ignore a lot of the picture.²²⁰

215. See, e.g., T. EDWARD DAMER, *ATTACKING FAULTY REASONING: PRACTICAL GUIDE TO FALLACY-FREE ARGUMENTS* (1980) (exposing a fallacy, known as the domino fallacy, that rejects the notion of a continuum).

216. See, e.g., Larzelere, *Meta-Analysis*, *supra* note 15, at 31 (rejecting the positive association between physical punishment and physical abuse because it “necessarily follows from defining all physical abuse as instances of physical punishment (100% of abusers then used physical punishment compared to a lower percentage of non-abusers)”). Aside from that correlation, the linkage is based on the domino fallacy, which holds that any step in an undesirable direction (e.g., spanking or buying on credit) is always undesirable because it increases the possibility of its undesirable extreme (abuse or bankruptcy) (citations omitted).

217. See, e.g., Larzelere, *Differentiating*, *supra* note 107, 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.”).

218. *Crawford v. Wash.*, 541 U.S. 36, 60 (2004).

219. See, e.g., *supra* note 175 and accompanying text.

220. Compare *supra* note 175 and accompanying text, with, e.g., Larzelere, *Review*, *supra* note 17, at 824 (“First, the studies with stronger internal validity tended to find beneficial outcomes. All six (100%) of the clinical treatment studies (including four randomized field studies and both (100%) of the sequential studies showed predominantly beneficial outcomes associated with customary or nonabusive physical punishment. Three (30%) of the 10 prospective longitudinal studies found predominantly detrimental outcomes, whereas the other 7 (70%) prospective studies found neutral outcomes. Nine (53%) of the 17 retrospective studies found predominantly detrimental outcomes, 7 (41%) found predominantly neutral outcomes, and 1 (6%) found predominantly beneficial outcomes.”).

For example, Dr. Straus often focuses on theoretical models and surveys of adults that were spanked as teenagers.²²¹ While it is true that spanking teenagers can be worse than mentally punishing them, spanking young children almost never is.²²²

Even on the rare occasion that Dr. Straus studied preteens, he only focused on six- to nine-year-olds that were spanked an average of 156 times a year.²²³ That's up to thirteen times the normal rate.²²⁴ Parents who physically discipline rarely spank their nine-year-old more than once a month.²²⁵ With such an unnatural sample, it's no wonder Dr. Straus' was able to associate corporal punishment with antisocial behavior.²²⁶ Many nine-year-olds that are spanked 156 times a year may simply be more prone to behavior problems, regardless of the type of punishment they get.²²⁷

When researchers ignore preexisting conditions (like a child's preexisting misbehavior), they erroneously associate spanking with harmful effects.²²⁸ This is known as the "intervention selection bias."²²⁹

221. *E.g.*, Straus, *ROUNDTABLE*, *supra* note 175, at 36-37 (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, *supra* note 33 (referring often to his theoretical models and surveys of teenagers).

222. *E.g.*, Larzelere, *Review*, *supra* note 17, at 827 (finding grounding less detrimental than spanking for teens, but for young children, spanking was more beneficial than nine common disciplines, including timeout and reasoning).

223. Rosellini, *supra* note 27 ("His research indicated that frequent spanking (three or more times a week) of children 6 to 9 years old, tracked over a period of two years, increased a child's antisocial behavior, measured in activities like cheating, bullying, or lying."); ROBERT E. LARZELERE, *CRITIQUE OF ANTI-SPANKING STUDY*, *available at* <http://ches.okstate.edu/facultystaff/Larzelere/CritiqueStraus.html> [hereinafter LARZELERE, *CRITIQUE*] ("The only thing that Straus et al. (1997) have proven is that spanking 6- to 9-year-olds at the rate of 156 times a year has a small, but detrimental effect (accounting for 1.3% of subsequent variation in anti-social behavior). Most children spanked from 1 to 25 times annually were in their most-improved group . . .").

224. *See, e.g.*, Baumrind, *Discipline Controversy*, *supra* note 157, at 409 (saying that, by age nine, only one-third of the parents spanked their children as often as once a month).

225. *See, e.g., id.*

226. *See, e.g., supra* note 223 and accompanying text.

227. *See, e.g.*, Baumrind, *Ordinary Physical Punishment*, *supra* note 128, at 585 ("A child who is not dispositionally compliant, however, is likely also to be less malleable and therefore likely to require more forceful parental intervention . . .").

228. *See, e.g.*, Robert E. Larzelere, Ph.D., Univ. Neb. Med. Ctr., *The Difficulty of Making Valid Causal Inferences from Passive Longitudinal Designs*, Presentation at Univ. Cal., Berkeley on *Inferring Causality from Longitudinal Studies* (Mar. 21, 2003), *available at* <http://ihd.berkeley.edu/larzelere.htm> [hereinafter Larzelere, *The Difficulty*] (saying the intervention selection bias is an explanation that, if ignored, can lead to incorrect conclusions about corrective interventions. For instance, the association between mental health treatment and subsequent

Consider, for example, chemotherapy. If doctors evaluate chemotherapy like some researchers evaluate spanking (by ignoring a patient's preexisting cancer), doctors would never prescribe the treatment.²³⁰ Chemotherapy is associated with a much greater "risk" of future cancer; not because it causes future cancer, but because it's an intervention used to help an already cancerous person.²³¹ A patient's future cancer is not necessarily a harmful effect of chemotherapy, but rather the result of her preexisting cancer problems. Likewise, the future misbehavior of a naturally defiant child is not necessarily the result of spanking, but rather the result of his preexisting behavior problems.²³²

The standard by which many researchers analyze physical discipline is peculiarly unfair. It's like saying chemotherapy is always harmful unless it makes the cancer-prone patient just as healthy as a normal person, or healthier.²³³ This standard is clearly too limited. Most people would consider chemotherapy helpful if it makes any progress in eliminating cancer, regardless of how the patient compares to a normal person.²³⁴ Likewise, spanking is helpful if it makes the child's behavior better than before.²³⁵

Yet many researchers analyze an already defiant child, and then insist that spanking him was harmful unless it made him behave just as well as a normal child, or better.²³⁶ Such a standard only measures

suicides in youth indicates that such treatment predicts a substantially increased risk of suicide—14.3 times as high a risk.).

229. See, e.g., *id.*; Robert E. Larzelere, Brett R. Kuhn, & Byron Johnson, *The Intervention Selection Bias: An Under-Recognized Confound in Intervention Research*, 130 PSYCHOL. BULL. 289 (2004).

230. See, e.g., Larzelere, *The Difficulty*, *supra* note 228 (discussing the intervention selection bias as applied to cancer treatment).

231. See, e.g., Larzelere, *Meta-Analysis*, *supra* note 15, at 2 ("Patients who received radiation treatment last year are more likely to experience cancer-related symptoms this year than those who did not receive (or need) radiation treatment.").

232. See, e.g., Larzelere, *The Difficulty*, *supra* note 228 (saying, in general, corrective interventions tend to be associated with future detrimental outcomes, because professionals use corrective interventions more for those with a poor prognosis. "This applies to corrective interventions in medicine (e.g., radiation treatment, hospitalization), education (Head Start), clinical psychology (marital counseling, suicide treatment), and parenting (power assertive discipline, homework assistance).").

233. See, e.g., *id.* (saying cancer treatment looks detrimental unless researchers control for it accurately, and analogizing such treatment to research that claims spanking is "detrimental").

234. See, e.g., *id.*

235. See, e.g., *id.* (rejecting the intervention selection bias, and saying intervention like spanking is beneficial if it causes improvement).

236. See, e.g., *id.* (citing studies that find spanking detrimental because researcher had not adequately controlled to initial levels of misbehavior).

whether spanking is perfect, not whether it's helpful.²³⁷ (Indeed, on the sole occasion that Dr. Straus analyzed physical and mental punishments using the same standards, physical punishment performed best).²³⁸

If researchers studied chemotherapy like they do spanking, only four percent of chemotherapy studies would consider the preexistence or severity of cancer.²³⁹ Once researchers abandon the intervention selection bias and adequately control for initial misbehavior, all uniquely harmful effects from spanking disappear.²⁴⁰

Thus, scientists who recognize the intervention selection bias believe that the body of evidence does not support "a categorical injunction against any use of disciplinary spanking."²⁴¹ Instead, it seems

237. See, e.g., *id.* (saying that, if a corrective intervention were perfect, its recipients would score as well as those who never had problems. Most "correlations only indicate that the corrective intervention fell short of perfection, but they do not discriminate between effective and counterproductive interventions.").

238. Compare Straus, *Impulsive*, *supra* note 17, at 357-59 (asking parents in the study questions about how often they punished with various disciplines, including spanking, grounding, privilege removal, allowance removal, and sending children to their room), with Larzelere, *Meta-Analysis*, *supra* note 15, at 32 ("Larzelere and Smith (2000), however, took advantage of the fact that the longitudinal cohort analyzed by Straus, Sugarman, and Giles-Sims (1997) also included parallel questions about four alternative tactics. When analyzed in the same manner that they analyzed spanking, the four alternative disciplinary tactics also predicted higher subsequent antisocial behavior, significantly so for grounding, marginally for privilege removal and allowance removal, and non-significantly for sending children to their room.").

239. See, e.g., Larzelere, *Meta-Analysis*, *supra* note 15, at 3 ("Suppose radiation treatment were studied in the same way that researchers have investigated physical punishment. Borrowing statistics from Gershoff's thorough meta-analysis, two-thirds (65%) of studies of radiation treatment would have included excessive dosages of radiation, 58% would have been cross-sectional studies, and only 4% would have taken into consideration the presence or severity of cancer.") (citations omitted).

240. See, e.g., Larzelere, *APA*, *supra* note 17 and accompanying text (also saying all apparently detrimental effects disappeared after controlling more completely for pre-existing child differences).

241. Baumrind, *Letter*, *supra* note 185 ("To support a categorical injunction against any use of disciplinary spanking Straus would have to show that the harmful outcomes he claims occur on average also occur in each case, or at least apply to each cell in the matrix. The association between disciplinary spanking and each harmful child outcome could not be moderated by any such factors as age of child, cultural meaning to the child and parent of mild [spanking], overall parenting style, or concomitant use of explanation and reason. If associations were so moderated, Straus would have to qualify his conclusions by reference to the appropriate moderating factors. Furthermore, the hypothesized moderating factors would have to be measured reliably and validly-or their possible effects (for example, of such covariates as parental warmth, reasoning, and nurturance) would remain unknown. Since Straus's argument singles out [spanking], he would have to conduct similar analyses using alternative methods of punishment as independent variables to show that they have a less pernicious effect than [spanking]. A proper test of Straus's blanket injunction theory requires pairwise contrasts on his 7-interval [spanking] measure as well as tests for each of the theoretically meaningful cells in his matrix. In view of the small effect size associated with his continuous

that spanking bans increase the risk of child abuse because they eliminate “age-appropriate nonabusive spanking that helps parents enforce milder disciplinary tactics.”²⁴²

3. “Correlation Is Not Causation”²⁴³

Certain British villagers observed that the more unmarried people they had, the fewer mice they had.²⁴⁴ From this *correlation*, they convinced themselves that being married *causes* mice infestation.²⁴⁵ Thus, the village elders focused on increasing their single population; that is, of course, until they realized that single people simply owned more cats than everyone else, and cats eat mice.²⁴⁶ Once they understood the true cause of mouse reduction, the village elders focused on raising the population of cats rather than single people.²⁴⁷

Many spanking researchers still are trying to “increase the single population” because they restrict their study methods to yield only correlations, not causation.²⁴⁸ Some researchers interview mothers about

measure of [spanking] it is unlikely that Straus’s blanket injunction against disciplinary use of mild spanking would be supported by such analyses.”)

242. Larzelere, *Meta-Analysis*, *supra* note 15, at 31 (“Research has yet to show that a ban on spanking reduces the subsequent rate of physical abuse by parents. Along with other possibilities, it may be that a spanking ban eliminates the kind of age-appropriate nonabusive spanking that helps parents enforce milder disciplinary tactics, thereby increasing the risk of escalating disciplinary interactions.”) (citing Robert E. Larzelere & Byron Johnson, *Evaluations of the Effects of Sweden’s Spanking Ban on Physical Child Abuse Rates: A Literature Review*, 85 PSYCHOL. REP. 381 (1999)).

243. *Norfolk & Western Ry. Co. v. Ayers*, 538 U.S. 135, 174 (2003) (Kennedy, J., dissenting).

244. Baumrind, *Specious Causal Attributions*, *supra* note 170, at 1296-97 (“The number of never-married persons in certain British villages is highly inversely correlated with the number of field mice in the surrounding meadows.”).

245. *Id.* (“Marital status of humans was considered an established cause of field mice by the village elders . . .”).

246. *Id.* (“[U]ntil the mechanisms of transmission were finally surmised: Never-married persons bring with them a disproportionate number of cats relative to the rest of the village populace and cats consume field mice.”) (emphasis in original).

247. *Id.* (“With the generative mechanisms understood, village elders could concentrate their attention on increasing the population of cats rather than the proportion of never-married persons. Note that although the correlation between marital status and incidence of field mice is *not* a joint effect caused by incidence of cats and is therefore a true association (i.e., incidence of cats is an intervening variable and not a prior variable), the explanation that marital status is a cause of incidence of field mice is at best trivial, whereas the generative explanation that cats consume mice is valuable.”) (emphasis in original).

248. See, e.g., Straus, *ROUNDTABLE*, *supra* note 175, at 44. The frequent associations between being spanked as a teenager and future problems are strictly correlative issues, not causal. Larzelere, *supra* note 216, at 2 (saying “[t]he spanking controversy persists largely because of pervasive methodological problems,” like correlational research).

how often they spank and how often their children misbehave.²⁴⁹ Then they hunt for a relationship between the frequency of spanking and the child's misbehavior.²⁵⁰ Other researchers retrospectively interview adults decades after their childhood to see whether they were spanked and how often.²⁵¹ Then they try to link the spanking with whatever negative behaviors the adult may have, like depression or aggression.²⁵²

Ever since the time of Aristotle, people have known that just because two behaviors are correlated does not mean one behavior causes the other.²⁵³ Even if retrospective studies could control for someone's inaccurate memory, they cannot tell whether spanking causes adverse effects, or whether something else does (like someone's temperament or genetics).²⁵⁴ Likewise, merely interviewing a mother cannot determine whether spanking causes her child's misbehavior, or whether her child's misbehavior prompts the spanking.²⁵⁵ Because most spanking researchers discover nothing more than correlations, they typically concede that spanking "cannot be identified definitively as the cause" of negative child behaviors.²⁵⁶

A methodology that relies heavily on correlations—which is common in child discipline research—can be used to claim almost

249. See, e.g., Straus, *Corporal Punishment*, *supra* note 20, at 37-38 (interviewing mothers of over 3,000 children to assess spanking and to make associations); Larzelere, *Meta-Analysis*, *supra* note 15, at 2 ("This same-source bias has been shown to inflate associations between disciplinary tactics and adverse outcomes.").

250. See, e.g., Straus, *Corporal Punishment*, *supra* note 20, at 39 (claiming, based on the interviews with the mothers, that the more corporal punishment is used, the more antisocial behavior surfaces).

251. See, e.g., Straus, *ROUNDTABLE*, *supra* note 175, at 44 (relying on one survey of sixty-one abusive men and forty-four non-abusive men, and another survey of ninety-six couples, to show the correlation of corporal punishment to spouse assaults).

252. See, e.g., *id.* ("Straus analyzed 2,143 American couples and found that the more corporal punishment husbands and wives had experienced, the higher the probability of their assaulting a spouse.").

253. See, e.g., Baumrind, *Specious Causal Attributions*, *supra* note 170, at 1291 (saying that the idea that the cause produces the effect "appears early in the writings of Aristotle and Aquinas and is later examined systematically by Kant (1781/1965).").

254. See, e.g., Baumrind, *Specious Causal Attributions*, *supra* note 170, at 1293 ("It is an unsound practice at best to accept retrospective self-reports as veridical without verifying them against independent sources of information.").

255. See, e.g., Gershoff, *supra* note 199, at 550 ("[I]t is conceivable that the causal direction is reversed from what might be expected, such that children are driving the associations (e.g., aggressive children tend to elicit more corporal punishment from their parents).").

256. See, e.g., Gershoff, *supra* note 199, at 550 ("Because these meta-analyses are based primarily on correlational studies, parental corporal punishment cannot be identified definitively as the cause of these child behaviors and experiences, with the exception of immediate compliance."). Note that Gershoff opposes even mild physical discipline.

anything, like that ice cream causes depression.²⁵⁷ Say a researcher approaches her study with a bias against ice cream. If she is like many child discipline researchers, she simply asks people questions like “Are you depressed?” and “Do you eat ice cream?”²⁵⁸ When she finds a correlation,²⁵⁹ she then concludes that ice cream causes depression, without testing that conclusion against clinical studies or alternative explanations.²⁶⁰ Accordingly, she will never discover whether depression actually triggers ice cream eating, or whether something else causes both depression and ice cream consumption.²⁶¹

C. “*Avoid the Insidious Evils of . . . Propaganda Favoring Particular Points of View*”²⁶²

At a 1996 American Academy of Pediatrics conference on spanking, Dr. Larzelere and others presented research showing that there is no convincing evidence that spanking harms children.²⁶³ The two

257. See, e.g., DEBATING CHILDREN’S LIVES: CURRENT CONTROVERSIES ON CHILDREN AND ADOLESCENTS 215 (Mary Ann Mason & Eileen Gambrill eds., 1994) (“On the matter of studies that demonstrate a correlation between spanking and the later abuse of wives, children, and self, it should be noted that these studies—all of them—are characterized by design problems so obvious and pervasive as to send a graduate student of experimental methods into gales of laughter. For one thing, the self-reports of people who have run afoul of authorities because of such problems can hardly be relied on. For another, correlation is not a cause. For another, as every text on experimental methods will tell you, ex post facto investigations are next to worthless. For yet another, the authors of such studies cannot be accused of objectivity. In other words, despite the impressive bibliography, this isn’t science. What we have here is a shrewd attempt on the part of social policy activists within the professional community to use psychobabble and pseudoscience as the basis for law.”) (emphasis in original).

258. Cf., e.g., *supra* note 183 and accompanying text.

259. Cf., e.g., DANIEL MILLER, CONSUMPTION: CRITICAL CONCEPTS IN THE SOCIAL SCIENCES 416 (“Ice cream has ‘great power to act as a substitute for the breast, to wipe out anxieties and depression.’ The physical sensation of eating ice cream, when ‘optimally experienced’, is so complete that it is capable of blotting out all other concerns.”) (citation omitted).

260. Cf., e.g., *supra* note 175 and accompanying text.

261. See, e.g., Dr. Kalman M. Heller, *Is Spanking Harmful to Children?*, available at <http://www.drheller.com/spanking.html> (saying “just because two or more behaviors may be correlated, e.g., children who are read to more when young have higher I.Q.’s, doesn’t mean that one behavior, the reading, causes the other, the higher intelligence. That’s because many other factors could actually be the causal [ones] and need to be controlled for in order to conclude what is truly causal. In this example, factors such as the parents’ intelligence (I.Q. is at least partly genetically determined) and poverty (several aspects of growing up in very poor homes and neighborhoods result in poorer performance on IQ tests) may be the causal factors. Reading to children may simply be more associated with growing up in a non-poverty home.”).

262. *FCC v. League of Women Voters of Cal.*, 468 U.S. 364, 409 (1984) (Stevens, J., dissenting).

263. See generally Larzelere, *Review*, *supra* note 17.

pediatrics professors that organized the conference admitted that, before the conference, they “had a preconceived notion that corporal punishment, including spanking, was innately and always ‘bad.’”²⁶⁴ By the end of the conference, they both realized that, “given a relatively ‘healthy’ family life in a supportive environment, spanking in and of itself is not detrimental to a child or predictive of later problems.”²⁶⁵

This is common. Many people have a preconceived notion that physical discipline is harmful because most literature that opposes spanking is not only methodologically flawed, but also emotionally charged.²⁶⁶ This can be dangerous because playing on emotions makes it easier to influence people, especially when the subject is as moving as our children.²⁶⁷

For instance, Dr. Straus tirelessly manipulates his readers just by using the word “hitting” instead of “spanking.”²⁶⁸ He never uses this tactic when his research links harmful effects to grounding, privilege removal, or allowance removal.²⁶⁹ Dr. Straus never refers to grounding as “imprisonment” or withholding allowance as “robbing.” Indeed, he doesn’t seem to mention at all that his research indicates such punishments are more harmful than spanking.²⁷⁰

264. See, e.g., Rosellini, *supra* note 27 (“When Larzelere and others presented their research at the 1996 AAP conference on spanking, it prompted a quiet wave of revisionism. The two conference organizers, S. Kenneth Schonberg and Stanford B. Friedman, both pediatrics professors at Albert Einstein College of Medicine in New York, wrote afterward in *Pediatrics*, ‘We must confess that we had a preconceived notion that corporal punishment, including spanking, was innately and always “bad.”’”).

265. *Id.* (“[B]y the end of the conference, the two skeptics acknowledged that ‘given a relatively “healthy” family life in a supportive environment, spanking in and of itself is not detrimental to a child or predictive of later problems.’”).

266. Compare, e.g., Trumbull, *supra* note 180 and accompanying text; Trumbull, *supra* note 123; Edwards, *supra* note 20 and accompanying text, with STRAUS, *supra* note 33 (calling spanking “hitting” throughout the book), and *supra* note 102 and accompanying text.

267. Compare, e.g., FRANCIS GRAHAM WILSON, *POLITICAL PHILOSOPHY AND CULTURAL RENEWAL: COLLECTED ESSAYS 14-15* (H. Lee Cheek, Jr., M. Susan Power & Kathy B. Cheek eds., 2001) (citing FRANCIS GRAHAM WILSON, *A THEORY OF PUBLIC OPINION* 101, 103 (Greenwood 1975) (1962)) (“[P]ublic discourse [is] endangered by propaganda and submerged within an increasingly urban culture. The propagandist uses sophisticated techniques to create symbols, and does not appeal to reason; rather he uses emotion in order to manipulate mass minds in the contemporary world. In a modern secular democracy where intellectuals manipulate public opinion, discourse in the public square is vastly different from a communal, consensual discussion.”), with, e.g., *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972) (saying children can fundamentally affect a person).

268. See generally STRAUS, *supra* note 33 (calling spanking “hitting” throughout the book).

269. See, e.g., *supra* note 238 and accompanying text.

270. See, e.g., *id.*

It seems, then, that some researchers want to turn people against physical discipline, and try to do so through emotional rhetoric when legitimate reason and research do not support their goals.²⁷¹ If this tactic is successful, it can be hard for people to step back and think critically about the emotionally charged viewpoint.²⁷² It can be especially difficult to resist a scientific-sounding plea that brands all who question it enemies of children.²⁷³

1. “We Have Been Admonished to Avoid ‘the Tyranny of Labels’”²⁷⁴

*Timmy Willis was disciplined into posttraumatic stress disorder by schoolteacher Jami Stanton after she lost control of her temper and locked him in the “timeout room”—a dark windowless room where the walls were covered with musty shag carpeting, paint chips fell from the ceiling, there was no ventilation, it reeked of mildew and urine, and a rusted, jagged pipe hung overhead.*²⁷⁵

271. Compare, e.g., *supra* note 180 and accompanying text, with ROBERT E. LARZELERE, THERE IS NO SOUND SCIENTIFIC EVIDENCE TO SUPPORT ANTI-SPANKING BANS (Apr. 2007) [hereinafter LARZELERE, SOUND SCIENTIFIC EVIDENCE].

272. See, e.g., Nick Crossley, *Emotion, Psychiatry and Social Order: A Habermasian Approach*, in HEALTH, MEDICINE AND SOCIETY: KEY THEORIES, FUTURE AGENDAS 293 (S. Williams, J. Gabe & M. Calnan eds., 2000) (“[E]motions are not just technical objects of intervention, [they] have a rational character too, but that the colonisation of emotional life increasingly eclipses this rational dimension in the name of technical intervention.”).

273. Compare, e.g., *supra* note 267 and accompanying text, with, e.g., STRAUS, *supra* note 33, at 171 (saying “even a single spanking carries a risk of harmful side effects . . .”); cf. Jack Shafer, *Green Is the New Yellow: On the Excesses of “Green” Journalism*, SLATE, July 6, 2007, available at <http://www.slate.com/toolbar.aspx?action=print&id=2169863> (“It places a political agenda in front of the quest for journalistic truth and in its most demagogic forms tolerates no criticism, branding all who question it as enemies of the people.”).

274. *Baker v. Carr*, 369 U.S. 186, 297 (1962) (Frankfurter, J., dissenting) (“[The present case] is, in effect, a Guarantee Clause claim masquerading under a different label . . . We have been admonished to avoid ‘the tyranny of labels.’”) (quoting *Snyder v. Mass.*, 291 U.S. 97, 114 (1934)).

275. See Dave Savini, *Kids in Confinement*, THE IRE JOURNAL, Nov./Dec. 2000 (“In the basement of an elementary school, tucked away in a dark corner was a tiny room. It had a deadbolt lock on the outside and a paper bag concealed the window. Inside, the walls were covered with musty shag carpeting and paint chips fell from the ceiling. There was no ventilation and a rusted, jagged pipe hung overhead. It reeked of mildew and urine. This was a ‘time-out room’ where elementary school students were locked up for such offenses as failing to do homework . . . [an] 8-year-old [boy said] he was terrified of [the time-out room]—he watched kids get locked inside and listened to them scream and kick for long periods of time.”). Because Mr. Savini did not mention any names regarding this timeout room, both Timmy Willis and Jami Stanton are pseudonyms. Also, Mr. Savini’s article does not delineate the mental effects that the timeout room had on children. However, posttraumatic stress disorder fits well because it develops after exposure to extremely terrifying events. RACHEL YEHUDA, RISK FACTORS FOR POSTTRAUMATIC STRESS

Jami lost the battle for control; she lost control of herself; she lost control of her temper and her ability to discipline reasonably.²⁷⁶ Timmy's posttraumatic stress disorder illustrates the tendency for mental punishment to become mental abuse.²⁷⁷ There's a fine line between mental abuse and legal, socially approved timeout and other modes of disciplining children.²⁷⁸ Despite this, the idea that timeout increases the risk that a parent will go too far and cross the line to mental abuse has been largely ignored.²⁷⁹

This abusive timeout is appalling, but so is the conclusion drawn from it. Few people really think timeout inherently increases the risk that a parent will mentally abuse her child. Nevertheless, this story says timeout leads to mental abuse in exactly the same way that some researchers have said spanking leads to physical abuse.²⁸⁰

There is no empirical basis for either argument.²⁸¹ But as advertisers have long been aware, if you repeat a claim frequently enough, people will eventually believe it.²⁸² Accordingly, many researchers commonly label spanking "violence," and children who have been spanked "victims."²⁸³ Because they repeatedly allege that physical discipline is inherently evil, lawmakers are beginning to believe it.²⁸⁴

DISORDER xiii (1999). In order to concretely illustrate the scare tactics researchers like Dr. Straus use, this paragraph applies the facts from Mr. Savini's story to one of Dr. Straus' paradigmatic scare stories. Cf. STRAUS, *supra* note 33, at 81 ("Ricky LeTourneau 'was disciplined to death' by foster mother Deborah Wolfenden after she lost control of her temper and beat him.").

276. Cf. STRAUS, *supra* note 33, at 81 ("[She] lost the battle for control. She lost control of herself. She lost control over her temper and her ability to discipline reasonably.").

277. Cf. *id.* ("Ricky's death illustrates the tendency for physical discipline to become physical abuse.").

278. Cf. *id.* ("There is a fine line between physical abuse and legal, socially approved spanking and other modes of disciplining children.").

279. Cf. *id.* ("Despite this, the idea that spanking increases the risk that a parent will go too far and cross the line to physical abuse has been largely ignored.").

280. See *supra* notes 275-279 and accompanying text (relating a similar story about physical abuse from Dr. Straus' book).

281. See, e.g., *supra* note 211 and accompanying text.

282. See, e.g., MADSEN PIRIE, HOW TO WIN EVERY ARGUMENT: THE USE AND ABUSE OF LOGIC 113 ("Advertisers have long been life members of the *ad nauseam* society. They know that a specious claim acquires credibility and force if it is repeated often enough. They know the importance of building up not a rational conviction but a habit of association . . . [T]o use the *argumentum ad nauseam* is easy enough: all you have to do is to repeat yourself.").

283. See, e.g., U.N., *Children and Violence*, *supra* note 5, at 6 (calling spanking, "violence," and children who have been spanked, "victimized").

284. See, e.g., *supra* note 98 and accompanying text; Part II, *supra*.

However, most of the population does not think spanking is violent or abusive.²⁸⁵ If spanking were abusive, the child abuse rate would not be only five percent while the spanking rate is around eighty percent.²⁸⁶ Eighty is just too far from five to say spanking equals abuse. Indeed, as the use of spanking decreases, child abuse rates seem to rise steadily.²⁸⁷

Yet, the more spanking opponents are able to change our child discipline vocabulary, the more judges, juries, and legislators may think corporal punishment is not legally reasonable discipline.²⁸⁸ Language manipulation provides a way to infuse the law with anti-spanking philosophy, without subjecting that philosophy to critical examination.²⁸⁹

285. Compare, e.g., M. Siegal & M.S. Barclay, *Children's Evaluation of Father's Socialization Behavior*, 21 DEV. PSYCH. 1090 (1985), with M. 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) (together finding that working class Australian children from five to seventeen years old "were asked to judge the acceptability of the use of four different methods of discipline in fictitious vignettes involving a parent and a 4-year-old." All approved both reasoning and spanking over permissiveness and love withdrawal.); Baumrind, *Causally Relevant Research*, *supra* note 21, 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) (footnote omitted).

286. See, e.g., Trumbull, *supra* note 123 ("Surveys indicate that 70 to 90 percent of parents of preschoolers use spanking, yet the incidence of physical child abuse in America is only about 5 percent.") (footnote omitted).

287. See, e.g., *id.* ("[O]ver the past decade reports of child abuse have steadily risen while approval for parental spanking has steadily declined."); Memorandum from the National Committee to Prevent Child Abuse (May 1995). Note, however, that the U.N. reports that children are "victimized" at higher rates than adults, but it can only do this because it labels even mild spanking "victimization." U.N., *Children and Violence*, *supra* note 5, at 6. If "victimization" denotes severe physical interactions, then "victimized" adults and children should have similar resultant death rates; but they don't. While some claim the child "victimization" rates are very high, the corresponding death rates are consistently lower—up to *ten times lower*—than the death rates of victimized adults. U.N., *League Table*, *supra* note 7, at 10 fig. 6. This suggests that many children are not truly victimized.

288. If social scientists and legislators alter the language of spanking and make it sound violent enough, then spanking may eventually be outlawed. See, e.g., Deana A. Pollard, *Banning Corporal Punishment: A Constitutional Analysis*, 52 AM. U. L. REV. 447, 454 ("[D]espite referring to the parental right to control children's upbringing as 'fundamental,' the Court's historical and contemporary analysis of the right has shown little deference to parental actions that may harm children.").

289. See, e.g., Straus, *ROUNDTABLE*, *supra* note 175, at 65 (saying that Sweden "sought to redefine what was then legally and morally acceptable behavior carried out by most parents, such as spanking"); Bitensky, *supra* note 19, at 404-05 ("The Convention of the Child's absolute prohibition of corporal punishment of children also builds upon and, indeed, represents a further

2. Calling Spanking “Violent” Is Like Calling Timeout “Imprisonment”

As intended, legislators are beginning to act merely on the slogan “violence begets violence.”²⁹⁰ They are beginning to accept the “human rights” argument that, “if you cannot spank your neighbor, you should not spank your child.”²⁹¹ Not only is this argument inconsistent with the sound research, but it makes no sense in light of the fact that parents don’t have the same responsibility for their neighbors as they do their children.²⁹²

We don’t force our neighbor to sit in the timeout chair, the corner, or the closet. We don’t compel our neighbor to do more chores, go to her room, go to bed early, or handwrite 200 times “I’ve been a bad neighbor.” We don’t keep her from eating dinner, visiting friends, or playing with toys. We don’t give our neighbors any of the punishments we give children because we are not responsible to help our neighbors mature like we are our children.²⁹³

progression from interpretations of article 7 of the Civil and Political Rights Covenant, which forbids subjecting anyone to torture or to cruel, inhuman, or degrading treatment or punishment.”).

290. See, e.g., U.N., *League Table*, *supra* note 7, at 28 (“If you hit your child you’re telling the child that hitting is reasonable behaviour. . . . In sum, the widespread use of physical punishment in the bringing up of children, it is argued, is a mass lesson in the legitimacy of violence as a method of resolving conflicts or asserting will.”).

291. See, e.g., *id.* at 28 (“The Committee [of Ten] does not find it acceptable that a society which prohibits any form of physical violence between adults would accept that adults subject children to physical violence.”).

292. Compare, e.g., 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* 192 (1977) (finding “moderate punishment by parents in the long run produced less aggressive children than either no punishment or harsh punishment However, when harsh punishment is used, particularly with children who weakly identify with their parents, aggression is heightened—probably as a result of the modeling. At the same time, permissiveness, as indicated by no punishment, is equally deleterious according to our data,”), with, e.g., Diana Baumrind, Ph.D., *A Blanket Injunction Against Disciplinary Use of Spanking Is Not Warranted by the Data*, 98 *PEDIATRICS* 828, 829 (1996) [hereinafter Baumrind, *Not Warranted*] (saying children “readily understand” that being spanked by their parents does not entitle them to “aggress offensively against their peers”). Even Dr. Straus suggests that it is best to be firm, just not with spanking. See MURRAY A. STRAUS, *THE PRIMORDIAL VIOLENCE* (forthcoming 2009), ch. 14, at A4 (saying that the combination of love and firm guidance is the best—just without spanking).

293. See, e.g., David Benatar, *Corporal Punishment*, 24 *SOC. THEORY & PRAC.* 237 (Summer 1998), available at <http://www.corpun.com/benatar.htm> (“If we suggest that hitting a wrongdoer imparts the message that violence is a fitting means to resolve conflict, then surely we should be committed to saying that detaining a child or imprisoning a convict conveys the message that restricting liberty is an appropriate manner to deal with people who displease one. We would also be required to concede that fining people conveys the message that forcing others to give up some of their property is an acceptable way to respond to those who act in a way that one does not like. If

If we were really concerned with treating children like adults, we would lobby to force children to live on their own, get jobs, pay taxes, and submit to adult penal and contract laws.²⁹⁴ But few people do this because children are children for a reason: they need to mature.²⁹⁵ If they do not learn when they are young that misbehavior has negative consequences, they tend not to understand when they are older how to deal with legal consequences.²⁹⁶

So, the issue behind the spanking debate is not whether the child should be treated as an adult.²⁹⁷ The issue is whether the child should be allowed to mature through the discipline method that suits him best.

Each child is unique; some children may need physical discipline, whereas others may not.²⁹⁸ Sometimes, *not* spanking could be what begets violence, as indicated by this American youth who got in trouble with the police “on a daily basis”:²⁹⁹

beatings send a message, why don't detentions, imprisonments, fines, and a multitude of other punishments convey equally undesirable messages?”).

294. *Contra, e.g., supra* note 84 and accompanying text.

295. *See, e.g., Baumrind, Discipline Controversy, supra* note 157, at 412 (“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.”).

296. *See, e.g., supra* note 12 and accompanying text; Coburn, *supra* note 124 (“How ironic if, in years to come, the lack of corrective smacking in childhood is raised in mitigation of criminal offending.”); *supra* Part III.

297. *Contra* U.N. *League Table, supra* note 7, at 28 (“Europe’s Social Rights Committee is pushing its 45 member countries to acknowledge that the physical punishment of children is a breach of their human rights.”). Many argue against spanking because it causes mild pain. David Orentlicher, *Spanking and Other Corporal Punishment of Children by Parents*, 35 *HOUS. L. REV.* 147, 149 (1998) (saying our society overvalues pain and undervalues children). However, all disciplines, including timeout and spanking, inflict either mental or physical pain. Indeed, research suggests that child discipline requires pain to be effective. *See* LARZELERE, *COMBINING LOVE, supra* note 184 (“Research on punishment has found that the stronger the punishment, the more effective it is. That suggests that effectiveness will be maximized when the child is most distressed However, when reasoning was used, whether by itself or in combination with punishment, an intermediate level of child distress was associated with optimal effectiveness.”).

298. *See, e.g., LARZELERE, COMBINING LOVE, supra* note 184 (“For children initially high on antisocial behavior, spanking frequency *reduced* their subsequent level of antisocial behavior. For children who were lowest on antisocial behavior, spanking frequency increased their subsequent level of antisocial behavior.”) (emphasis in original); LARZELERE, *SOUND SCIENTIFIC EVIDENCE, supra* note 271, at 5 (discussing the four studies by Roberts & Powers. “The spank enforcement worked when the barrier method did not, and vice versa. This shows that parents need more disciplinary enforcement options, not fewer options” Dr. Larzelere also reported that these methods can reduce recurrences of child abuse from 49% to 19% over a 2.5 year period.).

299. *See, e.g., M.L. Gunnoe & C.L. Mariner, Toward a Developmental-Contextual Model of the Effects of Parental Spanking on Children’s Aggression*, 151 *ARCHIVES PEDIATRICS & ADOLESCENT MED.* 768 (1997) (finding that customary spanking reduced aggression in four- to

It took five police officers to get the fifteen-year-old boy in handcuffs and [into] a police car. [After he had been taken away, an officer] interviewed the mother to determine why the boy had become so violent. The mother [said she and the father] had simply tried to restrain the boy from leaving the house after curfew. [In defiance, the boy] proceeded to punch the daylights out of both mom and dad. Mom explained that they had lost control of the boy at an early age, as young as three or four years old. He simply refused to do what they said. “We’ve tried everything,” she sobbed. “We’ve tried timeouts, we’ve tried grounding him, we’ve taken privileges away, it just seems like nothing works.” [The officer] then asked . . . “When he was three years old and refused to do what you said, did you ever spank him?” Mom became very angry as her eyes narrowed to slits and she gritted her teeth. With blood running down her face from a broken nose, she replied, “We don’t believe in spanking. Violence begets violence!”³⁰⁰

This is the sad result of a mother who obviously cared about her child, but never learned that aggression and delinquency are related to the quality of parenting, not the use of physical discipline.³⁰¹ Other parents seldom learn that aggression is more closely linked to permissiveness, negative criticism, and watching television than to *even abusive* physical punishment.³⁰² Still others rarely learn things like,

seven-year-olds, in African-Americans, and in girls); Detective Robert Surgenor, *Introduction to Fighting Back*, available at <http://www.fdn.org/articles/introduction.html> (saying that the youth in the following story, who was never spanked, was in trouble with the police “on a daily basis”).

300. Surgenor, *supra* note 299.

301. See, e.g., Baumrind, *Causally Relevant Research*, *supra* note 21, at 14 (“[V]ariations in the complex pattern of childrearing, not whether parents include normative physical punishment among their disciplinary options, accounts for the significant differences in child outcomes.”); 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 (1994) (finding that once the contribution of parental involvement had been removed, harsh corporal punishment showed no detrimental impact on adolescent aggressiveness, delinquency, and dysphoria).

302. Compare UNDERSTANDING AND PREVENTING VIOLENCE 371 (A.J. Reiss & J.A. Roth eds., 1993) (reviewing 188 studies from 1957-1990 and concluding: “Overall, the vast majority of studies, whatever their methodology, showed that exposure to television violence resulted in increased aggressive behavior, both contemporaneously and over time.”), with, e.g., Larzelere, *Meta-Analysis*, *supra* note 15, at 24 (reviewing twenty-six qualifying studies and finding that even severe or predominant physical discipline consistently is more beneficial than other disciplinary tactics to reduce aggression), and Dan Olweus, *Familial and Temperamental Determinants of Aggressive Behavior in Adolescent Boys*, 16 DEV. PSYCH. 644 (1980) (saying maternal permissiveness and negative criticism leads to more detrimental effects than even abusive physical discipline).

when sons strongly identify with their fathers, moderate spanking actually seems to *decrease* aggression.³⁰³

Children are smart.³⁰⁴ They understand the moral difference between a playground fight and punishment by legitimate authorities like parents, teachers, and judges.³⁰⁵ Indeed, the sound research supports this, suggesting that a spanking does not teach a child that it's okay to hit others to resolve conflicts.³⁰⁶

If punishments taught such things, then timeout would teach children to resolve conflicts by forcing people to sit in chairs.³⁰⁷ But few children put their peers in timeout because that's not what punishment teaches. Punishment teaches that negative behavior has negative consequences.³⁰⁸ To ignore this and make laws that deprive children of helpful discipline methods risks depriving them of maturity.

303. *E.g.*, LEFKOWITZ, *supra* note 292 and accompanying text.

304. *See, e.g.*, Benatar, *supra* note 293 (arguing that we underestimate children's ability to comprehend punishment when we suggest that children cannot extract the message that spanking imparts—that misbehavior is unacceptable).

305. *See, e.g.*, Benatar, *supra* note 293 (“There is all the difference in the world between legitimate authorities—the judiciary, parents, or teachers—using punitive powers responsibly to punish wrongdoing, and children or private citizens going around beating each other, locking each other up, and extracting financial tributes (such as lunch money). There is a vast moral difference here and there is no reason why children should not learn about it. Punishing children when they do wrong seems to be one important way of doing this.”).

306. *See, e.g., id.*; *supra* note 18 (showing that spanking reduces aggression better than mental punishments).

307. *See, e.g.*, Benatar, *supra* note 293 and accompanying text. Perhaps this logic leads people to recommend that parents not discipline children at all, but instead give children therapy. But, to be consistent, therapy merely tells children to view a misbehaving person as mentally ill and deserving of psychological treatment. *Id.* Likewise, to refrain from all discipline tells children that it is fine for people to misbehave and thereby infringe on others' rights and interests. However, most children “readily understand” that legitimate authorities have legitimate powers. Baumrind, *Not Warranted*, *supra* note 292 and accompanying text.

308. *See, e.g.*, Baumrind, *Not Warranted*, *supra* note 292 (“A team of investigators documented experimentally the importance of prudent negative consequences for maintaining the appropriate behavior of hyperactive students. Prudent negative consequences (which did not include paddling), within the context of a positive teacher-student relationship, were extremely effective in shaping appropriate social and academic behaviors, and were necessary on an ongoing basis to control inappropriate behavior of hyperactive students. Positive consequences did not suffice, and imprudent negative consequences were counterproductive. Prudent negative consequences are consistent, immediate, calm, private, and specific.”) (citation omitted).

3. “Unacceptable . . . Censorship and Use of the Media for Propaganda”³⁰⁹

The media is intensely interested in the subject of spanking.³¹⁰ Research that claims corporal punishment causes problems like delinquency and aggression makes for attractive, emotion-grabbing headlines.³¹¹ However, like many researchers, many journalists ignore studies about spanking’s successes.³¹²

For instance, the American Medical Association published two studies in a single issue of its *Archives of Pediatrics & Adolescent Medicine*.³¹³ One study was by Dr. Straus, and the other was by Dr. Marjorie Gunnoe.³¹⁴ Of the two studies, Dr. Gunnoe’s was more comprehensive. Whereas Dr. Straus’ study lasted only two years, Dr. Gunnoe’s lasted five and included more people.³¹⁵ Dr. Straus surveyed only mothers who had given birth between fourteen- and twenty-four-years-old.³¹⁶ By contrast, Dr. Gunnoe analyzed random children from parents of many ages.³¹⁷

309. Ark. Educ. Television Comm’n v. Forbes, 523 U.S. 666, 688 (1998) (Stevens, J., dissenting).

310. See, e.g., U.N., *League Table*, *supra* note 7, at 29-30 (“Second, physical punishment is an issue of which most people have some experience, on which most people have opinions, and in which the media has an intense interest.”).

311. See, e.g., *id.* at 30 (“Research which is either presented or misrepresented in such a way as to suggest that smacking children is the cause of all problems from delinquency to depression are always likely to attract headlines and editorial derision.”).

312. Compare Part IV.A (showing the bias of many spanking researchers), with, e.g., Rosellini, *supra* note 27 (“Journalists, reporting on child-rearing trends, seem to have adopted a similar approach to spanking, rarely bothering to scrutinize the claims of prohibitionists.”).

313. See, e.g., *id.* (“Consider the news media coverage of a much touted study by Straus, published last year in the *Archives of Pediatrics & Adolescent Medicine* . . . Remarkably, the same issue of *Archives* carried another, longer-term study by psychologist Marjorie Lindner Gunnoe that came to quite different conclusions.”).

314. See, e.g., *id.*

315. See, e.g., *id.* (“Unlike Straus, Gunnoe used data that tracked somewhat more children (just over 1,100) for five years (not two years), sampled older parents as well, and relied on reports from both children and adults.”).

316. See, e.g., *id.* (saying “the 807 mothers in the survey were just 14 to 24 years old at the time they gave birth”).

317. See, e.g., *supra* note 315 and accompanying text; LARZELERE, CRITIQUE, *supra* note 223 (“Immediately following the article by Straus et al. (1997) in the latest issue of *Archives of Pediatrics and Adolescent Medicine* is a study by Gunnoe and Mariner (1997). It improves upon the Straus et al. study in several ways, and reconciles the differential findings between their study and the other 8 best studies to date. Improvements include a longer time until outcome variable (5 years), a more representative sample, and using different informants (parent and child) for the spanking and the outcome variable.”).

The two studies came to opposing conclusions.³¹⁸ Dr. Straus claimed his survey showed that frequent spankings increase antisocial behavior, like aggression.³¹⁹ Dr. Gunnoe's study indicated that many young children who are spanked get into fewer fights at school.³²⁰ She concluded, "For most children, claims that spanking teaches aggression seem unfounded."³²¹

Again, these two articles appeared in the same issue of the same publication.³²² Three major news networks and over 100 periodicals reported Dr. Straus' study under headlines like "Spanking Makes Children Violent, Antisocial."³²³ But none of the major networks, and only fifteen periodicals, mentioned Dr. Gunnoe's findings.³²⁴

Similarly, almost none of the news outlets mentioned the flaws in Dr. Straus' study. Nobody mentioned that the detrimental effects he found were statistically insignificant—accounting for only 1.3 percent of later change in antisocial behavior.³²⁵ To the contrary, the Associated Press interpreted this 1.3 percent as proof that spanking causes a "boomerang" of misbehavior.³²⁶ But as Dr. Larzelere later noted, "If spanking is as detrimental as it is being made out to be, it should be easy to get a statistically significant [change in behavior]."³²⁷

318. Compare, e.g., Gunnoe, *supra* note 299 and accompanying text, with *supra* note 223 and accompanying text.

319. See, e.g., *supra* note 223 and accompanying text.

320. See, e.g., Rosellini, *supra* note 27 ("Gunnoe found that children ages 4 to 7 who had been spanked got in fewer, not more, fights at school. (The reverse was true with white boys ages 8 to 11 in single-mother families, who Gunnoe suggested might be less accepting of parental authority).").

321. Gunnoe, *supra* note 299.

322. See, e.g., *supra* note 313 and accompanying text.

323. See, e.g., Rosellini, *supra* note 27 ("American Medical Association, which publishes Archives of Pediatrics & Adolescent Medicine, issued a news release headlined 'Spanking Makes Children Violent, Antisocial,' and Straus' findings were reported by the three major networks and included in at least 107 newspaper and magazine stories Remarkably, the same issue of Archives carried another, longer-term study by psychologist Marjorie Lindner Gunnoe that came to quite different conclusions Yet there was no AMA press release on the Gunnoe study.").

324. See, e.g., *id.* ("Yet there was no AMA press release on the Gunnoe study, and none of the network reports and only 15 of the 107 newspaper and magazine stories on Straus's research mentioned Gunnoe's contrary findings.").

325. See, e.g., LARZELERE, CRITIQUE, *supra* note 223 and accompanying text.

326. See, e.g., Rosellini, *supra* note 27 ("Typically, news accounts reported simply that Straus's study determined that 'spanking children causes [a] 'boomerang' of misbehavior,' as the Associated Press put it.").

327. LARZELERE, CRITIQUE, *supra* note 223 ("If spanking is as detrimental as it is being made out to be, it should be easy to get a statistically significant difference between those spanked at the rate of 104 times annually vs. those spanked from 0 to 25 times annually. Given a total variance accounted for of 1.3%, I don't think Straus et al. can obtain that even with their overall sample size of over 800.").

The media also didn't mention that, of all the children in his study, Dr. Straus drew his conclusions from only extreme cases.³²⁸ They failed to say that his study did not represent the vast majority of families, having surveyed only children from unusually young mothers.³²⁹ And they never said that the unpublished part of Dr. Straus' study actually suggests spanking is beneficial for initially disruptive children.³³⁰

In general, the media doesn't talk about the possibility that spanking may have benefits. Even when they do report spanking positively, they also include anti-spanking views, which tends to dilute any message that spanking may be helpful.

For example, USA Today reported that one thing CEOs "overwhelmingly have in common" is that they were spanked as children.³³¹ The journalist interviewed leaders like Dave Haffner, CEO of Fortune 500 manufacturer Leggett & Platt. "I received the belt when I deserved it," said Haffner [speaking] with obvious love in his voice for his father . . . 'I'm disciplined, detailed and organized.'"³³²

328. Compare *id.* (noting that Straus failed to release the results of anything but the most extreme high frequency group and suggesting that "9-year-olds who are spanked at the rate of every other day may have serious behavioral problems quite apart from their being spanked"), with Baumrind, *Discipline Controversy*, *supra* note 157, at 409 (saying that, by age 9, only one third of the parents spanked their children as often as once a month). Thus, nine-year-old children that are spanked this often either have abnormal behavioral problems or live in unusual situations.

329. Rosellini, *supra* note 27 ("But neither the press release nor many of the news reports mentioned the study's gaps: that 9-year-olds who are spanked at the rate of every other day may have serious behavioral problems quite apart from their being spanked, and that the 807 mothers in the survey were just 14 to 24 years old at the time they gave birth—hardly a representative sample.").

330. See LARZELERE, *COMBINING LOVE*, *supra* note 184 ("Relatedly, Straus (personal communication) has reported that, in three of the five cohorts in Straus et al. (1997) [the study currently being discussed], the outcomes of spanking frequency depended upon the initial level of the child's antisocial behavior. Spanking frequency reduced antisocial behavior in the most antisocial children, but increased it in the least antisocial children. This is consistent with the idea that contingent punishment is particularly important for turning around the misbehavior of disruptive children, but that parents should be resorting more often to gentler tactics such as reasoning with better behaved children.").

331. Del Jones, *Hit with the Question: Were You Spanked? CEOs Say Yes*, USA TODAY, Oct. 9, 2006, at Money (also saying, "USA TODAY interviewed about 20 CEOs over three months and, while none said they were abused, neither were any spared. Typical is General Motors (GM) CEO Rick Wagoner, 53. He got an occasional 'whack in the fanny,' while growing up in Richmond, Va., but said he had it coming . . ."). Among those that had been spanked were General Motors CEO Rick Wagoner, Time Warner CEO Richard Parsons; Shell Chemicals Executive Vice President Fran Keeth, Alliant Energy Resources former CEO Erroll Davis, SCO Group CEO Darl McBride, TD Ameritrade CEO Joe Moglia, and United Way CEO Brian Gallagher.).

332. *Id.*

Time Warner CEO Richard Parsons said of his parents who spanked him, “It was just clear to me that both my parents were focused on my well-being, my happiness, my prospects for success, satisfaction, contentment.”³³³

Likewise, Kaye/Bassman International CFO Nick Turner credited corporal punishment for his success.³³⁴ As an executive recruiter, Mr. Turner said about ninety percent of the top executives were spanked as he was, and they turned out to be “stable, focused, [and] competitive.”³³⁵

For balance, the USA Today journalist also interviewed Dr. Straus. While Dr. Straus admitted that “very good parents” spank, he said the CEOs would be doing “even better” had they not been spanked.³³⁶ While it’s unclear what makes someone a super-CEO, the sound research contradicts Dr. Straus’ claim. Children who are never spanked don’t seem to do “even better” than they would have with spanking; instead, they tend to do worse than many who are spanked.³³⁷

So, on the one hand, spanking opponents receive most of the media coverage, and that media coverage often is unopposed. On the other hand, positive reports about spanking are weak counterbalances because they usually include opposing viewpoints, even if those views are unfounded. This amounts to a virtual monologue about a subject that deserves a dialogue.

333. EVE TAHMINCIOGLU, FROM THE SANDBOX TO THE CORNER OFFICE: LESSONS LEARNED ON THE JOURNEY TO THE TOP 15 (2006).

334. See Jones, *supra* note 331.

335. *Id.*

336. *Id.* (“Straus says it comes as no surprise that CEOs who were spanked express great affection for their parents. It’s not just bad parents who spank. ‘So do very good parents,’ he says. ‘They would be even better parents if they didn’t spank, and their kids would be doing even better.’”).

337. See, e.g., LEFKOWITZ, *supra* note 292 and accompanying text. Compare Baumrind, Causally Relevant Research, *supra* note 21, 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.”), with Diana Baumrind, *The Influence of Parenting Style on Adolescent Competence and Substance Use*, 11 J. EARLY ADOLESCENCE 56, 69-71 (1991) [hereinafter Baumrind, *Influence*] (showing that children in authoritative families (who were spanked, sometimes often) displayed minimal internalizing and externalizing problems, and had generally healthy self-assertiveness), and *supra* note 217 and accompanying text.

D. “Risk . . . Alone Is Insufficient to Support Regulation”³³⁸ Because “It Is Always a Doubtful Course, to Argue Against the Use or Existence of a Power, from the Possibility of Its Abuse”³³⁹

When the research of spanking opponents is challenged, they often claim they are only trying to expose “risk.”³⁴⁰ For example, Dr. Penelope Leach of London’s Royal Free Hospital admits that “no single variable such as physical punishment would be expected to account for all the variance in the outcomes of upbringing.”³⁴¹ Nevertheless, she insists that “[t]he relevant concept is risk, and explaining risk is part of government’s role.”³⁴²

That’s as logical as saying it’s the government’s job to explain the risk that cutting potatoes with knives may lead to stabbings. Statements like Dr. Leach’s are generally unsupported by the sound research because such research suggests that the risk of abuse lies in the parenting style, not the discipline method.³⁴³ Just as most people handle knives responsibly, most parents spank responsibly.³⁴⁴

338. *FEC v. Beaumont*, 539 U.S. 146, 159-60 n.5 (2003) (citing *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652, 658-59 (1990)).

339. *Martin v. Hunter’s Lessee*, 14 U.S. 304, 344 (1816) (also saying, “From the very nature of things, the absolute right of decision, in the last resort, must rest somewhere—wherever it may be vested it is susceptible of abuse.”).

340. See U.N., *League Table*, *supra* note 7, at 30 (“Penelope Leach, Senior Research Fellow at London’s Royal Free Hospital and University College Medical School and an anti-physical punishment campaigner has written: ‘Concepts such as statistical significance, correlation, prediction or risk are difficult to present comprehensibly in the brief and simple terms demanded by the media . . . [T]he relevant concept is risk . . .’”).

341. *Id.* (Dr. Leach saying, “It is difficult to explain, briefly, that no single variable such as physical punishment would be expected to account for all the variance in the outcomes of upbringing; that nobody is suggesting that every smack leads to antisocial behaviour any more than every cigarette leads to lung cancer, or even that everybody who is beaten a great deal is certain to show later ill effects any more than everybody who smokes a great deal is certain to get lung disease.”).

342. *Id.* (quoting Dr. Leach).

343. See, e.g., *supra* note 301 and accompanying text.

344. See, e.g., Rebecca R. S. Socolar, M.D. & Ruth E. K. Stein, M.D. *Spanking Infants and Toddlers: Maternal Belief and Practice*. 95 *PEDIATRICS* (1995) 105-111 (indicating “that most parents who spank do not spank on impulse, but purposefully spank their children with a belief in its effectiveness. Furthermore, the study revealed no significant correlation between the frequency of spanking and the anger reported by mothers. Actually, the mothers who reported being angry were not the same parents who spanked.”); *supra* note 210-212 and accompanying text.

Like Dr. Leach, Dr. Straus theorizes that even one spank increases the risk that a child will experience harmful side effects.³⁴⁵ But his studies do not show such an increase.³⁴⁶ Indeed, they cannot show an increase because the risk factor analyses he uses only apply “to a statistical population, not to individuals” like a child.³⁴⁷ Dr. Straus’ risk theory, therefore, reflects an exercise in mere possibilities.³⁴⁸

Laws, however, are supposed to be “statements about the truth of actual events, not mere probabilities. If that belief is ever lost, a society based on the rule of law would ultimately collapse into anarchy.”³⁴⁹ While many spanking researchers claim they are only trying to expose risk, the effect of their rhetoric is more serious. It affects law at one of the most sensitive levels of society; it affects the lives and maturation of children.³⁵⁰

V. THE MOST COMPREHENSIVE CHILD DEVELOPMENT STUDY VALIDATES THE BODY OF RESEARCH THAT SUGGESTS SPANKING IS HARMLESS

In contrast to the inadequate study methods described in Part IV are the methods of Dr. Diana Baumrind of the University of California, Berkeley.³⁵¹ Dr. Baumrind is best known for identifying and describing

345. See, e.g., STRAUS, *supra* note 33, at 171 (saying even “a single spanking carries a risk of harmful side effects . . .”).

346. See, e.g., Baumrind, Letter, *supra* note 185 (“But the risk analyses Straus conducts show no such thing and logically cannot, because they are probabilistic, not categorical.”); LARZELERE, CRITIQUE, *supra* note 223 and accompanying text; Larzelere, APA, *supra* note 17 and accompanying text.

347. See, e.g., Baumrind, Letter, *supra* note 185 (“Risk factor analyses apply to a statistical population, not to individuals. . . . [S]panking is a very weak and statistically unstable risk factor . . .”).

348. See, e.g., *supra* note 241 and accompanying text.

349. See Roger C. Cramton, *Furthering Justice by Improving the Adversary System and Making Lawyers More Accountable*, 70 *FORDHAM L. REV.* 1599, 1607-08 (2002) (quoting JONATHAN HARR, *A CIVIL ACTION* 236 (1995)).

350. See, e.g., *supra* note 298 and accompanying text.

351. Dr. Diana Baumrind “enjoyed a strong intellectual friendship with her father, an atheist with a strong sense of Jewish cultural tradition” PARENTHOOD IN AMERICA: AN ENCYCLOPEDIA 81 (Lawrence Balter ed., 2000). “In her teens, Diana supplemented her personal education in Marxist philosophy and economics by attending night classes at *The Catholic Worker*” *Id.* During that time, she joined the Communist Party and met celebrities like “Pete Seeger and Paul Robeson, whose left-wing political activism also subjected them to McCarthy-era investigations.” *Id.* at 82. “In 1948, Diana earned an A.B. degree in philosophy and psychology at Hunter College.” *Id.* Newly married, she began graduate school at the University of California, Berkeley, where in 1955, she earned her Ph.D. in Psychology (Clinical-Social-Developmental). *Id.* “By 1960, Dr. Baumrind affiliated with Berkeley’s Institute of Human Development, where she still

parenting styles, and for challenging “those who prematurely commit themselves to theoretical or political positions.”³⁵²

For over ten years, Dr. Baumrind and several teams of professionals conducted the most extensive and methodologically thorough child development study to date.³⁵³ They studied 164 families, tracking the children in those families from age four to fourteen.³⁵⁴ As much as possible, Dr. Baumrind approached the study without bias by selecting team members with divergent ideologies, assigning any given observation to a team that was unfamiliar with the family to be observed, openly reporting their methods and results, and assigning independent psychologists to separately analyze those results.³⁵⁵

directs the Family Socialization and Developmental Competence Project.” *Id.* “[G]rants of nearly \$3.5 million have funded her research . . . on family socialization and parenting styles, developmental competence, adolescent risk taking, and ethics.” *Id.* “[Dr.] Baumrind is a recipient of the G. Stanley Hall Award (APA Division 7, 1988), and an NIMH Research Scientist Award (1984–1988).” *Id.* at 82–83.

352. *See, e.g., id.* at 80 (saying Dr. Baumrind is best known for identifying and describing basic parenting styles); *id.* at 83 (“[S]he is unwavering in her commitment to . . . humanism, and courageous in her challenge to those who prematurely commit themselves to theoretical or political positions . . .”).

353. *See, e.g., Baumrind, Influence, supra* note 337, at 58 (“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 21, at 2 (“Observations and interviews were conducted by highly trained professionals . . .”); Goode, *supra* note 179 (“Dr. Straus, who attended Dr. Baumrind’s talk, praised her study. ‘It may be the best single study available,’ he said, in terms of methodology. But the findings did not change his view that spanking is harmful.”).

354. *See, e.g., Baumrind, Causally Relevant Research, supra* note 21, at 4 (saying that she longitudinally analyzed 79 families and cross-sectionally analyzed 164); Diana Baumrind, Univ. Cal., Berkeley, When Are Causal Inferences Justified in the Debate About Physical Discipline “Effects”?, Presentation at Univ. Cal., Berkeley on Inferring Causality from Longitudinal Studies (Mar. 21, 2003), available at <http://ihd.berkeley.edu/baumrindls.htm> [hereinafter, Baumrind, Discipline “Effects”] (saying that Dr. Baumrind’s Family Socialization Project comprised “a study of children ages 4, 9 and 14 years”).

355. *See, e.g., Baumrind, Causally Relevant Research, supra* note 21, at 10 (describing the methods, plausible variables, possible shortcomings, and results of her study), and *id.* at 2 (saying that information about parents and children came from direct observation; from intensive semi-structured interviews with parents, children, and teachers; and from standardized and project-designed psychological tests. “Observations and interviews were conducted by highly trained professionals who were selected for their heterodox views and life experiences.”); Diana Baumrind, *Rejoinder to Lewis’s Reinterpretation of Parental Firm Control Effects: Are Authoritative Families Really Harmonious?*, 94 PSYCHOL. BULL. 132, 136 (1983) [hereinafter Baumrind, *Rejoinder*] (“Results using either the interactive measures or the father-interview cluster based on data collected by an independent observer with no knowledge of the child yield the same conclusion.”); Baumrind, *Influence, supra* note 337, at 58 (“On the basis of transcripts of the entire battery of

Dr. Baumrind also controlled for many variables to get the most accurate data.³⁵⁶ For instance, she only studied middle-class families to negate the many complicating influences poverty has on children.³⁵⁷ She compared children that had never been spanked and children that had been spanked.³⁵⁸ Of those that had been spanked, she analyzed the various effects of different spanking styles, considering both frequency and intensity.³⁵⁹

Periodically throughout the study (generally when a child turned four-, nine-, and fourteen-years-old), Dr. Baumrind's teams spent fifty hours at each child's home, school, and playground.³⁶⁰ The teams observed the interactions of the child's family, and individually interviewed the child, his parents, and his teachers.³⁶¹ This was done to

interviews and observational procedures, two psychologists, working independently, rated each adolescent . . .” and parent.).

356. See, e.g., Baumrind, *Causally Relevant Research*, *supra* note 21, at 2 (describing how she controlled the study by (1) distinguishing abusive parents and removing them from the study, (2) controlling for the initial level of child misbehavior, (3) keeping close record of positive and negative parenting practices to account for parental rejection, (4) relying on multiple sources to describe parent and child behavior, so that their relationship would be neither inflated nor distorted, (5) taking into account physical discipline by both the father and the mother, (6) comparing the impact of physical punishment with verbal punishment, to see if one was associated with worse results, (7) recording other variables to see if there could be further explanation to various outcomes. “The time-intensive assessments of each family at each time period in the [Family Socialization Project] data base provide high-quality measures that meet the common threats to construct validity and internal validity that beset self-report population-based survey studies of physical punishment.”).

357. See, e.g., Baumrind, *Not Warranted*, *supra* note 292, at 830 (saying, “studying the effects of middle class parents’ use of spanking on child outcomes, and on parents’ later abusive behavior” would untangle the associations confounding associations between poverty and the presence of abuse or use of corporal punishment).

358. See Baumrind, *Causally Relevant Research*, *supra* note 21, at 10 (“This is one of the few studies to contrast the effects of normative physical punishment with another aversive disciplinary intervention, and to contrast the effects of ‘no spanking’ with those of ‘low frequency’ spanking.”).

359. See *id.* at 4 (“For theoretical reasons pertaining to Straus’ claim that any physical punishment was harmful we chose to differentiate between parents who never spanked during the time period and those who very seldom did, that is who had spanked the child one to three times, or three to five times. Straus did not use planned contrasts to test his claim that any spanking was harmful.”) (emphasis in original).

360. See, e.g., Baumrind, *Discipline “Effects,” supra* note 354 (conducting her study of children ages 4, 9, and 14 years, and their parents based on 50 hours of observation and interviews); Baumrind, *Causally Relevant Research*, *supra* note 21, at 2 (observing children in “naturalistic settings” such as the home, classroom, and school playground).

361. See *supra* note 355 and accompanying text.

analyze the differences in each child's upbringing, competence, and achievements.³⁶²

Although Dr. Baumrind is emphatically not a spanking advocate, her study ultimately suggests that spanking can be helpful in certain contexts, and is not inherently harmful.³⁶³ Nevertheless, her research was so thorough that even Dr. Straus admitted it might be the "best single study available."³⁶⁴

A. Sound Research Indicates that Physical Discipline Does Not Inherently Harm Children

Dr. Baumrind's teams found "no evidence for unique detrimental effects of normative physical punishment."³⁶⁵ Initially, they found a small detrimental correlation between spanking and behavior

362. See, e.g., Baumrind, *Influence*, *supra* note 337 (charting all the different social and academic skills that she measured: e.g., maturity, resilience, optimism, optimum competence, general self-esteem, math achievement, verbal achievement, self regulation, prosocial behavior, socially responsible, attitude toward drugs, total problem behaviors, illicit drug use, acts out sexually, etc.); Baumrind, *Causally Relevant Research*, *supra* note 21, at tbl. 7; see *id.* at 9-10 (showing that "children from Authoritative, and to a lesser extent Democratic, homes were competent and well-adjusted," then describing how they assessed the children who had not been spanked for competence, sociability, self-assertiveness, achievement-oriented, and behavior dysfunctions).

363. See *id.* at 12-13 ("Although I do not regard spanking as less humane than other forms of punishment, I am not an advocate of spanking. Evangelicals such as Dr. James Dobson who advises spanking as an antidote to 'stiff-necked rebellion' because 'pain is a marvelous purifier' is clearly a pro-spanking advocate. I am not.") (emphasis in original) (citation omitted); Baumrind, *Discipline Controversy*, *supra* note 157, at 413 ("The prudent use of punishment within the context of a responsive, supportive parent-child relationship is a necessary tool in the disciplinary encounter with young children. . . . The extent to which spanking or any other form of aversive discipline is part of a harsh parenting pattern or is conditioned by warmth and the use of reason determines its meaning to the child and its consequent beneficial or detrimental effects. 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.").

364. See Goode, *supra* note 353 and accompanying text; Goode, *supra* note 179.

365. E.g., Baumrind, *Causally Relevant Research*, *supra* note 21, at 10 ("Thus we 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."); Baumrind, *Discipline "Effects," supra* note 354 ("In sum, there was no evidence to . . . suggest that mild to moderate spanking is associated with negative outcomes.").

problems.³⁶⁶ But when they separated physical abuse from physical discipline, spanking yielded virtually no negative outcomes.³⁶⁷

By contrast, they found that children who were never spanked tended to have social and behavioral problems, and were not more competent than their peers.³⁶⁸ This is consistent with the many studies indicating that spanking is just as effective as mental punishments, if not more so.³⁶⁹

Whereas Dr. Baumrind found that spanking is not inherently harmful, she did find that verbal discipline might be.³⁷⁰ Children that were punished through scolding, belittling, or general disapproval tended to be less competent and have more behavior problems than children who were spanked.³⁷¹ Even when Dr. Baumrind separated verbal abuse from verbal punishment, the results were still detrimental.³⁷²

However, discipline methods that included spanking were associated with positive behavior and did not correlate with behavior

366. See, e.g., Baumrind, Causally Relevant Research, *supra* note 21, at 7 (“Prior to excluding families in the Red zone where parents can be said to hit violently,” they found a detrimental association).

367. See, e.g., Baumrind, Discipline “Effects,” *supra* note 354 (discovering that “once these very high risk families were removed and plausible third variables covaried out correlations were close to zero.”).

368. See, e.g., *supra* note 337 and accompanying text.

369. See, e.g., *supra* note 17 and accompanying text.

370. See, e.g., Baumrind, Causally Relevant Research, *supra* note 21, at 9 (“Finally we asked—is physical punishment associated with more detrimental child outcomes than verbal punishment? The answer is clearly no [T]he negative outcomes associated with normative verbal punishment were at least as pronounced as those of normative physical punishment.”) (footnote omitted).

371. Compare *id.* at 5 (“A measure of frequency of an alternative disciplinary tactic, verbal punishment, was created using three items: a) Parent yells or shouts, b) Parent belittles the child by the use of sarcasm, and c) Parent engages in nattering (pointless and disapproving chatter).”) (emphasis in original); *with id.* at 9 (“Total verbal punishment was negatively associated with competence, and positively associated with problem behavior at each age and for most outcomes, typically to a greater degree than the associations between these child outcomes and total physical punishment.”) (footnote omitted).

372. See, e.g., *id.* at 15 n.6 (“Unlike the effects of removing parents in the Red Zone for physical punishment, doing the same for verbal punishment did not greatly attenuate its detrimental effects.”); Spock, *Bratty Child*, *supra* note 25, at 31 (“Sometimes parents who are afraid to be firm fail to recognize their own timidity because they commonly use an irritable tone in directing or correcting their children. But crossness is not a sign of determination—quite the opposite. It signals to the child that the parent is frustrated because he or she has so often failed to get the child to obey in the past and is already anticipating failure in the present episode. The defeatist element in the tone of voice encourages the child to try to win out again, and the gritty element provokes him to fight back. A parent . . . who has confidence he or she will be obeyed has no reason, no need, to use a scolding tone.”).

problems in young children.³⁷³ Dr. Baumrind found that the use of spanking never determined which child became dysfunctional or competent.³⁷⁴ Instead, such differences largely depended on “variations in the complex pattern of childrearing.”³⁷⁵

B. Sound Research Indicates that Children with the Highest Optimism, Academic Achievement, and Self-Esteem Have Been Spanked

Ultimately, Dr. Baumrind’s study suggests that a young child develops best when his parents lovingly but firmly guide his actions—when they confront him, as needed, with discipline and clear

373. See, e.g., Baumrind, *Rejoinder*, *supra* note 355, at 135 (“In our studies of preschool children, punitive discipline was not correlated with unsocialized or rebellious behavior . . . maternal Punitiveness was associated in girls with friendly, outgoing, sociable behavior towards peers and adults.”). Compare *id.* at 136 (“Paternal consistent discipline for boys is associated with likeable, independent, and assertive behavior, and for girls with affiliative, responsible, and stable behavior Thus the linear association between firm control and gender-normative behavior in preschool boys and girls is clearly positive.”), with *supra* note 217 and accompanying text.

374. See, e.g., Baumrind, *Discipline Controversy*, *supra* note 157, at 40 (“Willingness to spank their preschoolers did not discriminate effective from ineffective parents or competent from dysfunctional children in the [Family Socialization Project]; almost all parents, including the most effective, spanked . . .”).

375. Baumrind, *Causally Relevant Research*, *supra* note 21, at 14; See also, e.g., *id.* at tbl. 3 (describing the main types of parenting styles (in order from the most beneficial to the most detrimental, Baumrind, *Influence*, *supra* note 337) as authoritative, democratic, directive, good-enough, permissive, and rejecting-neglecting). Dr. Baumrind summarized the characteristics of these styles as follows:

Parenting Style	Demandingness	Responsiveness
Authoritative	High	High
Democratic	Medium	High
Directive	High to high-medium	Low to low-medium
Good-Enough	Medium	Medium
Permissive	Low	Medium to High
Rejecting-Neglecting	Low	Low

Id. Demandingness in this chart “refers to the claims that parents make on children to become integrated into the family and community by their maturity expectations, supervision, disciplinary efforts, and willingness to confront a disputative child.” Baumrind, *Discipline Controversy*, *supra* note 157, at 411. “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.” *Id.* Responsiveness “refers to the extent to which parents intentionally foster individuality and self-assertion by being attuned, supportive, and acquiescent to children’s needs and demands.” *Id.* at 410. See also *supra* note 24 and accompanying text.

explanations of why his behavior is good or bad.³⁷⁶ Dr. Baumrind calls these firm and loving families “authoritative” families.³⁷⁷

Firm guidance appears to be especially important during the first six years of a child’s life.³⁷⁸ It encourages children to develop life skills when they do not naturally push themselves to assume responsibility.³⁷⁹ For example, making a child share increases the likelihood that he will continue to share, even when not required to.³⁸⁰ Such high maturity demands stimulate children to become self-motivated and engage in difficult tasks.³⁸¹ This helps explain why children in authoritative families were the most achievement oriented and the most competent.³⁸²

In Dr. Baumrind’s study, every authoritative family maintained firm guidance by spanking at least occasionally.³⁸³ Even when those

376. See, e.g., Baumrind, *Discipline Controversy*, *supra* note 157, at 412 (saying the families with the optimum outcome “remain receptive to the child’s views but take responsibility for firmly guiding the child’s actions, emphasizing reasoning, communication, and rational discussion in interactions that are friendly as well as tutorial and disciplinary”); *id.* (reporting that these families “endorse the judicious use of aversive consequences, which may include spanking, but in the context of a warm, engaged rational parent-child relationship.”).

377. See, e.g., Baumrind, *Causally Relevant Research*, *supra* note 21, at 7 (saying the most beneficial child outcomes were linked to Authoritative families); see *id.* at 14 (finding that Authoritative parents have a “deep and abiding commitment to the parenting role, intimate knowledge of children’s developmental needs; respect for a particular child’s individuality and desires; provision of structure and regimen appropriate to the child’s developmental level; readiness to establish, and disciplinary strategies to enforce, behavioral guidelines; and cognitive stimulation, effective communication, and use of reasoning to ensure children’s understanding of parents’ goals and disciplinary strategies.”).

378. See, e.g., *supra* note 376 and accompanying text; Baumrind, *Not Warranted*, *supra* note 292, at 829 (opposing a spanking ban because, in part, “[t]he imposition of authority, even against the child’s will, is useful to the child during the first 6 years. . . . [P]ower-assertive disciplinary methods are generally required . . .”).

379. See, e.g., Baumrind, *Rejoinder*, *supra* note 355, at 135 (“Young children frequently require external incentives to put forth the effort required to test their limits [F]irm control, should therefore contribute to task mastery.”).

380. *Cf.*, e.g., *id.*, at 141 (“An explicit, forceful expression of a directive to share has been shown to increase rather than decrease the likelihood that young children will continue to share after instructions are discontinued.”) (citation omitted).

381. See, e.g., Baumrind, *Discipline Controversy*, *supra* note 157, at 409 (“Provided that parents are also responsive and intellectually stimulating, firm parental control and high maturity demands promote rather than undermine self-efficacy and intrinsically motivated engagement in difficult tasks.”).

382. See, e.g., *supra* note 362 and accompanying text.

383. See, e.g., Baumrind, *Letter*, *supra* note 185 (“Although I do not claim that [corporal punishment] is a necessary element in the Authoritative pattern we do not know whether the outcomes would be as successful—not only in producing compliance, but in generating agentic, prosocial behaviors—because all Authoritative parents used corporal punishment.). Because they all used corporal punishment, there was no opportunity to test whether it was necessary. All Dr.

families spanked often, the positive outcomes remained the same.³⁸⁴ (Likewise, in families with the worst results—“rejecting-neglecting” families—frequent spanking did not make their bad results any worse).³⁸⁵

Authoritative families tended to spank often when their children were young; but they also quit disciplining sooner than most other families.³⁸⁶ Having laid a firm foundation, authoritative families had less and less reason to discipline as their children grew.³⁸⁷ Accordingly, the strength of authoritative families was not just the high demands they placed on their children, or just their love for them; it was the balance of the two.³⁸⁸ Children appear to thrive just as much on responsibility as they do on love.³⁸⁹

Baumrind really can determine is that corporal punishment is not inherently detrimental and that it is used in each of the Authoritative families. *See also supra* note 217 and accompanying text.

384. *See, e.g.,* Baumrind, *Causally Relevant Research*, *supra* note 21, at 10 (“Unexpectedly, even the presence of above-average frequency of normative physical punishment represented by the Orange zone did not attenuate at all the positive outcomes associated with Authoritative or Democratic parenting.”).

385. *See, e.g., id.*, at 15 n.5 (saying “Orange zone [which indicated above-average, but still normative spanking] membership did not increase the detrimental outcomes associated with Rejecting-Neglecting parenting or decrease the effectiveness of Authoritative or Democratic parenting. Generally speaking, within parent type, children of Orange zone parents were not less competent or more maladjusted than other children, although we hypothesized that this would be the case especially for children of Rejecting/Neglecting parents.”).

386. *See, e.g., id.* at 9 (saying “both absolute and relative spanking frequency of Authoritative couples decreased rapidly after [four years old] with only 40% at or above the mean at [nine years old], compared to 58% of all other parents, and by [fourteen years old] with only 17% at or above the mean, compared to 42% of all other parents”).

387. *See, e.g., id.* (“[B]y early adolescence, when we in common with other specialists believe physical punishment to be developmentally inappropriate, [Authoritative parents] were significantly less likely than other parents to use physical punishment. Perhaps their firm enforcement policies throughout childhood were successful in achieving a desirable level of behavioral compliance by adolescence.”).

388. *See, e.g.,* Baumrind, *Discipline Controversy*, *supra* note 157, at 412 (“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.”); DIANA BAUMRIND, *CHILD MALTREATMENT AND OPTIMAL CAREGIVING IN SOCIAL CONTEXTS* 69-70 (1995) [BAUMRIND, *OPTIMAL CAREGIVING*] (saying that for preadolescent children in her middle-class population, “[p]arents who were both demanding and responsive (the engaged pattern and the authoritative prototype) compared to those who were neither, or one but not the other, were likely to produce children who were socially responsible and socially agentic.”).

389. *See, e.g.,* Baumrind, *Discipline Controversy*, *supra* note 157, at 406 (“But we now recognize that few children are as easily traumatized as psychoanalysts imagine; most thrive on challenges and are motivated by a drive for competence.”); *id.* at 410 (“Affective warmth and empathy in parents motivate children to participate in cooperative strategies and are associated with the development in children of an internalized moral orientation.”).

Throughout Dr. Baumrind's study, children in authoritative families had the highest optimism, highest academic achievement, and highest self-esteem.³⁹⁰ By contrast, children that were given high demands but not much love didn't turn out as well.³⁹¹ And children from permissive homes that were given a lot of love but not much responsibility didn't turn out as well either.³⁹² These generalizations applied regardless of the child's gender, and regardless of whether the family was separated or intact.³⁹³

Dr. Baumrind's study validates the authoritative parenting model that balances love and firm guidance.³⁹⁴ This is virtually the same model to which Dr. Spock dedicated most of his career.³⁹⁵ To him, good child development depended largely on the "clarity and consistency of the parents' leadership [and on] whether the spanking parent was generally kind and devoted. . . ." ³⁹⁶ He believed that the "[i]nability to be firm [was] the commonest problem of parents in America."³⁹⁷

390. See, e.g., Baumrind, *Influence*, *supra* note 337, 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).

391. See, e.g., BAUMRIND, *OPTIMAL CAREGIVING*, *supra* note 388, at 70 (saying that for preadolescents in Baumrind's middle-class population, "[p]arents who were highly demanding but not responsive (the restrictive pattern and the authoritarian prototype) were likely to have daughters who were socially assertive and not highly socially responsible, but sons who did not differ from other boys." As those children reached adolescence, they "had more internalizing problem behaviors and were more likely to engage in heavy drug use.").

392. See, e.g., Baumrind, *Influence*, *supra* note 337, at 63 ("Preschool and primary school girls from permissive homes, compared to those from authoritative homes, were markedly less self-assertive, and preschool children of both sexes were less cognitively competent."); Spock, *Bratty Child*, *supra* note 25, at 31 ("[P]arental submissiveness doesn't avoid unpleasantness; it makes it inevitable.").

393. See BAUMRIND, *OPTIMAL CAREGIVING*, *supra* note 388, at 70 (saying these generalizations regarding adolescents' drug use, behavior, and competence "applied to both sexes, and to intact and separated families.").

394. See, e.g., Baumrind, *Discipline Controversy*, *supra* note 157, at 405 (saying the authoritative model "rejects both extremes of the authoritarian-permissive (or conservative-liberal) polarity, representing instead an integration of opposing unbalanced childrearing positions.").

395. See, e.g., *supra* note 24 and accompanying text.

396. See, e.g., *id.*

397. Spock, *Bratty Child*, *supra* note 25, at 29 (also saying, "The commonest reason . . . 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 . . . [O]ne basic reason—conscious or unconscious—why these parents are afraid of their children is that they don't want to stir up the same kinds of arguments and disagreeableness that used to occur between them and their own parents A firm, calm approach makes the child *much* more likely to co-operate—politely, promptly and completely . . . I know this is true. I've seen it work not just hundreds but thousands of times. Parental firmness also makes for

VI. CONCLUSION³⁹⁸

Before October 2007, no more than 10,000 people had ever marched on Sweden's capital.³⁹⁹ But after yet another teenager was killed by Swedish teens (this time at a birthday party), an unprecedented 12,000 people swarmed the streets of Stockholm to "say no to violence."⁴⁰⁰ Many others conducted companion marches throughout Sweden.⁴⁰¹ Candles were lit, a moment of silence was held, and thousands mourned over the increasingly common sight of Swedish children killing each other.⁴⁰² "Violence is more common today than it

a happier child. An adult, too, is happier when she is working for or dealing with someone who is definite, positive and agreeable.") (emphasis in original); Spock, *supra* note 24, at 25 ("The main purpose and theme of the [February article] was to encourage the parents to be clear and firm in leading their children—a point of view I've often stressed.").

398. KEYWORDS: spank, spanking ban, smack, smacking ban, slap, corporal punishment, physical discipline, disciplining, train, training, CEO, barricade, timeout, time out, beat, hit, nonviolent, nonviolence, violent, violence begets violence, harm, detrimental, beneficial, aggression, child abuse, neglect, dependency, maltreatment, child maltreatment, cognitive development, brain development, psychology, culture, cultural, religion, religious, emotion, emotional, science, scientific, statistics, research, crime, criminal, teen violence, Murray Straus, *Beating the Devil Out of Them*, Irwin Hyman, Penelope Leach, Susan Andersen, David Bell, Jane Bluestein, LaVonne Carlson, Karen D'Avanzo, Joan Durrant, Seymour Feshbach, Norma Feshbach, Madeleine Gómez, William Higa, Tom Jambor, Charles Johnson, Eli Newberger, Thomas Sagendorf, H. Patrick Stern, Teresa Whitehurst, Thomas Gordon, Parent Effectiveness Training, Adrienne Haeuser, End Physical Punishment of Children, EPOCH, Canadian Foundation for Children, Youth and the Law, Elizabeth Gershoff, children services, children's services, child protective services, department of social services, CPS, CSB, DSS, CAPTA, Child Abuse Prevention and Treatment Act, Benjamin Spock, Dr. Spock, Baby and Child Care, Robert Larzelere, Diana Baumrind, John Rosemond, James Dobson, Sweden, Swedish, New Zealand, authoritative, authoritarian, permissive, family, father, mother, parent, parenting, childrearing, child rearing, helpless, aggressive, behavior, misbehavior, child welfare, best interests of the child, child's best interests, child's rights, children's rights, rights of the child, child's human rights, U.N., United Nations, Convention on the Rights of the Child, European Committee of Social Rights.

399. See *Sweden Comes to Terms with Huge Youth Demo*, THE LOCAL: SWEDEN'S NEWS IN ENGLISH, Oct. 13, 2007, available at <http://www.thelocal.se/8781/20071013/> ("Gunnar Abele said he thought the protest was unprecedented. 'It's very rare in Sweden. At best on May Day you have 10,000,' he said.").

400. See, e.g., *id.* ("More than 12,000 people swamped the streets of the capital Stockholm on Friday to 'say no to violence' after a teenager was killed by drunken teens at a birthday party a week ago.").

401. See, e.g., *id.* ("Hundreds of other demonstrators showed their solidarity in other Swedish cities, from Gothenburg to Malmö to Kalmar.").

402. See, e.g., *Antivåldsdemonstration på gång i Malmö* [*Anti-Violence Demonstration Again in Malmö*], SVERIGES RADIO P4 MALMÖ, Oct. 11, 2007, available at <http://www.sr.se/cgi-bin/malmo/nyheter/artikel.asp?Artikel=1650917> ("Klockan fem blir det en tyst minut för kilen från Stockholm som dog. Det blir även tal och tända ljus." ["At five o'clock there would be a minute's silence for those that died in Stockholm. There would also be a speech and lit candles."]); *Sweden Comes to Terms with Huge Youth Demo*, *supra* note 399 ("I organised this demonstration because I

was ten years ago. . . . [N]o one should be surprised if 13-year-olds soon bear guns.”⁴⁰³

Today, six out of ten Swedish children feel vulnerable at school, and just as many have been victims of youth violence.⁴⁰⁴ This is consistent with the dramatic rise in youth violence since Sweden banned spanking.⁴⁰⁵ The very spanking ban that was supposed to help them seems to have betrayed them.⁴⁰⁶

And yet, we don’t talk about how many parents either do not or cannot maintain control when physical discipline is banned.⁴⁰⁷ We don’t talk about how such parents tend to resort to helpless, aggressive parenting techniques, and even child abuse.⁴⁰⁸ Therefore, we don’t talk about how children “are no more protected [under spanking bans] than they were before”⁴⁰⁹

Similarly, we don’t say how the most friendly, stable, and competent children come from “authoritative” families—families that raise children with both love and firm guidance.⁴¹⁰ We don’t say how the most sound, comprehensive research suggests that firm guidance includes at least occasional spanking.⁴¹¹ And we don’t say how such physical discipline has shown no harmful effects on children.⁴¹²

feel concerned. It could have been me that night,’ Anton Abele, 15, who had been at the party [where the teen was killed] on October 5, told AFP.”)

403. Marie-Louise Kristola, *Barnen - om ungdomsvåldet* [*The Children - on Youth Violence*], SVERIGES RADIO P1, Oct. 25, 2007, available at <http://www.sr.se/sida/artikel.aspx?programid=787&artikel=1657404> (“Fahmi var själv också ute och slogs som tonåring - idag jobbar han med struliga ungdomar. Han ser i sitt arbete att vuxna ofta släpper kontakten med sina barn i tonåren. Och han är oroad för framtiden. - Våldet är rårare idag än för tio år sen. De som misshandlar är yngre och ingen ska bli förvånad om 13-åringar snart bär pistol.” [“Fahmi was also out there and fought as a teenager—today he works with trouble youth. He looks at his work that adults often drop in touch with their children in their teens. And he is worried about the future. ‘Violence is more common today than it was ten years ago. Those who abuse are young and no one should be surprised if 13-year-olds soon bear gun.’”]).

404. Ann Hagman, *Elever känner sig hotade på rasten* [*Students Feel Threatened at Recess*], METRO, Oct. 19, 2007, available at <http://www.metro.se/se/article/2007/10/18/23/0546-45/index.xml>.

405. See, e.g., *supra* note 12 and accompanying text; *supra* Part III.

406. See, e.g., Lyons, *supra* note 112 and accompanying text.

407. See, e.g., Coburn, *supra* note 124.

408. See, e.g., *supra* note 12 and accompanying text; *supra* Part III.A.

409. See, e.g., Coburn, *supra* note 124.

410. See, e.g., *supra* note 362 and accompanying text; *supra* Part V.

411. See, e.g., *supra* note 217 and accompanying text.

412. See, e.g., *supra* note 377 and accompanying text; *supra* note 363 and accompanying text; LEFKOWITZ *supra* note 292 and accompanying text.

Because we suppress information about spanking, many children forced to grow up without it are suffering because of their violent peers, helpless parents, and even their own misbehavior.⁴¹³ They are suffering because of increased aggression, defiance, and antisocial behavior—the very vices that spanking appears to reduce better than any other discipline method.⁴¹⁴

Because we suppress information about spanking, policymakers are insisting that children who learn best through physical discipline must mature only through mental discipline.⁴¹⁵ This is like trying to force visual learners to become auditory learners. There are just too many variables from child to child, discipline method to discipline method, and misbehavior to misbehavior to justify a spanking ban.⁴¹⁶ It is not in the child's best interests to require a one-size-fits-all discipline method, or to determine that a valuable discipline method like spanking cannot suit any child.⁴¹⁷

It is in the child's best interests to allow him to learn from a discipline method that he understands.⁴¹⁸ It is in his best interests to allow his parents to take an active and loving role in his maturation, without making them feel helpless to control his misbehavior.⁴¹⁹ Therefore, it is in the best interests of the child, the family, and ultimately society to allow corporal punishment.⁴²⁰ Anything less risks leaving our country feeling as helpless as those marching on the streets of Sweden.

413. See, e.g., *supra* note 12 and accompanying text; *supra* note 1 and accompanying text; *supra* Part III.

414. Compare, e.g., *supra* note 12 and accompanying text, with *supra* note 18 and accompanying text.

415. See, e.g., *supra* note 6 and accompanying text.

416. See, e.g., *supra* note 330 and accompanying text; *supra* note 15 and accompanying text.

417. See, e.g., *supra* note 298 and accompanying text; *supra* note 241 and accompanying text.

418. See, e.g., *supra* note 15 and accompanying text.

419. See, e.g., *supra* note 362 and accompanying text; LARZELERE, *supra* note 12, at 4 (reporting “the critics say that the influence of parents has been inadvertently compromised by the entire set of overly intrusive Swedish policies. Because parents have been disempowered, the police must intervene in many more incidents than was previously the case.”).

420. See, e.g., LARZELERE, SOUND SCIENTIFIC EVIDENCE, *supra* note 271, at 5 (saying spanking bans would eliminate the use of discipline methods that have been shown to “prevent young defiant children from growing up to become delinquents and life-long criminals.”).

