

Does Wright Violate Children's Rights? The Ethicality of Corporal Punishment in American  
Schools

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Memories of paddling, or beating children's bodies with a wooden instrument, as a form of discipline may seem to belong to one's parent's or grandparent's generation, but the use of corporal punishment in schools remains legal in twenty states.<sup>1</sup> This surprising longevity of this practice is attributed to the 1976 United States Supreme Court case *Ingraham v. Wright*, which maintains that the use corporal punishment in schools is constitutional because it does not equate cruel and unusual punishment. The 1989 United Nations Convention of Rights of the Child, which was ratified by 191 countries, directly opposes the use of corporal punishment in an educational setting.<sup>2</sup> Article 28, section 2 asserts, "States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention."<sup>3</sup> The United States signed the CRC, but despite studies demonstrating the detrimental psychological effects of violence on children, and individual state's moves to abolish corporal punishment in schools, has yet to ratify the treaty. The United States' commitment to the ruling of *Ingraham v. Wright* raises the question of how the clash between cultural and traditional practices should be reconciled with universal doctrines that uphold a standard of rights, particularly when one's body is considered their inviolable property. Does the United States have a moral obligation ratify the Convention of Rights of the Child and outlaw corporal punishment in schools, or can these conflicting worldviews coexist?

Corporal punishment is defined as "the willful and deliberate infliction of physical pain on the person of another to modify undesirable behavior".<sup>4</sup> Although many consider the application

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<sup>1</sup>Farmer and Stinson, "Failing the Grade."

<sup>2</sup>Farmer and Stinson, 1045.

<sup>3</sup>Imbrogno, "Corporal Punishment in America's Public Schools and the U.N. Convention on the Rights of the Child."

<sup>4</sup>Roy, "Corporal Punishment in American Public Schools and the Rights of the Child," 555.

of any degree of violence in an educational setting an overstep of boundaries, the “teacher justification statute” grants teachers the same disciplinary rights as guardians to enact punishment, thus allowing for the perpetration of violence by educators.<sup>5</sup> The use of corporal punishment is surprisingly widespread as well, with the U.S. Education Department estimating that there are 600,000 incidences in public schools every year. <sup>6</sup>

Corporal punishment also appears to have deep cultural ties to American history, which can explain the regional, particularly southern and rural, reluctance to let go of the practice. The roots of physical discipline can be traced to the long-entrenched belief that the Bible encourages the use of physical punishment to correct children, which was ingrained into the minds of the country’s first agrarian, Christian settlers, where parents assumed both the role of both teacher and disciplinarian. <sup>7</sup> Psychologist Irwin Hyman, who has performed extensive research on corporal punishment in the modern U.S. attributes the evangelical attachment to the practice to the “devil theory,” or the assumption that since 66% of Americans “report that they believe in the devil” they most likely “also believe that pleasure is the work of the devil and that good character can be forged through pain and humility.”<sup>8</sup>

The hesitation to outwardly abolish corporal punishment begs the question: is this reluctance emblematic of a covert cultural attachment to the antiquated way of life intimately tied to the foundation of the country? How can nonconsensual, legalized physical violence coexist with the founding claim that American citizens have a right to property, if one’s body is their primary piece of property? John Locke, a philosopher whose ideas were directly

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<sup>5</sup> Roy, 556.

<sup>6</sup> Imbrogno, “Corporal Punishment in America’s Public Schools and the U.N. Convention on the Rights of the Child,” 1.

<sup>7</sup> Imbrogno, 2.

<sup>8</sup> Imbrogno, 2

incorporated into founding documents like the Declaration of Independence and Constitution, asserts that all men have a right to, “life, liberty and property.”<sup>9</sup> One’s body is considered their indisputable property, so the infliction of unavoidable violence through the practice of corporal punishment is a violation of one’s right to both liberty and property. The CRC similarly asserts that one has a right to freedom from bodily harm in Article 19, which affirms, “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse.”<sup>10</sup> The dichotomy between the integral rights formally provided by these documents and their application in practice demonstrates how the United States can reinterpret founding guidelines to support illegitimate personal agendas largely founded in religious beliefs.

Lynette Roy explains the unique conditions of the United States’ social and political climate resulting in the establishment and permanence of the ruling in *Ingraham vs. Wright* in the journal article “*Corporal Punishment in American Public Schools and the Rights of the Child.*” Roy exploits the absurdity of *Ingraham vs. Wright*’s implication that incarcerated adults have a greater right to protection from bodily harm than children in schools to argue that the federal government needs to take a strong stance against corporal punishment in accordance with the principles of our modern society.<sup>11</sup> This irony stems from the fact that the Eighth Amendment was determined to apply solely to those implicated in a crime, thus requiring corporal punishment must be, “inspired by malice and sadism” that is “deemed to shock the conscience” in order to warrant legal retribution for the propagators of such violence.<sup>12</sup> While heinous criminal offenders can defend themselves before being subjected to violence, the U.S. stance on

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<sup>9</sup> Locke, John, 1632-1704. *Two Treatises on Civil Government*. London :G. Routledge and sons, 1887.

<sup>10</sup> Roy, 561

<sup>11</sup> Roy, “Corporal Punishment in American Public Schools and the Rights of the Child,” 557.

<sup>12</sup> Roy, 563.

corporal discipline overlooks the rights of the most vulnerable population, children, offering legal redress only after the child has suffered the lasting effects of physical trauma. To counter this harmful practice that is tragically ubiquitous, especially in the American south, Roy exhorts the “lower federal courts [to] focus not on the long and sordid tradition of corporal punishment” but rather the student’s “constitutionally-protected liberty interest in bodily integrity.”<sup>13</sup> Additionally, she calls for a top-down approach, asserting that a state-level “remedy will never be adequate” as the authority of a more elevated department would have a greater success preventing “punishment that causes either physical or psychological harm to a student”.<sup>14</sup> The federal government could take a firm stance against corporal punishment by ratifying the Convention of the Rights of the Child, but it is contentious whether this move would have a marked effect on the abolition of these practices, or would rather be a symbolic gesture to placate those advocating for the rights of children.

Others, like Andre R. Imbrogno in his article, “*Corporal Punishment in America's Public Schools and the U.N. Convention on the Rights of the Child: A Case for Nonratification*” argue that the ratification of the CRC is an ineffective strategy because *Ingraham vs. Wright*’s “tone of deference established by the Supreme Court is reflected in judicial decisions from the lower federal courts and the states”.<sup>15</sup> There are numerous federal loopholes to undermine the assertions of the CRC against the use of corporal punishment, and thus Imbrogno argues that a bottom-up, localized governmental approach is the most effective to overturn this American tradition, independent of the ratification of the CRC. Imbrogno’s assertion that change “must be

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<sup>13</sup> Roy, 562.

<sup>14</sup> Roy, 563.

<sup>15</sup> Imbrogno, “Corporal Punishment in America’s Public Schools and the U.N. Convention on the Rights of the Child,” 7.

developed through the changing of attitudes at the grassroots level rather than from the top-down imposition of international law,” is a far cry from the universality advocated by CRC, as he minimizes the international sense of responsibility.<sup>16</sup> This more disconnected strategy also implies that an individual nation’s morally dubious cultural practices can coexist with cries for international ethics, bringing into question the true pervasiveness of such ethical codes. Despite his argument against the ratification of the CRC, Imbrogno recognizes the injustice of the employment of corporal punishment in U.S. schools. In particular, he highlights the scientific research suggesting that corporal punishment is linked “with violence later in life and higher rates of delinquency.”<sup>17</sup> Similarly to Roy, Imbrogno agrees that the federal response to *Ingraham vs. Wright* was too neutral by entirely deferring to individual states, and that the federal government needs to take a stronger stance against corporal punishment.

Alice Farmer, author of *Failing the Grade: How the Use of Corporal Punishment in U.S. Public Schools Demonstrates the Need for U.S. Ratification of the Children's Rights Convention and the Convention on the Rights of Persons with Disabilities.*” agrees with both Roy and Imbrogno that greater measures need to be taken to protect the well-being of children, particularly the exceptionally vulnerable disabled population. However, Farmer directly opposes Imbrogno’s stance that the ratification of the CRC is fruitless, rather believing that Article 28 of the CRC, which asserts, parties should, “take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity” is a direct call to action.<sup>18</sup> Farmer believes that the United States should take definitive action against corporal punishment, at a minimum by ratifying the CRC treaty, on behalf of the international community

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<sup>16</sup> Imbrogno, 10.

<sup>17</sup> Imbrogno, 7.

<sup>18</sup> Farmer and Stinson, “Failing the Grade,” 1045.

represented by this statement. Additionally, she introduces the problematic, but unsurprising, aspect of how corporal punishment disproportionately affects disabled children and people of color, challenging the ruling of *Ingraham vs. Wright* on the basis of the United States' supposed commitment to equality. Particularly, Farmer emphasizes how in Tennessee, "students with disabilities are punished at more than twice the rate of the general student population."<sup>19</sup> This statistic is appalling because of these children's dependence on their caretakers and thus their disposition toward exploitation, but African American students are also disproportionately affected. Nationally "African-American students make up 17.1% of the nationwide student population, but 35.6% of those paddled."<sup>20</sup> In accordance with the prevalence of corporal punishment in the American south, this racial bias suggests that corporal punishment is a reflection of the United States' sinister history of slavery and racism.

The CRC declares corporal punishment in schools an international human rights violation, and therefore the United States has a moral obligation as leading world power to ratify the Convention of the Rights of the Child and set an ethical precedent for the humane treatment of children. The use of corporal punishment in schools is not in accordance with human dignity and therefore should be abolished. Additionally, regional use of corporal punishment in the United States raises red flags as it relates to the continuation of racism and other legacies of discrimination that are technically constitutionally illegal, but still prevalent. Under this logic, the *Ingraham vs. Wright* ruling should be unconstitutional as it relates to discrimination, and therefore corporal punishment does not have a legal founding in the United States, let alone internationally.

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<sup>19</sup> Farmer and Stinson, 1038.

<sup>20</sup> Farmer and Stinson, 1038.

As stated by Farmer and reconfirmed in Imbrogno's article, "Studies have demonstrated that "[p]roportionately, black children are subjected to corporal punishment many times oftener than white or Asian children in almost every school district in the nation".<sup>21</sup> In combination with the prevalence of corporal punishment in the Southeast, with all of the Confederate states with the exception of Virginia permitting it, while it is banned virtually everywhere outside the region, elicits imagery of the antebellum and Jim Crow South. In a time when the practice of racial terror lynching is only a few decades in the past, and state-sanctioned police brutality against people of color is a regular occurrence, one must wonder whether the strange attachment to corporal punishment stems from the United States' desire to cling to a legalized continuation of racially-targeted violence. Although one can defend this position using the same logic as the Confederate monument debate, that one should not erase history or "culture" because of its problematic connotation, is racialized violence a cultural practice the United States is proud to retain? Especially when the victims of the violence are children within an environment where they are meant to learn and grow, one cannot help but see the glaring of disparities of this position.

It is established that the use of corporal punishment has distinct implications within the United States as an individual country, but the United States also has an obligation as a world leader and a supposed advocate for liberty to ratify the CRC and set a global example. Imbrogno raises a valid argument that the ratification of the CRC alone would be a futile isolated effort to elicit palpable change on a federal level, but this does not mean that that United States' ratification of the CRC would be inconsequential. Rather, it is a necessary step for the federal government to take to make a firm, if only symbolic, stance against corporal punishment, and

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<sup>21</sup> Imbrogno, "Corporal Punishment in America's Public Schools and the U.N. Convention on the Rights of the Child," 5.

break away from the detached pattern of deference to individual states established by the ruling of *Ingraham vs. Wright* and criticized by both Roy and Imbrogno. Additionally, the ratification of the CRC would be emblematic of the United States' internationally perceived commitment to preserving human dignity, which is in jeopardy considering that the U.S. is only one of two countries, the other being Somalia, not to ratify the treaty. Given Somalia's reputation as a haven for human rights violations, the United States should take the necessary measures sever this association, in order to preserve the American reputation as leader of the free world, if not in the best interest of its children. If the United States is a democracy and believes that all people have a right to life and liberty as John Locke and the Declaration of Independence claim, shouldn't we make a gesture to assert ourselves as concerned for the well-being of our children?

The way we can stop state-sanctioned violence against children is by bringing about another civil suit challenging corporal punishment, not within the bounds of cruel and unusual punishment, but concerning the disproportionate percentage of African American and disabled students affected, and how this disparity relates to the 14<sup>th</sup> amendment's assertion of equal justice under the law. If this case makes it to the Supreme Court, it could overturn the ruling of *Ingraham vs. Wright*, adopting the CRC's stance against corporal punishment, but purely within the constraints of American politics. Even if the Supreme Court abolishes the legal assault of children, the legal strategy necessary to enact this change would still value state power over individual liberty, as opposed to international discourse about human dignity, demonstrating how Locke's philosophy remains an integral aspect of the United States' interpretation of the body as property.

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