

**CORPORAL PUNISHMENT IN THE USA AND IN JAPAN:
SCHOOLS AND HOMES**

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és további két anonim lektor...

Absztrakt

TESTI FENYÍTÉS AZ USA-BAN ÉS JAPÁNBAN: ISKOLÁK ÉS OTTHONOK

Alapvetően, az mondhatjuk, hogy a testi fenytés nem legális az iskolában. Legalábbis az elmúlt 50 egynéhány évet tekintve, amikor egy egyre növekvő konszenzus uralta a témát, minek eredményeképpen a testi fenytés hanyatlását láthattuk, főként azon kutatási eredményeknek köszönhetően, melyek szerint az ütlegelés vagy verés több kárt tesz, mint jót a diákok mentális egészségében. Ezen eredmények mellett azt is kijelenthetjük, hogy legtöbb szülő a gyermekekkel szembeni erőszak egyik formájának tekinti. Habár vannak még kultúrák, ahol a testi fenytésnek kulturális gyökerei vannak.

Kulcsszavak: testi fenytés, fizikai kényszer/erőszak, gyermekek/diákok, iskolák, kultúra

Diszciplínák: jog, történelem, pszichológia

Abstract

Basically, it can be said that corporal punishment is not legal at schools. At least, the last 50 or so years a growing consensus on the subject dominated the field, and it resulted in the decline of the corporal punishment, mostly, owing to findings that hitting or spanking students does more harm than good to their mental health. And in addition to these results, we can safely argue that most parents consider it to be a form of child abuse. But there are cultures where the use of corporal punishment is culturally rooted.

Keywords: corporal punishment, physical abuse/force, children/students, schools, culture

Disciplines: law, history, psychology

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Introduction

Although corporal punishment has already been examined and researched for many decades, it is vital to note that there are still significant gaps in the understanding of vital factors and areas. The present study intends to be designed as a cross-cultural study in order to draw attention to some points that might have not been considered by researchers. The study highlights some differences dealing with corporal punishment in general in Japan and in the United States. There are some major, basically cultural or rather socio-cultural, differences that cannot be neglected while we intend to study the resilience of the existence of the phenomenon of corporal punishment. Thus, as a preliminary study on the subject, I attempt to highlight some important ideas, notions that can be related to the subject examined without taking sides in an ongoing debate.

Corporal Punishment in the United States

This summer, one of the school districts in Missouri has chosen to disagree. On June 16, the school board of the Cassville R-IV School District added a new policy,

"Corporal Punishment," to its manual. Starting with the new school year, teachers may (or can) now use "physical force as a method of correcting student behaviour." This "new," alternative method can be applied both for elementary school and high school students as well. The novel policy lifts a ban on corporal punishment that the board instituted in 2001.

Evidently, not all parents would like their children to be paddled, thus, the school district decided to make corporal punishment optional for them. At the beginning of the school year, parents who were in favour of the use of physical force on their children could go for it by providing written consent; others who decided to disagree with corporal punishment could opt out by doing nothing. For those who make a decision to pick the "novel" method, the policy states that the use of corporal punishment must be a last resort and then "only in reasonable form and upon the recommendation of the principal." There can be "no chance of bodily injury or harm," and striking a student on the head or face is prohibited. A witness must be present, and the principal must submit a report to the superintendent (NET1, Paúl, 2022). There is no doubt that Cassville's adoption of an

official policy to reinstitute corporal punishment has drawn much attention (Campoamor, 2022). But, let us not forget about the fact that corporal punishment of students has been going on in 19 states, including Missouri.

Ingraham v. Wright decision (NET2): The primary purpose of the Cruel and Unusual Punishments Clause (NET3) has always been considered, and properly so, to be directed at the method or kind of punishment imposed for the violation of criminal statutes. When public school teachers or administrators impose disciplinary corporal punishment, the Eighth Amendment is inapplicable. Basically, the Eighth Amendment forbids cruel and unusual punishments but the Constitution does not give more information and guidance that is why courts have already met cases connected to similar issues.

Facts: Two students in a public high school in Florida instituted an action pursuant to 42 U.S.C.S. §§1981-1988 in the United States District Court for the Southern District of Florida, against certain school officials, alleging a violation of their Eighth and Fourteenth Amendment rights based on disciplinary paddling incidents. According to the evidence presented, the students were subjected to disciplinary paddling without prior notice and a hearing. The paddlings were so severe as to keep one of the students out of school for 11 days and to deprive the other student of the full use of his arm for a week. The students argued that the use of corporal punishment was cruel and

unusual, and thus violated the Eighth Amendment. At the time of the incident, the Florida statute in effect authorized corporal punishment after the teacher had consulted with the principal or teacher in charge of the school, specifying that the punishment was not to be "degrading or unduly severe." The district court dismissed the complaint, holding that there was no constitutional basis for relief. The Court of Appeals affirmed. The students appealed. This issue of this case is whether the disciplinary paddling of public school students constitutes cruel and unusual punishment in violation of the Eighth Amendment or not? The conclusion of the Supreme Court is a "simple" no.

Affirming, the Supreme Court of the United States held that the disciplinary paddling of public school students did not constitute cruel and unusual punishment in violation of the Eighth Amendment. The Court explained that because the Eighth Amendment was designed to protect those convicted of crime, it did not apply to disciplinary corporal punishment of public school children. According to the Court, the extension of the cruel and unusual punishment clause to ban the paddling of school children was not justified, because public schools were open to public scrutiny and were supervised by the community. Furthermore, teachers and administrators were subject to the legal constraints of the common law whereby any punishment exceeding that which was reasonably necessary for the proper education and discipline of the child could

result in both civil and criminal liability under state law. As long as the schools were open to public scrutiny, the Court saw no reason to believe that the common-law constraints would not effectively remedy and deter excess punishment. Furthermore, the Court noted that the students were not entitled to prior notice and an opportunity to be heard pursuant to the Due Process Clause of U.S. Const. amend. XIV (NET2). Those states opted to allow corporal punishment after the U.S. Supreme Court's 1977 ruling in *Ingraham v. Wright* that it was constitutional and up to the states. The 18 other states are Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Wyoming. This decision has given more freedom to states to define how far a teacher might go in applying corporal punishment. Texas, for instance, goes as far as to affirm that permitted corporal punishment is "the deliberate infliction of physical pain by hitting, paddling, spanking, slapping, or any other physical force used as a means of discipline." In other words, Texas intends to give more than enough room ("any other physical force") for teachers to hit students (NET5). Irene Merker Rosenberg argues that "[i]n holding that the eighth amendment is limited to criminal contexts and thus does not prohibit severe corporal punishment in the public schools, the *Ingraham* majority was obliged to rely on ambiguous history and dubious precedent.

In order to demonstrate that eighth amendment protection is extraneous to the school environment, the Court invoked a policy rationale the effect of which is to preclude beatings of adult prisoners in locked jail-houses and to permit whippings of free students in an open school setting" (Rosenberg, 1978, 109-110). And, in addition, she goes on to observe that "[...]while sound institutional values may be vindicated by not adjudicating all constitutional aspects of a problem in the context of a single case, the Court's refusal to treat the substantive due process issue in *Ingraham* may instead have stemmed from a desire to avoid resolution of a difficult issue which, under prior case law, should have been decided in plaintiffs' favour" (Rosenberg, 1978, 109-110). Thus it is not difficult to see how this decision might have led to the pro-corporal decisions by 19 states in America, even if studies would not support it (Afifi, et. al., 2017). Also, A Hearing was held in Washington, DC, April 15, 2010 before the Subcommittee on Healthy Families and Communities Committee on Education and Labor, U.S House of Representatives One Hundred Eleventh Congress, second session (Serial No. 111-55). Corporal punishment is regarded as a violation of human rights under several international treaties, including two in which the United States of America has already ratified. Thus it is relevant to ask the following questions: "[...]are we in violation of human rights laws by continuing to permit corporal punishment in our education

system?” (NET6) The answer provided by George Miller, Chairman, Committee on Education and Labor U.S. House of representatives, can give us a ”clearer” picture why this can happen in one of the most “democratic” countries in the world. It follows: ”[t]his depends on the nature of the treaties you are referring to, and whether the United States has consented to be bound by them. If the U.S has signed on, ratified or acceded to a treaty, that, in my view, makes corporal punishment in school a crime; thus, in my view, we are definitely violating international law and fundamental principles of human rights by allowing it to occur.” This may sound promising but he goes on to observe that “[it is]the United Nations Convention in the Rights of the Child (CRC), which sets *minimal* international standards for the treatment of children, [and][t]he United Nations has enforcement power over ratifiers under Article 45a of the CRC. Along with local government, nongovernmental organizations (NGOS) monitor for compliance and carry out its”. Also we can be under the impression that corporal punishment has been mishandled, but this is not the case, since he states that [t]he wrinkle with CRC is that the U.S. has **not** signed onto *this* treaty. Therefore, the U. S. has **not** consented to be bound by its terms, and thus technically [which means legally], is **not** violating international law by allowing corporal punishment to continue in our schools”. As a matter of fact there are only two members U.N member nations who have decided not to

sign it: the United States of America and Somalia. Though it must be admitted that the situation is not as bad as it seems, since, for instance, the American Academy of Paediatrics suggests that paediatricians discourage spanking and recommends parents to use effective discipline methods that take account of the promotion of positive, supportive parent-child relationships; proactive methods of teaching; and nonviolent responses to undesired behaviour (Durrant, 2008).

Also, The American Academy of Pediatrics (AAP) published a policy statement in November 2018 calling for the education of parents on positive and effective parenting strategies and the elimination of physical and humiliating punishment, including verbal abuse (Sege, Siegel, 2018). A year later, in addition to this statement by AAP, the American Psychological Association (APA) released a similar statement (NET7). Though the current situation seems promising it is still difficult to go through with the annihilation of corporal punishment in the United States. For instance, in September 2020, the Protecting Our Students in Schools Act of 2020 (H.R. 8460) was introduced in the US House of Representatives. The Bill intended to prohibit corporal punishment in any school which obtains federal funding. A Companion Bill of the Protecting Our Students in Schools Act was introduced in the US Senate in November 2020. Both bills were not adopted by the end of the Congress in January 2021. In June 2021, the Protecting

Our Students in Schools Act (H.R. 8460) was reintroduced after the new US Congress took office. Thus, as we, most attempts to obliterate physical punishment at schools have failed (NET8).

Corporal Punishment in Japan:

Aaron Miller argues that if we intend to understand perceptions and perspectives considering taibatsu (‘corporal punishment’) in Japan, we need to adopt Japanese socio-cultural context in order to realize why and how it is applied at schools and sports. He examines the definitions and a range of viewpoints of taibatsu to highlight the significance of socio-cultural context in examining contemporary social practices. He identifies other significant Japanese concepts and notions, for instance, “boryoku (violence), shido (guidance), shitsuke (discipline), gyakutai (abuse), kibishii (strict), seishin (spirit), konjo (guts)”, in order to support his argument that taibatsu is a. “multi-vocal symbol” (Miller, 2009) His conclusion reveals that the Japanese “type” of corporal punishment is a rather strange creature, which might not be revealed or understood without a socio-cultural context, or it can escape with it as well. He concludes that “[t]he definition of taibatsu is thus continuously being challenged, redefined and reinterpreted. Cultural explanations of a ‘unique’ Japanese pedagogy of discipline do not sufficiently describe why taibatsu happens and/or why there are movements today to rid Japan of it. One can therefore

understand discipline and punishment in Japan only in the specific social, cultural or historical contexts in which it is talked about or used. The impetus for taibatsu depends greatly on the time/place at which it occurs – elementary school, middle school, high school, university, sports or the home – and the subjectivity of each individual incident and the contingency of each individual’s opinions clearly demands only one justifiable conclusion: that taibatsu is a multi-vocal symbol.” (Miller, 2009).

Still, other voices raise concerns in a socio-cultural context as well, considering corporal punishment as a form of abuse in Japan with alarming results. For example, Aya Goto, Pamela J. Surkan and Michael R. Reich argue that ”Japanese society suffers from an odd paradox related to children: Japan is simultaneously experiencing a declining number of live births and a rising number of child abuse cases” (Goto, Surkan and Reich, 2020) (Also, see: Kachi, Kato and Kawachi, 2020). The effort Japan needs to take does not happen easily but there are actual actions taken to achieve the ultimate goal: eliminate the forms of corporal punishments at home and at schools in Japan.

Though, yet again, the situation may be turning into a concentrated effort to prevent children from being abused in Japan as well. The Inter-Ministerial Committee (Cabinet Office, National Police Agency, Ministry of Justice, Ministry of Foreign Affairs, Ministry of Education, Culture, Sports, Science and Technology,

Ministry of Health, Labour and Welfare) in Japan has already decided to take the matter seriously, and in 2021 they released *Japan's National Action Plan to End Violence against Children*. The Inter-Ministerial Committee has already been ready to act in order to end violence throughout Japan, the Committee states that “[p]rior to the adoption of the Declaration of the Rights of the Child at the General Assembly in 1959, Japan, in 1951, adopted the Children’s Charter and subsequently ratified the Convention on the Rights of the Child in April 1994. Bearing in mind the spirit of the Convention, Japan has since been committed to promoting and protecting the rights of children, including through the processes of country reviews undertaken by the Committee of the Rights of Child. Japan also ratified the Optional Protocol on the Involvement of Children in Armed Conflict in 2004 and the Optional Protocol on the Sales of Children, Child Prostitution and Child Pornography in 2005. Such commitments are also clearly reaffirmed in Japan’s pledge issued on the occasion of the 30th anniversary of the adoption of the CRC in 2019 (NET9). Moreover, based on the concept of human security, Japan has been carrying out measures for ending violence against children to realize a society in which no one will be left behind”, a goal of the SDGs, by incorporating these measures into the SDGs’ Action Plan which is Japan’s implementation strategy of the SDGs. In February 2018, Japan declared that it would become a path-

finding country (i.e., participating country) of the GPeVAC, and has since been actively engaged in the activities of the GPeVAC, as a member of the Board, the highest decision-making body of the GPeVAC.

In this context, Japan, as a pathfinding country, has formulated a National Action Plan (NAP) to End Violence against Children for the purpose of eliminating violence against children within the country”. As we can see, Japan has already started to realize and re-structure the socio-cultural policy surrounding corporal punishment with the necessary enforcement as well, even if it can only be done by “multi-stakeholder collaboration” on their plan to implementation and execution of Japan’s National Action Plan to End Violence Against Children. (October 2020 Inter-Ministerial Committee on Japan’s National Action Plan on Business and Human Rights (NET10)

Conclusion

Accomplishing changes in the management of corporal punishment in these cultures (U.S and Japan) seems to ache for concentrated efforts (and more time) not only in redrafting and amending policy, but also reassuring and guaranteeing actual implementation (without a great number of issues and concerns considering enforcement) as well. Though one might agree on the unquestionable existence of cultural differences, a certain urge to examine or re-examine the need to use

corporal punishment, especially, concerning children, seems inevitable, as we can see in the case of Japan (Japan's National Action Plan to End Violence Against Children) even if the so-called social practices may tell us otherwise. But the road they have decided to take will be bumpy and rough till it ends due to the deeply rootedness of the practice of corporal punishment.

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