

CHILD JUSTICE AND THE LITTLE DAILY DROPS OF PHYSICAL VIOLENCE: A CASE OF TROUBLED WATERS*

María del Mar Cabezas Hernández

Centre for Ethics and Poverty Research, University of Salzburg
mmarcabezas@gmail.com

Abstract:

This article addresses the debate on fuzzy cases concerning the so called 'mild' and sporadic instances of physical violence against children by caregivers. The end of violence toward children is a current goal in the international scenario. However, myths on the use of violence and the scope of parental rights still survive. Thus, I examine the main theoretical, ethical and political challenges regarding conceptual clear-cut boundaries and the burden of proof when justifying violence. Finally, I defend the role of a preventive approach on children's wellbeing and family intervention as a fruitful way to surpass polarized debates on permissibility and criminalization.

Keywords:

Parenting, Violence, Maltreatment, Justice, Childhood.

Resumen:

Este artículo aborda el debate sobre los casos difusos en relación a la violencia física contra los menores llamada "suave" o esporádica por parte de sus cuidadores. El fin de la violencia contra la infancia es un objetivo actual en el escenario político internacional. Sin embargo, los mitos sobre el uso de la violencia y el alcance de los derechos parentales todavía perviven. Así, este artículo trata de examinar los principales retos teóricos, éticos y políticos respecto de las fronteras conceptuales y la carga de la prueba cuando se trata de justificar algunos tipos de violencia. Por último, se defiende el papel de una perspectiva preventiva respecto del bienestar de la infancia y las intervenciones en el ámbito familiar como una vía fructífera para superar debates polarizados entre la permisividad y la criminalización de los mencionados casos de violencia.

Palabras clave:

Crianza, violencia, maltrato, justicia, infancia.

* This research has been funded by the Austrian Science Fund (FWF): P26480-G15. It has also been developed in the context of the project MINECO FFI2014-53926-R. I am grateful for their support.

Recibido: 20/10/2016

Aceptado: 28/02/2017

INTRODUCTION

Violence against children is a sometimes-invisible reality, also in affluent countries. Children are in fact more vulnerable to become victims of violence and crimes than adults, being the family the most common scenario, and toddlers and young children the main victims (Finkelhor, 2005).

One might think that intra-family child physical abuse is an almost eradicated or reduced issue in western affluent societies. Nevertheless, the official figures –which obviously do not reflect the whole reality, as many cases stay unreported (Knutson, 1995)– show something different (Butchart & Mikton, 2014; Finkelhor et al., 1990; Briere & Elliott, 2003; and English, 1998).

That being said, and although I am aware of the severity of these cases, I will focus on the instances of physical violence placed at fuzzy categories as they may act as drops increasing a culture of violence against children. In doing so, I aim to address the paradoxical attitudes in western affluent countries toward those sporadic cases of physical violence against children. To an extent they are still socially accepted and they may not constitute an instance of physical abuse as a matter of public health and social justice for children. Concretely, since more philosophical work on this field could shed some light concerning inconsistencies and ethical thresholds, I will delve into the background causes and the gaps between different logics when some assumptions –still present in the collective imaginary– are confronted with different scales of physical violence against young children.

As preliminary clarifications, and although I am aware of the global magnitude of child abuse, firstly, I will focus on western affluent countries where a welfare state and the discourse of human rights are to a certain degree established and accepted. Therefore, this election is based on the potential benefits of a deeper analysis of the mentioned questions in order to improve *de facto* children's recognition as relevant subjects of rights. As a result, this article aims to move some aspects of recurrent debates on discipline and punishment forward, beyond the usual tensions between parental rights and children's rights. Secondly, this article is not intended to dismiss other unjust situations such as child psychological and sexual abuse. Likewise, I would like to make clear that, although the problem concerning justice and fuzzy categories affects other groups of citizens, I will focus on the case of young children due to their especial vulnerability, and the traditional oblivion that children and childhood have experienced as a group deserving philosophical reflection. These two reasons may in fact leave children in an especial asymmetric, less invisible and vulnerable situation. "Children are vulnerable because they need care not only to survive but also to develop their basic physical, intellectual, and emotional capacities" (Mullin, 2014: 266). In this sense, although every human being is

interdependent and vulnerable, children are intrinsically dependent on caregivers and, in turn, radically vulnerable, that is, radically damageable and susceptible to suffering an instance of injustice. Secondly, compared to animal ethics, gender studies, or ecoethics, children have only started to receive genuine philosophical attention over the last decade (Archad & McLeod, 2002; Bagatini & McLeod, 2014).

Finally, I will focus on the violence executed by the main caregivers so that the discussion on other forms of violence such as bullying among peers, violence executed by other adults outside the family or by adolescence against their parents will exceed the scope of this article.

THE PARADOXICAL PUBLIC ATTITUDES TOWARD CHILD PHYSICAL VIOLENCE

Although child physical abuse is penalized in most western countries as well as more and more countries are implementing laws against child violence, it is remarkable how just “2.4% of the world’s children are legally protected from corporal punishment in all settings” (Pinheiro, 2006: 12). According to recent data, 48 countries¹ have forbidden the previously admitted caregivers’ right to punish children using physical violence. This, in terms of parental rights and parental autonomy, implies a huge shift, especially compared to the traditional acceptance of spanking children, for instance. In line with what the CRC promotes (UN, 1989) in its article 19,² it is undeniable that over the last decades a new global awareness on the moral wrongness of legalized violence against children has been developed.

However, following the recent Save the Children’s Report on child violence, there is still a long path to cover before the age bias is surpassed and children stop being a group of citizens against whom the use of some forms of physical violence is, to a greater or smaller extent, admitted:

¹ Most of these countries are western and/or affluent ones (Europe and South America). However, it is eye-catching how countries such as Canada, France, and The United States are not part of this list: Albania; Andorra; Argentina; Austria; Benin; Bolivia; Brazil; Bulgaria; Cabo Verde; Congo, Republic of; Costa Rica; Croatia; Cyprus; Denmark; Estonia; Finland; Germany; Greece; Honduras; Hungary; Iceland; Ireland; Israel; Kenya; Latvia; Liechtenstein; Luxembourg; Malta; Netherlands; New Zealand; Nicaragua; Norway; Peru; Poland; Portugal; Republic of Moldova; Romania; San Marino; South Sudan; Spain; Sweden; TFYR Macedonia; Togo; Tunisia; Turkmenistan; Ukraine; Uruguay; and Venezuela.

² The article 19 defends: “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, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. 2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

There are still 150 states where children can be lawfully hit in the family home, 143 where violent punishment remains lawful in alternative care and in day care settings, 71 where it is not prohibited in all schools and 62 lacking protection for children in penal institutions. In 36 states, children found to have committed an offence may be sentenced to corporal punishment under criminal, religious and/or traditional law; and in 21 states corporal punishment is not prohibited in any setting. Just 10% of the world's children live in states where the law recognizes their right to protection from all violent punishment and to equal protection from assault (Save the Children Sweden, 2015: 3).

Moreover, beyond the severe cases of physical abuse; there is still a fuzzy space when it comes to how to approach some instances of violence against children that may not constitute a crime, but are rather examples of the tolerance toward a little amount of physical violence against children. Some examples would be the sporadic use of a slap on the face³, a smacking on the child's hands, shaking or spanking.

The general acceptance toward these 'minor' cases leads to a paradoxical situation in which severe cases are condemn and the little instances of physical violence are tolerated, as it also happens regarding sexual violence: the same society that is in shock concerning cases of rape supports and enables an atmosphere in which the everyday life cases of verbal harassment are sometimes not even recognised as such.

Back to the case of child physical violence, the different levels are not unconnected issues. A society that tolerates little drops of physical violence as an adequate means to educate or as a sign of care and love will surely have to face some argumentative problems regarding the rejection of severe cases of violence as I will try to argue throughout this article. By this, I do not necessarily mean, as the slippery slope⁴ argument suggests, that allowing someone to adopt those minor instances of physical violence could lead that same person to behave in a highly violent way. Rather, I suggest that some reflection should be done in relation to the background causes that allow us sometimes to commend physical violence, some other times to reinforce it. Simply said, if affluent western societies aim to end with violence against children in whatever of its forms as a matter of justice, public health, and respect toward children as relevant subjects –so that our collective attitudes could be in line with the discourse of human rights–, then it is necessary to address some questions concerning the social assumptions and beliefs about both violence and children's moral standing. The Commissioner of Human Rights of the Council of Europe, T. Hammarberg, perfectly highlights the core of the matter:

³ Regarding this, it is noteworthy how facts and values are deeply and to some extent unconsciously interwoven when some countries categorise the slap on the face as intrinsically humiliating but are permissible regarding a slap on the wrist or the bottom.

⁴ Here it is also important to bear in mind that the problem with slippery slope arguments does not lie in the connection *per se* between X and Y, but in the leap in the argumentation regarding how X may eventually lead to Y. In this sense this argument might be not a case of fallacy, but rather "a question of limits" (López de la Vieja, 2010: 258).

How can we expect children to take human rights seriously and to help build a culture of human rights, while we adults not only persist in slapping, spanking, smacking and beating them, but actually defend doing so as being 'for their own good'? Smacking children is not just a lesson in bad behaviour; it is a potent demonstration of contempt for the human rights of smaller, weaker people (Pinheiro, 2006: 11).

For this reason, and although definitive solutions surpass the scope of this article, throughout the following sections I will delve into three current groups of theoretical and practical challenges on the conceptualization, justification, and penalisation of physical violence toward children that may benefit from more philosophical attention.

CONCEPTUAL CHALLENGES: VIOLENCE, ABUSE, AND DISCIPLINE

One of the challenges on how to protect children from violence lies in the conceptualization of violence itself, as one might associate it only with physical abuse or maltreatment, with moral damage or with any kind of physical and psychological aggression. Conceptual boundaries are fuzzy and it is especially hard to find working definitions shared by a plural society.

In the *World Report on Violence and Health* the WHO defines violence as "the intentional use of physical force or power,⁵ threatened or actual, against oneself, another person, or against a group or community, that either results in or has a high likelihood of resulting in an injury, death, psychological harm, maldevelopment or deprivation" (Krug and WHO, 2002: 5). In this sense, violence is defined as a conduct. Indeed, other authors define violence as a type of human aggression, meaning, "any behaviour directed toward another individual that is carried out with the proximate (immediate) intent to cause harm" (Baron and Richardson, 1994: 7).

On its part, child physical abuse or maltreatment is characterised as any action that tends to cause physical injuries to a child and hurt the child's physical and psychological needs, independently of the fact of whether or not that result is actually achieved (Sanmartín, 2008; Cantón & Cortés, 1997). It is characterised, therefore, by the physical aggressions executed by caregivers (or other adults in charge), which could endanger the physical, social and emotional development of the child, such as burning, poisoning, choking, pinching, shaking, hitting, slapping, throwing, stabbing, suffocate or throwing harmful objects against the child (Starr, 1988).

⁵ In line with the following states in this report, in which violence is referred to as "the use of power", this sentence should be understood as a) the intentional use of physical force and b) the intentional use of power, so that violence is not reduced to physical power. It follows: "The 'use of power' also serves to include neglect or acts of omission, in addition to the more obvious violent acts of commission. This definition covers a broad range of outcomes –including psychological harm, deprivation and maldevelopment. [...] Many forms of violence [...] can result in physical, psychological and social problems that do not necessarily lead to injury, disability or death" (Krug and WHO, 2002: 5).

As a result, according to these categories there can be instances of physical violence that do not constitute a case of physical abuse if they do not cause physical injuries or imply a risk to the child's physical health, but that may actually constitute a case of psychological abuse executed not through verbal means, but through physical means. Moreover, a slap may not cause a physical injury but it is an act of physical violence. This leads to another question on responsibilities, namely, do the main agents of justice for children (the states, institutions, caregivers, and the general civil society) aim to end with violence or only with abuse against children? Needless to say, 'maltreatment' already includes sexual abuse, psychological maltreatment and negligence. Therefore, it is not only used referring the cases of extreme physical violence. In that sense, the small mentioned cases such as a sporadic slap may not reach the threshold to be considered a case of physical abuse but could be the trigger of a case of psychological abuse at the same level as insults and other forms of verbal violence and humiliation. Thus, the problem might not only be whether the terms violence or aggression are more accurate than maltreatment or abuse, but the reduced and oversimplified understanding of any of these terms, especially when they concern children.

One could also discuss whether every aggression is an act of violent *per se* and, as such, an abuse, that is, a 'bad use' of the person, or, on the contrary, whether violence should be only referred to an extremely harmful form of aggression. However, thinking that violence refers only to those actions that generate physical severe and visible injuries is in fact part of the problem concerning the invisibility and social acceptance of some amount of violence against children.

In fact, this explains why the last report by the UN on violence against children aims to surpass a narrow view on the topic and, as a consequence, tries to go beyond the concept of maltreatment. As it is recognized in this report (Pinheiro, 2006), the UN tries to avoid an oversimplification of the matter that would let a certain amount of cases aside, even though the non-extremely-severe instances of violence are also morally relevant, humiliating, cruel and avoidable. In fact, "no violence against children is justifiable, and all violence against children is preventable" (Pinheiro, 2006: 3).

Thus, agents of justice for children should try to reach an agreement on whether all forms of violence constitute a case of physical abuse, whether a violent event has to constitute a case of abuse to be considered and labelled as morally wrong and unfair.

Definitions also vary and meet some fuzziness when dealing with borderline cases, and problems of chronicity, frequency, intensity, and intentionality. From the social perspective, child abuse is defined as any parental behaviour that interferes negatively with children's development and health (Cantón & Cortés, 1997), so that chronicity would not be required. In fact, adding this criterion could become perverse especially when the damage inside the family may belong to different types of abuse, appear in clusters, and have an accumulative nature. Here the question that should be publically faced would be how many slaps and spansks a day a child should intentionally receive and for how long (weeks, months or years) until a case of poor parenting becomes a case of physical abuse. Should the conduct be seldom

but severe or frequent but softer in order to be considered? How much psychological harm and how much use of force should be required to label a suboptimal caregiver as an abuser?

At the same time, in relation now to intentionality, some questions on the double effect arise. Human actions, intentions, previsions and outcomes are not as clear-cut as one could initially think. Interactions in real life occur in messiness of factors. And what is more, as Žižek points out, “the same act can count as violent or non-violent, depending on its context; sometimes, a polite smile can be more violent than a brutal outburst” (Žižek, 2009: 180). As Baron and Richardson (1994) defend, refusing to speak to another person or not answering their questions would entail a form of verbal-passive-direct aggression, and in turn, of violence. Certainly, harm can be performed in a wide variety of forms. It could be physical, verbal, direct, or indirect. It could also be an action, and omission or even something that we let happen, that is, a harm that we consent.

To provide an example, the less severe instances of violence, such a verbal aggressiveness through insults, humour, derision, or sarcasm are socially highly accepted and seldom related to the concept of violence. Something similar happens with sporadic cases of physical violence against children, such a smacking on the child’s hands or spanking once at a way to stop a tantrum. Whether instances of suboptimal parenting with experiences of physical violence involved are associated to ‘violence’, ‘physical abuse’ or to ‘discipline’ will depend on the speaker’s previous assumptions and values.

Furthermore, intentionality is not an unequivocal term. One might argue that when one slaps a child to cut a tantrum there is no intention to harm, but to educate, to change the current conduct of the child or just to relieve the caregiver’s stress and frustration. Nevertheless, an act could be labelled as intentional in the sense that is consciously performed, that is: you have decided to slap the child, so that the slap is neither an accident nor the result of a discoordination because you did not see the child coming when you were moving your arm.

Here it is also crucial to untangle some common associations between punishment and discipline. One can discipline and teach a child without choosing punishment; and one may choose to punish the child without using physical violent punishments. In fact, that is what is done with prisoners. They are punished through deprivation of freedom and luxuries but physical punishment is not –at least theoretically– established as an accepted method.

Punishment has the intrinsically intention to cause pain or discomfort as a means to change the child’s behaviour so that the child associates surpassing the established limits with negative feelings.⁶ Discipline does not necessary use physical

⁶ The logic behind is also obscure, as something that makes the child feel bad (a slap) is used to stop her to express her negative and messy feelings. To put it differently, the reaction to the expression that communicates that the child is feeling bad, nervous, frustrating, or anxious (a tantrum) is another reaction based on making the child feel worse.

pain as a means to teach the child some limits and the skills to accomplish self-regulation, self-control and adequate behaviour. Although the child may have to deal with her own negative emotions and discomfort as a result of the fact that she is still developing those skills, the caregivers' intention is not to create a classical conditioning making her suffer.

This leads to a final background question, i.e. whether pain is always morally wrong or related to violence, and moral damage. One might argue that not any harm or pain is necessarily an instance of aggression, violence, or is morally wrong. Intention is again crucial. A typical example thereof is the pain caused by a doctor as a means for a good end. However, here again violence and pain should not be identified. While the doctor has the intention to cure and uses anaesthesia, in order to soften or avoid the pain involved in his means, the violent caregiver has the intention to bring something good to the child specifically through pain as a key element of that means, so that the child associates surpassing the limits with pain. Here again the nature of the interaction between the patient and the agent, as well as the consent and the intentions play an essential role in ethical terms so that disrespect, cruelty, and humiliation are also a central element when defining violence, which irremediably lead to some ethical assumptions involved.

ETHICAL CHALLENGES: MORAL DAMAGE, CHILDREN'S MORAL STANDING, AND THE BURDEN OF PROOF

When violence is seen as the intentional use of power resulting in a physical or psychological harm (Krug and WHO, 2002: 5), then it seems that for violence to exist firstly someone has to be damageable (susceptible to being harmed) as children are, and secondly, that damage is an intrinsic part of the definition of violence becoming so a thick moral concept (Goldie, 2009), namely, at the same time descriptive and normative.

Given the thick nature of these terms, conceptual and normative issues appear deeply interweaved. Similar to when something is described as cruel or contemptible, when one describes someone's behaviour as violent or abusive, that person is both describing how things are and judging how things should be. That person would be implicitly saying that that behaviour is morally wrong (Thiebaut, 2005).

As a result, it seems that all forms of violence executed to morally relevant beings would intrinsically imply an instance of moral damage, as all forms of cruelty do. But then, if moral damage becomes the criterion to discern moral goodness and wrongness, some open questions should be publicly addressed, especially regarding young children, such a) whether an action that is not perceived and labelled as such by the victim still constitutes a moral damage (Parfitt, 1984), or whether the fact of not even being aware of the intention and harm constitutes a double victimization; b) whether there can be justifiable/deserved instances of moral damage; and c) whether all forms of moral damage should be penalised –as I will address in the next section–. Although an in-depth answer to all of them would surpass the limits of this article, I will focus on the question on justification in what follows.

Not every form of human violence is perceived as unfair or morally unjustified by everyone (Morgado, 2011). One could think about the prisons, the violence used by policemen in a bust to catch a criminal, or even the death penalty in some countries. As previously said, one might argue that not every instance of violence is morally wrong, constitutes a moral damage or becomes a case of physical abuse. One might see some forms of violence in a given circumstance as a way of protecting or defending oneself, or in the case of caregivers, as a way of bringing something good to the child. However –and beyond cases of self-defence– here, as previously implicitly suggested, a problem of means and ends would arise, alongside a problem on how to justify the election of some means against others; since a right end may not justify *per se* questionable means. Following the given example of the doctor, using an sporadic amount of violence against the child in order to teach her something when there is already a wide research on positive parenting would be like a dentist who insists on working without anaesthesia because it is faster for him even though better ways are known and available. In this sense, not only how to justify our elections becomes ethically relevant, but the fact that the child's body becomes a means to send a particular message of power and fear in an asymmetric relation of power and dependency becomes a question of justice.

In relation to the justification of violence and the question of moral standing, it is also crucial to address the questions about towards whom violence is accepted and where the burden of proof is placed.

In relation to the first question, as Adam Smith argued through the impartial spectator, “there can be no proper motive for hurting our neighbour, there can be no incitement to do evil to another, which mankind will go along with, except just indignation for evil which that other has done to us” (Smith, 1761: II.ii.2.11). The question is whether we consider that the misbehaviour of the child is something that she does intentionally against us, and especially whether we really consider young children “our neighbour”, that is, a subject of rights or an individual with moral standing (Goodpaster, 1993), as this might be one of the key background causes of the tolerance towards non-severe forms of violence against those who might be morally relevant beings without being moral agents. Remarkably, adults stop using violence toward their offspring as a method to educate when the child is as tall and strong as the parents, as if teenagers were less rebel or problematic than a 4 years old child (Finkelhor, 2005; Finkelhor, Ormrod & Turner, 2007).

The recognition of young children as subjects of rights, as relevant beings, is extremely recent. Our cultural heritage can indeed provide illustrative cases in relation to the roots of the problem. Indeed, parental rights over children were defended long before children were even considered as morally relevant beings. Therefore, in order to surpass automatized reactions and assumptions, it is important to pay attention to the arguments commonly used to justify the use of physical violence against young children⁷. Surprisingly, if a man slaps his partner at a restaurant as a way to make her understand that she is speaking too loud, it is highly

⁷ A good study on the myths about the efficacy and the lack of damage in spanking children is (Straus, 2001).

likely that the rest of the witnesses would react, condemn it or at least make some comments. Even the headwaiter may warn him about the restaurant policy or invite him to leave the place. However, when a father slaps his young child as a way to make him stop crying or shouting at a restaurant, witnesses will probably say nothing. Actually, it is more likely for them to complain about the child's cry than about the caregivers' behaviour.

One might question this analogy arguing that there are no other ways of making the child understand the limits when she is not able to reason and speak. One could say that the use of a small amount of violence is due to the lack of verbal skills of young children, so that this would be the only way of showing them what they should not do. But do we really use and justify physical violence in order to be understood by a deaf person or a foreigner who does not speak a word of our language? When interacting between adults, we normally find other methods to make the other person understand our limits, what we want, and what this person cannot do. If someone were using small slaps when approached on the street by a foreigner asking for directions in order to make him understand whether he has to turn right or left, we would surely think that this person is completely out of his mind. Likewise, we do not use that argument for pets. Coming back to the example, if someone hits his dog/cat in the back of its head at a restaurant to make the animal understand an instruction, witnesses will also probably react. In other words, the premise defending that physical violence is the only way of communication or setting limits when the other one lacks an adequate level of language or reason seems to be false. As a result, civil society and concretely agents of justice for children should face the question on why we are more prompted to judge these practices as humiliating when the victim is an adult or a pet than a child, and why this age bias is still accepted.

One might also say that violence is important to protect children from threats, such as jumping through the window or touching the fireplace. In fact, caregivers are more prompted to use physical violence when the child commits a dangerous transgression (Catron & Masters, 1993). However, this speaks more about the stress that those situations cause to the parents than about the child's ability to understand limits. Surprisingly, caregivers are more patient when it comes to teach social limits that will not endanger the child's life than in teaching limits related to dangers. Besides, the fact that these cases of minor physical violence are commonly used in the 'heat' of a tantrum may indicate that they speak more about how skilled the caregiver is to regulate his own states than about the child's abilities to learn limits. To give an example, the child herself will commonly be the first to ask you to wash her hands after playing with the ground if she wants to have a snack and sees her hands completely dirty, or if she finds a hair in her meal, so that it seems they are able to detect to a degree some things as dangerous to their own health when previously the caregiver has patiently taught her about it.

As a result, in relation to the second question, one last issue is to decide and justify where the burden of proof should be placed (Clark, 2004; Afifi et al., 2012). Thus, the disagreements are partly due to different approaches on *who* should prove *what*. On the one hand, a position would be the one defending that, unless it is

proved that this causes harm, we are allowed to sporadically use minor amount of physical violence against our own children. That is, slapping my child is good and allowed until you prove it to be harmful⁸ (in the short and long term, in a severe sense beyond discomfort) for the child. In a nutshell, the argument would be ‘unless you show me that slapping sporadically my child might be harmful for her to a threshold that I consider sufficient, I will go on doing it’ and, as a result, the person would not have the obligation to question her behaviour.

On the other hand, a second approach to the burden of proof would defend that violence, sporadically slapping, shaking your child, as it could be applied to cruelty and verbal violence, is in principle morally wrong, harmful and should be avoided unless a) they are proved to be –intrinsicly⁹– good (and positive) for the child herself and at that moment, or b) they are proved not to harm the child. This leads western plural societies to the unavoidable examination of shared desirable thresholds, since there is no *continuum* from not harming to being good and positive. That is, proving that something does not harm the child does not immediately translate into being good for the child. In this line, as Clark suggests, corporal punishment “attacks on a person’s self, the child cannot defend oneself from it, and cannot retain one’s dignity in the face of it” (Clark, 2004: 369) so that it seems hard to deny that, even if these practices may not be a tragic source of trauma¹⁰, are intrinsically humiliating from the point of view of the person who receives it. Likewise, concluding that, based on some potential developmental benefits, these practises may be ethically good (Straus & Paschall, 2009) may lead not only to a naturalist fallacy, but to a perverse answer, as if someone were defending that suffering a posttraumatic stress disorder is actually beneficial and ethically commendable because it increases the person’s ability to rapidly react and to be always alert.

To conclude this section, I would like to highlight that allowing instances of physical violence against children would put us as a society in a difficult situation as we should answer the question on how to justify, if it is possible in a culture of human rights, on the one hand, a slippery distinction between deserved and undeserved violence, and, on the other hand, a dangerous link between love, care, and the use of violence not only toward vulnerable beings, but beloved ones.

POLITICAL CHALLENGES: FROM PERMISSIBILITY TO CRIMINALISATION

From a legal point of view, minor and seldom instances of physical violence against children are hard to place and deal with, probably also due to the previously

⁸ This, in turn, will lead back to the question of pain and harm and the tolerated thresholds treated in section III.

⁹ Not as a means to something good. Otherwise, one would be shifting the focus from the means to the ends.

¹⁰ Although a deep reflection on this would surpass the limits of the current article, it is at least necessarily to highlight for future research how subtle forms of maltreatment and micro-traumas during childhood have been neglected and underestimated by moral and political philosophy.

mentioned challenges. Two main questions arise here for agents of justice: what kind of behaviours should be penalised and how to protect at the same time public health and civil liberties, parental rights and children's rights (Gostin & Powers, 2006).

Physical punishment might surely be morally unjustifiable as it is a practice that violates basic human rights (Lenta, 2012). However, as physical violence is a concept wider than physical punishment, some problems emerge given the gradual and messy nature of some practices in real contexts.

As already said, the wide group of behaviours that fall into a fuzzy category might not constitute *per se* an instance of child physical abuse and might not lead to extreme negative outcomes for the child's physical health. However, those conducts can be described as not especially positive for children, dysfunctional, unnecessary, humiliating, and avoidable. The mentioned examples may indeed become parental behaviours that interfere or do not support a positive develop of the child in terms of interpersonal relations and self-esteem, affecting so psychological health or at least well-being. They can also be described as examples of suboptimal parenting.

Nevertheless, categories in the legal field are not based on granting a positive state of wellbeing to the child, but on the avoidance of the worst scenarios. Differently said, the legal system responds to a different logic, i.e. the protection of the child from a minimum threshold of threat and danger. As a result, agents of justice for children will have to face the political and public challenge regarding whether or not any form of violence against children should be penalised and criminalised.

The penalisation and the prohibition of those forms of physical violence would imply its official recognition as an inappropriate manner of interaction, as it has already happened with other groups of vulnerable or discriminated citizens, where a slap on the face is not even considered as an option or an admissible means today. One could also argue that, as it happened regarding social and civil rights during the 60's in the US, sometimes the legal recognition of a social injustice goes ahead of the social perception of the problem and may help accelerate social changes. In that sense, the legal penalisation of any form of violence and corporal punishment against children, including the sporadic instances, could help implement their already recognized rights concerning personal integrity (Lenta, 2012).

Likewise, the legal recognition of any form of physical violence against children as inappropriate and the prohibition of physical punishment would, firstly, support the witnesses to react, so that they could assume a more active role in stopping a potential increment of violence and, secondly, help civil society to question their own attitudes toward children and everyday life mild forms of violence, both physical and psychological. In doing so, social attitudes would be more in line with the UN's aim of ending violence against children. In his sense, from the point of view of the child's social network, if relatives, neighbours or witnesses feel that they are not officially supported, they will have a harder time to intervene or even to make an uncomfortable comment to the parents on how they are exercising their parenthood unless the case becomes really severe, as this would still be seen as a private question.

In short, the legal penalisation could be a positive way of increasing the awareness of lack of alternative positive parental skills that could contribute to the positive development and wellbeing of the child in a respectful atmosphere. It could also be a way of sending a clear message on how physical violence toward the beloved ones should neither be justified nor related to care.

Nevertheless, the difficulty of penalising a set of conducts that are socially seen as not so severe and that may not lead to physical injuries is based not only of the fact that it may be an overreach of the role of the legal system, but also on some concerns about the consequences, such as an overprotective and paternalistic state, an exaggeration of correctness, a waterfall of denunciations, the criminalisation of well-intended caregivers with suboptimal parental skills, the double victimisation of parents who are already under some burden such as poverty and social exclusion, and, eventually, the potential institutionalisation of children, which may cause more harm. In this line, it is also argued that such legislation could overshadow those cases that are much more severe.

Finally, beyond the pro/against discussion that actually replicates the recent attitudes regarding the criminalisation of emotional abuse (Cabezas, 2016), I would like to point out that investing in the penalisation of these small instances of physical violence might become a perverse means in order not to invest more resources in education and prevention. It might also be the case that a state, when facing this disjunctive, would prefer to invest in the criminalisation (with its corresponding fines) as a more cost-effective way of dealing with the problem than in education and prevention. These, as long-term measures that attack the background causes, are commonly perceived as less cost-effective in terms of instant economic reward and results. In this sense, criminalising the small amount of violence can be seen not as a way to protect the best interest of the child, but as a way of punishing the caregiver who has not had the chance to receive a better training in parental skills and child's development.

CONCLUSION

Throughout this article, I have tried to present and analyse from a philosophical point of view the implicit issues involved in the social debate on the use of physical violence against children in those cases that do not reach a threshold to be widely considered as a case of child physical abuse. I have addressed the key questions concerning contradictions in the public discourse, assumptions and beliefs underneath some myths, as well as I have delved into the main theoretical and practical challenges in terms of justice for children. In doing so, I aim to contribute to move the debate forward and hopefully open new paths of reflection on both the moral and social status of children and the social tolerance toward violence.

By way of conclusion, I would like to defend the need of a preventive approach regarding children's rights and family intervention. The main debate, as it has been shown, swings between permissibility and criminalization. However, a wide range of preventive measures has not been systematically implemented yet. Moreover, this could be a way of improving the cooperation between the two main agents of justice for children, i.e. the estate and the caregivers.

To conclude the argument, caregivers tend to use physical violence when they are hyperreactive to the child's behaviour, when they face difficulties in managing stress and controlling their impulses, when they have a low self-esteem and some difficulties in empathizing with the others, that is, when they face difficulties in understanding the sometimes confusing signs that the child sends at every step of her development, falling into misinterpretations and negative attributions regarding the child's behaviour and intentions (Casanova et al., 1992; Ochotorena & Arruabarrena, 2007). Likewise, the more afraid caregivers are about the dangerous outcomes of the child's behaviour, the more prompted they will be to use corporal punishment (Catron & Masters, 1993). In turn, all of these factors refer to nothing but to a low development of abilities belonging to the scope of emotional intelligence: the recognition of your own emotional states, the ability to recognise someone else's ones, and the skill to regulate your own feelings, behaviour, and thoughts (Ciarrochi, Forgas & Mayer, 2001).

As a result, beyond proposals of licensing parents (McFall 2010) as a way for the state to regulate the caregivers' responsibility toward their children, I would like to conclude by suggesting that providing free, simple and accessible parental education and training on the child's needs through schools, healthcare centres, and community associations may improve the situation before a given problem of suboptimal parenthood increases and crystallises (Browne & Herbert, 1995). Otherwise, how could caregivers do better if they lack the necessary skills and education? In this sense, I would like to defend the need of more in-depth reflection on preventive approaches so that the already tacitly accepted reactive or palliative perspective could be surpassed.

Improving the lack of awareness of the benefits of a well-coordinated system of long-lasting preventive measures could help develop the parental skills of a given society beyond penalised cases improving so the wellbeing of children and future generations. This may be more cost-effective in the long-term minimising potential intergenerational transmission of dysfunctional or suboptimal forms of interaction. As a result, the change would come from the core of every person, instead of being imposed from a coercive external force, which possesses a very limited motivational force in time (Williams, 1981). Thus, once the social thresholds concerning interpersonal respect would have been improved by cultivating every agent's emotional and social skills, a penalisation of suboptimal instances of parenthood would not be necessary while mild instances of violence would not be widely tolerated.

BIBLIOGRAPHY

- ARCHARD, David, and Colin M. MACLEOD (eds.) (2002). *The Moral and Political Status of Children*. Oxford/New York: Oxford University Press.
- AFIFI, T. O., MOTA, N. P., DASIEWICZ, P., MACMILLAN, H. L. and SAREEN, J. (2012). "Physical Punishment and Mental Disorders: Results From a Nationally Representative US Sample", *PEDIATRICS* 130 (2), pp. 184–92.

- BAGATTINI, Alexander, and Colin MACLEOD, (eds.) (2014). *The Nature of Children's Well-Being: Theory and Practice*. New York, NY: Springer.
- BARON, Robert A. and RICHARDSON, Deborah S. (1994) *Human Aggression. Perspectives in Social Psychology*. New York: Plenum Press.
- BRIERE, John, and Diana Elliott (2003). "Prevalence and Psychological Sequelae of Self-Reported Childhood Physical and Sexual Abuse in a General Population Sample of Men and Women", *Child Abuse & Neglect* 27 (10), pp. 1205–22.
- BROWNE, Kevin. D. and Martin HERBERT (1997). *Preventing Family Violence*. New York: Wiley.
- BUTCHART, Alexander, and Christopher MIKTON (2014). *Global Status Report on Violence Prevention*. Geneva, World Health Organization.
- CABEZAS, Mar. (2016), "Child Psychological Abuse, Public Health and Social Justice: The Cinderella Law Debate", in DRERUP, Johannes GRAF, Gunter, SCHICKHARDT, Christoph and SCHWEIGER, Gottfried (eds.). *Justice, Education and the Politics of Childhood*. Switzerland: Springer, pp. 137–53.
- CANTÓN, José and CORTÉS, M. Rosario (1997). *Malos tratos y abuso sexual infantil: causas, consecuencias e intervención*. Madrid: Siglo XXI.
- CASANOVA, G. M. et al. (1992). "Physiological responses to non-child-related stressors in mothers at risk for child abuse", *Child abuse and neglect* 16, pp. 31–44.
- CATRON, T. F. and MASTERS, J. C. (1993). "Mother's and children's conceptualization of corporal punishment", *Child development* 64, pp.1815-1828.
- CIARROCHI, Joseph, FORGAS, Joseph. P. and MAYER, John D. (eds.) (2001). *Emotional Intelligence in Everyday Life*. New York: Psychology Press.
- CLARK, John (2004). "Against the Corporal Punishment of Children", *Cambridge Journal of Education* 34 (3), pp. 363–71.
- ENGLISH, Laura (1998). "The Extent and Consequences of Child Maltreatment", *The Future of Children. Protecting Children from Abuse and Neglect* 8 (1), pp. 39–53.
- FINKELHOR, David (2005). "The Victimization of Children and Youth: A Comprehensive, National Survey", *Child Maltreatment* 10 (1), pp. 5–25.
- HOTALING, Gerald, LEWIS, A. I. and SMITH, Christine (1990). "Sexual Abuse in a National Survey of Adult Men and Women: Prevalence, Characteristics, and Risk Factors", *Child Abuse & Neglect* 14 (1), pp. 19–28.
- ORMROD, Richard K., and TURNER, Heather A. (2007). "Re-Victimization Patterns in a National Longitudinal Sample of Children and Youth", *Child Abuse & Neglect* 31 (5), pp. 479–502.
- GOODPASTER, Kenneth E. (1993). "Moral Consideration and the Environment: Perception, Analysis, and Synthesis", *Topoi* 12 (1), pp. 5–20.

- GOLDIE, Peter, (2009). "Thick Concepts and Emotion" in Daniel Callcut (ed.), *Reading Bernard Williams*. London/New York: Routledge, pp. 94–109.
- GOSTIN, Lawrence O. and POWERS, Madison (2006). "What Does Social Justice Require For The Public's Health? Public Health Ethics and Policy Imperatives", *Health Affairs* 25 (July), pp. 1053–60.
- KNUTSON, John F. (1995). "Psychological Characteristics of Maltreated Children: Putative Risk Factors and Consequences", *Annual Review of Psychology* 46 (1), pp. 401–31.
- KRUG, Etienne. G. and WHO (eds) (2002). *World Report on Violence and Health*. Geneva: WHO.
- LENTA, Patrick (2012). "Corporal punishment of children", *Social theory and practice* 38 (4), pp. 689-716.
- LÓPEZ DE LA VIEJA, M. Teresa (2010). *La pendiente resbaladiza. La práctica de la argumentación moral*. Madrid, Plaza y Valdés.
- MCFALL, Michael T. (2010). *Licensing Parents: Family, State, and Child Maltreatment*, Lanham: Lexington Books.
- MORGADO, Ignasi (2011). "Psicobiología de la maldad: Rudolf Höss, comandante de Auschwitz", *Claves de la razón práctica* 216, pp. 78-82.
- MULLIN, Amy (2014). "Children, Vulnerability, and Emotional Harm" in Mackenzie, Catriona, Rogers, Wendy and Dodds, Susan (eds.). *Vulnerability*. New York: Oxford University Press, pp. 266–87.
- OCHOTORENA, Joaquín and ARRUBARRENA, María (2007). *Manual de protección infantil*, Barcelona: Masson.
- ODHAYANI, Abdulaziz Al, WATSON, William J. and WATSON, Lindsay (2013). "Behavioural Consequences of Child Abuse", *Canadian Family Physician* 59 (8), pp. 831–36.
- PARFITT, Derek (1984). *Reasons and persons*. Oxford: Oxford University Press.
- PINHEIRO, Paulo. S. (2006). *World Report on Violence against Children*. Geneva: United Nations Publ.
- SANMARTÍN, José (2008). *Violencia contra niños*. Barcelona: Ariel.
- SAVE THE CHILDREN SWEDEN (2015). *Global Initiative to End All Corporal Punishment of Children. Ending Legalised Violence against Children*, [Retrieved from www.endcorporalpunishment.org]
- SMITH, Adam (1761). *The Theory of Moral Sentiments*. Lausanne: A. Millar.
- STARR, Raymond H. (1988). "Physical Abuse of Children", in VAN HASSELT, Vincent, MORRISON, Randall, BELLACK, Allan and HERSEN, Michael (eds.). *Handbook of Family Violence*. Boston: Springer, pp. 119–55.
- STRAUS, M. A. (2001). "10 myths that perpetuate corporal punishment", in Straus, M. A. & Donnelly, D. A. (eds.). *Beating the devil out of them: Corporal punishment*

- in American families and its effects on children*. New Brunswick: Transaction Publishers, pp. 149–164.
- STRAUS, M. A. and PASCHALL, M. J. (2009). "Corporal punishment by mothers and development of children's cognitive ability: a longitudinal study of two national representative age cohorts", *Journal of aggression, maltreatment & trauma* 18(5), pp. 459-83.
- THIEBAUT, Carlos (2005). "Mal, daño y justicia", *Azafea: Revista de Filosofía* 7, pp. 15–46.
- UN, *Convention on the Rights of the Child*, 1989. [Retrieved from <http://www2.ohchr.org/english/law/crc.htm>]
- WILLIAMS, Bernard (1981). *Moral luck. Philosophical papers 1973-1980*. Cambridge: Cambridge University Press.
- ŽIŽEK, Slavoj (2009). *Violence: Six Sideways Reflections*. London: Profile Books.