CHAPTER II
CORPORAL PUNISHMENT OF CHILDREN VIOLATES INTERNATIONAL HUMAN RIGHTS LAWS

There is cumulative and convincing evidence that all corporal punishment of children, no matter by whom inflicted or how mild, violates international human rights laws. This chapter will explore that evidence in detail, including textual interpretations of various treaties and one U.N. declaration, the holdings of regional human rights adjudicatory bodies, the influential statements of treaty monitoring committees, and the published work of legal scholars.

The generally accepted rules for interpreting treaties are set forth in the Vienna Convention on the Law of Treaties (Treaty on Treaties). The approach of the Treaty on Treaties is that “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.” The Treaty on Treaties defines “context” as a treaty’s text, its preamble, and any annexes, as well as certain other agreements, instruments, practices, and rules that relate to the treaty. The aim here is to hew conscientiously to this interpretive maxim and construe applicable treaties so that their terms are given only ordinary meanings. Where this is not possible because interpretation either leaves the meaning of terms “ambiguous or obscure” or “leads to a result which is manifestly absurd or unreasonable,” the Treaty on Treaties permits “recourse . . . to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion.” Accordingly, such recourse will be taken as needed and permitted.

As might be expected, there are those who beg to differ with so seemingly heterodox a proposition as that spanking children is a human rights violation. Some naysayers take a strict literalist approach to arrive at this conclusion. Their argument is that none of the relevant treaties use the actual words “corporal punishment,” “spanking,” or another idiographic
term in prohibiting the offending conduct. Thus, this line of thinking goes, those treaties must not prohibit corporal punishment of children.\textsuperscript{5}

It is true that the relevant international human rights instruments do not expressly refer to “corporal punishment,” etc. It is just as true, however, that the documents use other words that are broad enough in their ordinary meanings to readily encompass corporal punishment. There is nothing in the Treaty on Treaties that forbids the ordinary meaning of a word from encompassing both its narrower implicit as well as its express significations. The ordinary meaning of language often embraces the implicit. Many words, whether used in common parlance or treaties, might be described as “omnibus terms” that necessarily involve subsets of aliquot but unarticulated meanings. To take a pertinent example, consider the verb “to discipline.” Would anyone question that “to discipline” a child implicitly means, among other things, to subject a child to time-out, to deprive a child of privileges, or to scold a child? Could anyone reasonably contend that these three measures are not part of the ordinary meaning of “to discipline”?

Let me be clear that I am definitely not proposing a deconstructionist analysis of international instruments such that their meaning would depend solely on interpreters’ wishes. The result would be purely subjective and self-defeating for any practical purposes: the documents could mean virtually anything and consequently would mean nothing at all. Rather, I am merely suggesting that when treaty language involves omnibus terms, they should be read for the “silent” meanings that ordinarily flow from them. There is nothing venturesome in this proposal. It is simply the textualism favored by the Treaty on Treaties, devoid of a crabbed and sterile literalism. As will be seen, this approach demonstrates that the treaties and declaration under analysis here contain manifold implied prohibitions on corporal punishment of children.

Those who take issue with spanking as a human rights violation have a second arrow in their quiver. They argue that corporal punishment of children carried out by private parties, such as parents, cannot constitute a violation of human rights laws. These critics invoke the traditional view that international human rights instruments should be interpreted according to a public/private distinction. Under this view, such instruments apply to human rights deprivations perpetrated by governments and their agents