Justifying corporal punishment of children loses its appeal

SUSAN M. TURNER
Department of Philosophy, University of Victoria, British Columbia, Canada

Introduction

Can the corporal punishment of children be justified? The question seems simple enough but, of course, is not. Morally or legally? This call for clarification points to a long, still unsettled (and sometimes unsettling) philosophical debate. I will not be putting it to bed here but will instead consider some of its implications for the corporal punishment of children question.

For the purpose of this discussion, I define punishment as the deliberate withdrawal or violation of a moral or legal entitlement in order to cause pain or suffering, such withdrawal or violation being in response to a perceived act of disrespect or disobedience. Corporal punishment is an instance of punishment where the moral and legal entitlement to physical security of the person is violated. The idea of “corporal punishment of children” can be analyzed into three separate ideas: (1) corporal punishment, (2) punishment of children (“by parents” is implied throughout) and (3) corporal punishment of children. The idea of punishment on its own is obviously central to each of these. I assume, against certain views to the contrary, punishment per se is not necessarily unjustifiable. And so, granting the justifiability of punishment, we may ask whether corporal punishment, the punishment of children or the corporal punishment of children are justifiable and if so, on what grounds. I will be leaving the justifiability of corporal punishment per se aside in what follows.

Just how to go about answering the two remaining questions is, for the most part, uncharted territory. Jurisprudence and philosophy of law are rife with discussion and debate about whether and if so how legal punishment is justified. H.L.A. Hart describes legal punishment as the “standard or central case” and, leaving them aside, refers to cases of “punishments for breaches of non-legal rules or orders (punishments in a family or school)” as a “sub-standard or secondary” (Hart, 1988, p. 5). In ‘Punishment and Upbringing: Considerations for an Educative Justification of Punishment, Ido Weijers, a philosopher of education, addresses the question whether punishment of
children can be justified and writes: “This is the fundamental problem of the relation between punishment and education: philosophers of education do not think about punishment; philosophers of law do not think about the child” (Weijers, 2000, 1/10). Weijers restricts his own focus to “the context of the family” arguing along the same lines as Hart, “the pattern of discussion in the philosophy of law is completely inadequate to understand what is basically at stake in punishing children” (Weijers, 2000, 2/10).

Weijers proposes an educative justification of punishment in the family which grants punishing children may be an important means of maintaining relationships of trust and respect between them and their parents. More will be said about his theory below. He does not consider corporal punishment explicitly except in the context of refuting John Locke’s view that “the educative meaning of beating the child is not that the child feels pain, but that he feels shame and disgrace” (Weijers, 2000, 4/10). Since Weijers argues punishing children can be justified and does not explicitly exclude corporally punishing them, Weijers does not show one may not appeal to his theory for a justification of corporal punishment of children.

Weijers’s argument assumes what most if not all philosophers of law have assumed when it comes to the scope of traditional justifications of legal punishment: punishment of children by parents is a whole separate ball game from punishment of adults by the State. This assumption supports setting aside the issue of punishing children in the legal punishment literature as well as Weijers’s conclusion justifications of legal punishment are “completely inadequate” in the family context. But in refusing appeal to philosophical discourse about justified legal punishment for the purpose of exploring punishment of children in the family, Weijers and others leave open the question of how we might understand criminal laws which deal specifically with this issue. Such laws presuppose a conceptual connection between legal and non-legal punishment which cannot be accounted for by approaches which insist on relegating each to its own philosophical category. Regarding the justification of punishment, what are we to make of a criminal law which provides a defense against the charge of assault for parents who corporally punish their children on the explicit grounds they are “justified” in doing so?

I begin by introducing Section 43 of the Canadian Criminal Code – a law which provides a defense for parents (and others with the care of children) against the charge of assault when this arises from an act of corporal punishment. I continue with a brief analysis of the traditional retributivist-deterrence debate over justifying legal punishment, then ask whether either position might shed light on the justification to which Section 43 refers. A more thorough analysis would also consider appeal to numerous hybrids and putatively