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The Swedish Ban of Corporal Punishment

On July 1, 1979, Sweden became the first nation to prohibit corporal punishment of children by their parents. The Swedish Parenthood and Guardianship Code was amended to provide: "A child may not be subjected to corporal punishment or other injurious or humiliating treatment."¹ The new Swedish law is distinctive because it allows greater intrusion into family life than the laws of other countries that have considered the relationship between corporal punishment and child abuse specifically² and children's rights generally.³ The law also represents the final step in an attempt by lawmakers to change societal views without coercion.

This comment explores the history of legislative, judicial, and societal attitudes toward corporal punishment in Sweden. It then outlines the legislative process involved in adopting the new law. Finally, it examines government proposals aimed at eliminating corporal punishment and explores the prospects of using more forceful measures in the future.

I. TRADITIONAL VIEWS OF CORPORAL PUNISHMENT

The 1979 law prohibiting corporal punishment reflects the major transformation of Swedish attitudes against the punishment of children that has occurred over the past thirty years. Traditionally, the right of parents to use corporal punishment in raising their children was wholly accepted in Sweden. Both religious and legal codes reiterated the proverbial dictum that sparing the rod spoils the child.⁴

1. Svensk Författningssamling [SFS] 1979:122 (Swed.).

2. A number of other countries have had debates about the propriety of corporal punishment. See Gil, *The Social Context of Domestic Violence: Implications for Prevention*, 6 VT L. REV. 339, 356-58 (1981) (U.S.); Grandke & Stolpe, *Zur Rechtsstellung der Kinder in der DDR*, 29 STAAT UND RECHT 528 (1980) (E. Ger.); Renchon, *Attribution et exercice de l'autorité parentale*, 39 ANNALES DE DROIT, REVUE TRIMESTRIELLE DE DROIT BELGE 155 (1979) (Belg.); Schröder, "Erzieherprivileg" im Strafrecht, in Festschrift für Richard Lange zum 70. Geburtstag 391 (1976) (W. Ger.).

3. See, e.g., Foster & Freed, *A Bill of Rights for Children*, 6 FAM. L.Q. 343 (1972); Hafen, *Children's Liberation and the New Egalitarianism: Some Reservations about Abandoning Youth to Their "Rights,"* 1976 B.Y.U. L. REV. 605.

4. Lagutskottets betänkande [LU] 1978/79:11; see also FONDEN FOR DEN MORALISKA RÄTTEN I SVERIGE, CAN YOU BRING UP CHILDREN SUCCESSFULLY WITHOUT SMACKING AND

When Swedish family law was codified in 1920, it expressly gave parents the right to punish their children.⁵ This language of the statute was extensively criticized⁶ because it resulted in the widespread use of severe corporal punishment.⁷ In an effort to discourage the use of harsh punishments, the Parenthood and Guardianship Code was amended in 1949 to replace the word "punish" with "reprimand."⁸ However, this change in the code was not accompanied by comparable changes in the criminal law. The Penal Code preserved the parental right to punish children and protected parents from criminal prosecution for actions against those under their supervision, as long as the injuries inflicted were not long-term.⁹ This exception from criminal liability for parents and guardians made child abuse cases difficult to prosecute until the exception was eliminated from the Penal Code in 1957.¹⁰

A. *The 1966 Amendment*

In 1965, the rising number of child abuse cases led the justice minister to call for stronger statutory condemnation of corporal punishment. He proposed amending the Parenthood and Guardianship Code to expressly state that corporal punishment should be avoided.¹¹ Justice Ministry officials concluded that an express disavowal of the parental right to inflict corporal punishment was the only effective way to deal with the problem. Even the 1957 repeal of the criminal assault exemption from the Penal Code had not stemmed the tide of child abuse.¹² However, prevailing societal views made an absolute prohibition of physi-

SPANKING? (1979) [hereinafter cited as FONDEN].

5. See *UTREDNINGEN OM BARNENS RÄTT, JUSTITIEDEPARTEMENTET, BARNETS RÄTT 1. OM FORBUD MOT ÅGA, STATENS OFFENTLIGA UTREDNINGAR [SOU] 1978:10*, at 11 (1978).

6. *SOU 1978:10*, at 15.

7. Despite the long-standing concern about the rising number of child abuse cases, the Swedish government has not kept official statistics on child abuse cases except from 1969-1970. The government found 777 cases of child abuse in the country during this period. FONDEN, *supra* note 4, at 4.

8. *Id.*

9. *Id.* at 11.

10. *SOU 1978:10*, at 15. The current statute reads: "A person who inflicts bodily injury, illness or pain upon another or renders him unconscious or otherwise similarly helpless, shall be sentenced for assault to imprisonment for at most two years or, in case the crime was petty, to pay a fine." *THE PENAL CODE OF SWEDEN*, ch. 3, § 5 (T. Sellin & J. Getz trans. 1972).

11. *SOU 1978:10*, at 15-18.

12. *Id.*

cal punishment, subjecting parents to criminal prosecution for all physical intrusions, entirely unenforceable.

Three bills were introduced in the Riksdag¹³ in response to the Ministry's proposal to amend the code. One proposal suggested that corporal punishment was necessary in raising children and that its elimination would interfere with family affairs.¹⁴ This proposal was flatly rejected. A second proposal explicitly rejected corporal punishment, asserting that unless corporal punishment was expressly banned parents would continue to assume the right to use it and government would continue to be saddled with the unmanageable task of determining when parental reprimands become reprehensible.¹⁵ This proposal was also rejected. The Riksdag's Law Committee supported a third proposal that incorporated features of the second proposal and Justice Ministry recommendations.¹⁶ The proposal neither called for an acknowledgement of the right to punish nor expressly banned physical punishment. Rather, all references to corporal punishment were to be extracted from the code. The Committee expected this removal to operate, albeit passively, as a ban of corporal punishment. A passive ban would clarify the government's position on physical punishment without creating the risk of frivolous criminal actions against parents.¹⁷

The Riksdag adopted the third proposal in 1966. Despite the passive nature of simply removing all references to corporal punishment from the Code, the Riksdag considered this action a ban on corporal punishment. Even later, when the Riksdag expressly banned corporal punishment in 1979, it insisted that its action was merely a codification of the existing law.¹⁸

The ban of corporal punishment was contrary to the prevailing public opinion in Sweden concerning corporal punishment. A public opinion poll in 1965 showed that 53% of all adult Swedes considered physical punishment occasionally necessary in child rearing. However, by 1968 the percentage of persons supporting physical punishment had fallen from 53% to 42% while opposition to corporal punishment had increased

13. The Swedish Parliament.

14. SOU 1978:10, at 17 (citing Motionerna 1966:I:723 & II:888).

15. SOU 1978:10, at 18 (citing Motionerna 1966:II:78 & II:889).

16. SOU 1978:10, at 17 (citing Motionerna 1966:I:722 & II:887).

17. SOU 1978:10, at 18 (citing 1LU 1966:32).

18. LU 1978/79:11.

from 35% to 54%.¹⁹ This shift of opinion continued through 1971 when a survey indicated that support for corporal punishment had decreased to 35%.²⁰ The 1971 survey also asked whether people thought the law prohibited corporal punishment. Sixty-one percent of the respondents felt that it was prohibited, while the remaining 39% either felt physical punishment was permitted by law or had no opinion on the issue.²¹

The reasons for this shift in public opinion are difficult to pinpoint. The possible effect of the statutory change cannot be discounted. However, corporal punishment has also come under criticism in other countries that have not legislatively attempted to ban corporal punishment.²²

Despite the change in public opinion and a clear legislative intent to prohibit physical punishment, the Swedish legal community refused to treat the repeal of the right to reprimand as an absolute ban of corporal punishment.²³ A leading commentator on family law wrote concerning the provision's repeal: "One ought to proceed, nonetheless, from the premise that minor physical intrusions are entirely permitted if the parent needs them to ably guide the child."²⁴ A commentary on the criminal code concluded: "Although a right to punish as such no longer exists, it is clear that a physical correction can be minimally intrusive. Child abuse is not the necessary result. Indictments for completely innocent acts can sometimes be an uncalled for interference with personal affairs."²⁵

Such statements by legal scholars have been blamed for the judiciary's failure to recognize the 1966 amendment as a prohibition of corporal punishment.²⁶ A 1975 district court case exemplifies the judicial response to the new laws. The court dismissed an indictment for abuse of a three-year-old child, stating: "Even if such a charge could be supported, it does not prove that the

19. SWEDISH SAVE THE CHILDREN FEDERATION, CORPORAL PUNISHMENT AND CHILD ABUSE 2 (A. Haeuser trans. 1981).

20. *Id.*

21. *Id.*

22. See Gil, *supra* note 2; Grandke & Stolpe, *supra* note 2; Renchon, *supra* note 2; Schröder, *supra* note 2.

23. This seems to be a reflection of the conflict between extra statutory defenses and positivism also found in other European systems. See G. FLETCHER, RETHINKING CRIMINAL LAW 779-84 (1978).

24. G. WALIN, KOMMENTAR TILL FÖRÄLDRABALKEN 118 (1971).

25. N. BECKMAN, KOMMENTAR TILL BROTTSBALKEN 125 (1970).

26. See SOU 1978:10, at 19.

force used by [the defendant] against his daughter has gone beyond the right to punish which parents have against children in their care."²⁷

B. Pressures for Additional Reform

A legislative response to the judicial failure to implement the law was slow in coming. However, in 1972 legislators again introduced proposals that explicitly outlawed corporal punishment.²⁸ These proposals were again rejected.²⁹ The Riksdag's Law Committee investigated the proposals and concluded that a public information campaign against physical punishment would be more appropriate than a statutory prohibition.³⁰ This decision was applauded by many in the justice administration community who continued to fear that an express ban would give prosecutors the onerous and unrealistic task of prosecuting parents for spanking their children.

In preparation for the International Year of the Child, the Riksdag established the Commission on Children's Rights on February 24, 1977. The Commission was charged with investigating ways of strengthening the legal position of children.³¹ In 1978 the Commission issued its first report, entitled *Children's Rights: A Ban Against Corporal Punishment*.³² The report proposed the enactment of an explicit ban of physical punishment. Corporal punishment was viewed as "a form of degrading treatment" which results in a "lack of self-esteem and a personality change" that could affect the child for life.³³ The report found that "[c]hild psychiatrists and psychologists have long been in agreement that physical punishment of children is inappropriate."³⁴

Influenced by such opinions and the need for society to "work against all forms of violence," the Commission found an express ban of corporal punishment necessary in order for children to grow up realizing that violence is not socially acceptable

27. *Id.*

28. SOU 1978:10, at 20 (citing Motionerna 1972:19; 1972:434).

29. SOU 1978:10, at 22 (citing LU 1972:23).

30. *Id.*

31. SOU 1978:10, at 3.

32. *Id.*

33. *Id.* at 11-12.

34. *Id.* at 23-24.

behavior.³⁵ The Commission noted that, while most Swedes felt corporal punishment was prohibited, many people continued to violate the law. The Commission felt greater public knowledge of the law would result in increased compliance. However, the Commission recognized the difficulty of publicizing the mere absence of permission to reprimand or punish. Unless the ban were explicitly expressed, it would be difficult to increase public knowledge concerning the illegality of corporal punishment beyond the 1971 level.³⁶

II. THE LEGISLATIVE PROCESS LEADING TO THE BAN OF CORPORAL PUNISHMENT

In accordance with Swedish policy, the government³⁷ sent the Commission's proposal to a number of interested parties for comments prior to legislative action on it. This process is called *remiss*, or remittance.³⁸ Remittance allows a variety of groups to comment on proposed legislation. Over twenty-five different government agencies, private organizations, and political parties (including the law faculty of Uppsala University, the Housewives' Home and Society Federation, and the Swedish Save the Children Federation) responded to the proposed ban on corporal punishment. A majority of the respondents favored the ban.³⁹

The Circuit Court of Appeals of Southern Sweden wrote to

35. *Id.* at 24.

36. *Id.* at 9.

37. In Sweden, as in Great Britain, West Germany, and other parliamentary systems, the term "the government" refers to the cabinet.

38. Regeringens proposition 1978/79:67. Although this practice is followed in other European countries it has been the subject of little academic work. A limited discussion of the Swedish remittance process is found in Dahlen, *A Governmental Response to Pressure Groups—The Case of Sweden*, in *PRESSURE GROUPS IN THE GLOBAL SYSTEM* 148 (P. Willetts, ed. 1982). An in-depth study of the advantages and disadvantages of the remittance process is beyond the scope of this comment. The procedure presents an interesting addition to the legislative process that parallels the notice and comment requirements of American administrative law. The wide spectrum of views made available to the legislature through the remittance procedure gives a breadth not always achieved in the typical legislative hearing process in the United States.

However, the unanimity of the remittance comments on the corporal punishment ban raises doubts about whether the process actually operates to solicit comments from known opponents of a measure. Further, the remittance procedure creates substantial delays in the legislative process, slowing the government's ability to respond. On the other hand, for policy questions not requiring immediate legislative response, submission to a diverse and objective expert audience for comment could, at least in theory, provide legislatures with a variety of innovative and valuable approaches to societal problems.

39. Regeringens proposition 1978/79:67, at 3.

the legislature reminding the government that in earlier remittances the court had "asserted the necessity of having state authorities take a fixed stand rejecting all forms of violence toward children."⁴⁰ The court's remittance, focusing on the substance of the legislation rather than on the impact of the legislation on the judiciary, contrasts with the conventional American concept of separation of powers. The Swedish Women's Leftist Alliance commented simply, "It is about time that the child's right not to be abused was legally settled."⁴¹ The Women's League of the Moderate Party, Sweden's most conservative political party, joined in the clamor of approval stating, "The regulations must be so worded that no doubt can exist in courts and among juvenile authorities, guardians, and other involved parties that physical or psychological violence cannot be accepted as a method of child rearing."⁴²

The only objections to the proposal came from government prosecutors who felt the proposed change would lead to a greater frequency of child abuse complaints but no significant increase in actual protection for children.⁴³ Surprisingly, no objections were made to the potential government intrusion into family affairs resulting from the proposed law.

After the government received the remittance responses, the Commission's proposal was introduced in the Riksdag.⁴⁴ In a report of its own, the government emphasized the role of the law in changing the attitudes of parents and guardians.⁴⁵ The Riksdag's Law Committee proposed slight changes in some sections of the law but did not substantively alter the ban.⁴⁶ A nearly unanimous vote of the Riksdag adopted the government proposal.⁴⁷

III. FEASIBILITY OF IMPLEMENTING THE BAN

The law prohibiting corporal punishment of children was not intended to include criminal sanctions requiring changes in

40. *Id.* at 10.

41. *Id.* at 15.

42. *Id.* at 14.

43. *Id.* at 9, 11.

44. *Id.* at 1.

45. *Id.* at 6.

46. LU 1978/79:11.

47. SWEDISH SAVE THE CHILDREN FEDERATION, THE OMBUDSMAN AND CHILD MALTREATMENT 7 (1980) (the vote was 259 to 6).

the Penal Code. The legislation was consciously designed as a prohibition "without teeth." The Commission on Children's Rights noted in its first report that no changes in the Penal Code were proposed.⁴⁸ The remittance comments also made reference to the noncriminal nature of the ban⁴⁹ and suggested use of a strong advertising campaign to increase public awareness and obedience to the law.⁵⁰ The government adopted this suggestion as part of its own report.

After the law was passed the government attempted to increase public knowledge of the statute.⁵¹ In 1971, under the old law, only 61% of all Swedes thought that the law prohibited corporal punishment. In 1980, 93% of the population was aware of the prohibition, and 96% knew of it by 1981.⁵² Nevertheless, this increased public awareness of the law has not resulted in its acceptance. The number of adults who felt that corporal punishment is sometimes necessary decreased by 9% between 1971 and 1979. However, the percentage has remained relatively constant since 1979. In 1981, although 96% of Swedish adults knew corporal punishment was illegal, 26% continued to believe that it was not only acceptable but sometimes necessary in child rearing.⁵³

The question of penalties for violation of the law is still undecided.⁵⁴ Even if additional criminal sanctions are not imposed,

48. SOU 1978:10, at 24.

49. *See, e.g.*, Regeringens proposition 1978/79:67, at 11-12 (Uppsala University law faculty's remittance comments).

50. *Id.* at 16.

51. *See, e.g.*, FONDEN, *supra* note 4 (this pamphlet was distributed in ten different languages by the Justice Ministry as part of the advertising campaign).

52. *See* SWEDISH SAVE THE CHILDREN FEDERATION, *supra* note 19.

53. *Id.* A 1980 poll by a different pollster showed 93% of the adults knew of the law, yet 31% felt corporal punishment is sometimes necessary in child rearing. BURKE MARKETING RESEARCH, INDEX INFORMATION—"LAG OM AGA" (1980).

54. Despite claims that the law has no penal sanctions, a recent UPI newspaper story from Stockholm, Sweden stated:

An 11-year-old boy walked into a police station and reported his parents for spanking him, which is against the law in Sweden, authorities said.

.....

It was believed to be the first case in which a child has actually used Sweden's 1979 Anti-Spanking Act, which bans any type of spanking or physical disciplining of children.

.....

Police confirmed Monday that the boy, who reported his parents last Saturday, had been given a spanking. He was taken to a social worker, who contacted the parents.

The father and mother could be fined or sent to prison if found guilty of

the ban may severely impact child custody hearings. The law presently allows parents to retain custody unless they grossly abuse or neglect parental responsibilities.⁵⁵ However, a second report issued by the Commission on Children's Rights proposed new child custody laws that would remove children from parental custody when there is simple, rather than gross abuse or neglect of parental responsibilities.⁵⁶ It is not clear whether the use of corporal punishment constitutes neglect or abuse under the proposal. However, the fact that the suggestion for lowering the standard for removing children from parental custody came from the same commission that proposed the ban of corporal punishment may provide justification for a judicial determination that corporal punishment is *prima facie* abuse or neglect under the new custody laws. Although the Commission never stated that the two reports were related, the combined effect of the reports may be to encourage dissolution of the family as punishment for parental use of corporal punishment.

The potential imposition of such harsh sanctions for parental use of physical punishment creates doubt about the future of the law. Although the remittances raised no direct opposition to the ban, they dealt with a law without sanctions or any mention of potential implications in child custody disputes. It is unclear what the government will do if corporal punishment can not be eliminated among the 25-30% of the population that continues to favor physical punishment despite the advertising campaign. The road has already been cleared for the government to remove children from homes as a means of eliminating physical punishment. The ban could also be strengthened by amending the Penal Code's assault provisions. This would parallel the government's amendment of the Penal Code in 1957 to strengthen the 1949 changes in the Parenthood and Guardianship Code. Such aggressive governmental attempts to enforce the ban could spur active opposition from the presently dormant segment of society that uses corporal punishment.

spanking their child, [public prosecutor] Bjelle said.

Deseret News, May 1, 1984, at 12A, col. 4. It is unclear whether authorities would have prosecuted the parents in this case for child abuse under the pre-1979 statutes.

55. SWEDISH INFORMATION SERVICE, THE "ANTI-SPANKING" LAW: TEXT OF THE LAW BACKGROUND (1979) (English summary of SOU 1979:63).

56. *Id.*

IV. CONCLUSION

The Swedish ban of corporal punishment provides an interesting study of the efforts of a legislature to change public opinion. The ban demonstrates how a democratic government can interfere with traditional family relationships without creating an explosive public backlash. The Swedish approach to corporal punishment also suggests creative strategies for reform when a government is satisfied with effecting gradual changes in societal attitudes and behavior. The portion of the population that supports corporal punishment will not actively oppose the law so long as it does not include any penalties. This allows time to continue changing the attitudes and behavior of later generations. Thus, the strategy of passing an unenforceable ban may prove more effective than a sudden and aggressive change in the law. However, if the government ever aggressively enforces the ban, the issue of family autonomy may still result in a volatile political battle over the status of the family in modern Swedish society.

Dennis Alan Olson