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Queensland Law Reform Commission
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Review of Section 280 of Queensland Criminal Code – domestic discipline
Response to changing laws surrounding Domestic Discipline

To the Queensland Government Law Reform Commission,

We were heartened to read your review of Section 280 of the Criminal Code (domestic discipline) in your recent report. It is encouraging to see the Commission recognise the importance of protecting children from violence under Queensland law. We also welcome your acknowledgement of the continued prevalence of physical punishment in Australia, and that its harmful effects are now far better understood than when the Criminal Code was first written. We strongly encourage the selection of Option 1: Repeal the defence.

Governments have a history of intervening in family matters when evidence clearly shows harm to children—such as in the introduction of seatbelt and car seat laws. The evidence surrounding corporal punishment is now equally compelling. Over the past decade, research has consistently demonstrated its adverse impact on children's emotional, behavioural, neurological, and social development. It is also associated with an increased risk of involvement in intimate partner violence later in life. The strong link between physical discipline and physical abuse cannot be ignored—where physical punishment is permitted, there is always a risk of escalation to abuse and even death. A complete ban on physical violence is essential to eliminate this dangerous grey area.

On behalf of our 130+ members in the *End Physical Punishment of Australian Children* (EPPAC) advocacy group (https://www.pafra.org/eppac), we fully support Option 1: repeat the defence that allows corporal punishment. Any alternative leaves room for interpretation and increases the risk of harm. For many parents, the line between "discipline" and abuse is unclear, and that ambiguity is dangerous.

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We would also like to draw your attention to two recent and relevant studies that provide an important long-term perspective on the impact of corporal punishment:

1. **An Australian study** (Poulsen et al, 2025) found that children who experienced corporal punishment (especially from fathers) were at greater risk of later involvement in physical intimate partner violence in adulthood. This highlights a critical issue—normalising violence in a loving parent-child relationship can set the foundation for accepting violence in adult intimate relationships. If we are serious about addressing Australia's domestic violence crisis, early prevention must start in the home.

2. **A recent international country comparison** (Cramm et al., 2023) found lower rates of adolescent suicide in countries that banned corporal punishment, with reductions in rates occurring on average 12 to 13 years after laws are changed.

Imagine if Queensland led the nation by aligning with the UN Convention on the Rights of the Child and offering full legal protection to children from violence. This would be a powerful step toward reducing societal violence and improving the long-term health, wellbeing, and productivity of all Australians.

We urge the Commission to adopt **Option 1: Repeal the defence**, as endorsed by the members of our EPPAC group, and fully ban corporal punishment.

Yours sincerely,

End Physical Punishment of Australian Children (EPPAC)
Auspiced by the Parenting and Family Research Alliance

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APPENDIX 1

Achieving Equal Protection for Children in Scotland:

A Narrative Account

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Abstract

In 2019, the Scottish Parliament passed a Bill that repealed the 'reasonable chastisement' defence in Scotland. This article provides a narrative account of this momentous reform. It describes the history of Scotland's law and gives an overview of a civil society campaign, coordinated by children's organisations, to secure legal reform. It provides reflections on the campaign, setting out key learning points, including: the importance of language and framing; the use of evidence; and the strength of broad coalitions. This account is offered to help inform similar campaigns to provide all children with protection from physical harm.

Keywords: *physical punishment, reasonable chastisement, Scotland, children's rights*

Introduction

Despite cumulating evidence that physical punishment is harmful to children, it remains lawful in many countries around the world. Until recently, this was the case in Scotland. The physical punishment of children is an emotive subject. It speaks to how we parent; it speaks to how we were parented. Efforts to make it unlawful often court controversy with advocates for change as vocal and impassioned as those who advocate for the status quo. Yet it is incumbent upon lawmakers to see beyond the emotion and the controversy, to consider the evidence and to take necessary steps to protect children from harm.

In 2019, the Scottish Parliament passed the *Children (Equal Protection from Assault) (Scotland) Act* as a result of which physical punishment of children is no longer permissible in law (Scottish Parliament, 2019a). This was the culmination of a long, sometimes arduous, civil society campaign, spear-headed by children's non-governmental organisations (NGOs), to secure legal reform in Scotland. As a representative of one such NGO, I was heavily involved in the campaign, but this article reflects the work of many people, from many organisations, across many years. They say it takes a village to raise a child; so it is with this issue. Ending the physical punishment of children is a collective endeavour. This article gives a narrative account of how legal reform was secured in Scotland. It is not intended as a thorough account of the campaign. Rather, it sets out what I consider to be the key aspects of a campaign which ultimately ensured all children in Scotland now have equal protection in law.

Scotland, the Cruel?

There is now a rich policy framework around children and families in Scotland, with the Scottish Government's long-stated aim to make Scotland "the best place to grow up" (Scottish Government, 2021b) and seen most notably in recent attempts to incorporate the United Nations *Convention on the Rights of the Child* (UNCRC, UN General Assembly, 1989) into Scots law. The *UNCRC (Incorporation) (Scotland) Bill* was passed unanimously by the Scottish Parliament in 2021. Although the UK Supreme Court ruled that four sections of the Bill exceeded Parliament's powers, meaning that the Bill is not yet law at the time of writing, the Scottish Government "remains committed to the incorporation of the UNCRC to the maximum extent possible, as soon as practicable" (Scottish Government, 2021a, p. 11).[1]

Historically, however, the prioritisation of children's welfare has not always been so evident. Craig (2018) describes the authoritarian and punitive culture of Scotland, certainly in the latter part of the twentieth century, remarking that "we have a long history of hitting children". She lists some of the words commonly used to describe corporal punishment - leathering, battering, tanning, whipping, hammering, roasting, hiding, thrashing – which were familiar to most Scottish children in the 1950s and 60s. Data collected by Scotland's Education Department in the 1970s shows corporal punishment was used ten times more often in Scottish schools than in English ones. A BBC News (2017) documentary on childhood in Scotland noted that "While students throughout the rest of the UK were punished by use of belt or cane, Scottish teachers used [a] modified version of the belt – a thick leather whip with one end split into two tails, or tawse". This instrument was advertised in educational journals and was "the first piece of educational equipment that a young teacher was forced to purchase" and it was recommended to new teachers that they practise "to get the swing and measure of the implement" (Parliamentary Debates (HC), 1981, c124).

Under the *Children and Young Persons (Scotland) Act 1937*, a parent of a child under the age of 16 could be charged for ill-treatment "in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement)" (s12.1) – but this shall not "be construed as affecting the right of any parent, teacher, or other person having the lawful control or charge of a child or young person to administer punishment to him" (s12.7). Against this rather harsh backdrop, it may have seemed highly unlikely that Scotland would become the first place in the United Kingdom to implement full legal protection from assault for children in all settings. Yet it did. The pathway to prohibition was a long one, which I will summarize in the following sections.

Physical Punishment in Schools

It was not until 1987 that corporal punishment was banned in state-supported schools in Scotland, even then only as a result of two Scottish mothers taking the issue all the way to the European Court of Human Rights. Grace Campbell and Jane Cosans brought a complaint to the European Commission of Human Rights in 1976, arguing that their own and their children's rights had been violated under the *European Convention on Human Rights* (1950). Campbell had requested a guarantee that her 6-year-old son would never be subjected to corporal punishment at school. Cosans, whose 15-year-old son Jeffrey had refused to be

whipped with a tawse after taking a prohibited shortcut to school, also requested that he never receive corporal punishment while he was a pupil. The educational authorities would not agree to the mothers' requests. As a result, Jeffrey Cosans was suspended for nearly a year and left school when he turned 16.

In its 1982 judgement (Campbell & Cosans v United Kingdom, 1982), the European Court of Human Rights found that the mothers' rights to ensure that their children's education conforms with their own "philosophical convictions" (European Convention on Human Rights, 1950, Art. 2, Protocol 1) had been violated: "The applicants' views relate to a weighty and substantial aspect of human life and behaviour, namely the integrity of the person, the propriety or otherwise of the infliction of corporal punishment and the exclusion of the distress which the risk of such punishment entails" (para. 36). The Court also found that, due to his lengthy suspension, Jeffrey Cosans's right to education (Art. 2, Protocol 1) had been violated. However, the Court did not find that the threat of corporal punishment constitutes inhuman or degrading treatment, so Article 3 of the *European Convention on Human Rights* was not violated in either case. Thus, the decision was more concerned with parents' rights than with the rights of the children affected by school whippings, yet it influenced the *Education (No. 2) Act 1986*, which abolished corporal punishment in state schools and independent schools receiving state funding across the UK.

It took another decade to outlaw the practice in privately funded independent schools, by virtue of section 16 of the *Standards in Scotland's Schools etc. Act 2000*. It was not until 2002 that corporal punishment was prohibited in day care and childminding (The Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002).

Physical Punishment in the Home

As elsewhere in the UK, and indeed elsewhere internationally, there existed in Scots law a defence of 'reasonable chastisement' to the common law offence of assault. This common law defence was also recognised in statute (Children and Young Persons (Scotland) Act 1937, s.12.7). A parent or someone *in loco parentis* could use this defence to claim that an act which might otherwise constitute assault was reasonable as an act of punishment. However, there was no clear definition in law as to what was 'reasonable' or 'unreasonable'.

When this defence was debated in Parliament in 1989, a motion to repeal it was introduced but ultimately withdrawn (Parliamentary Debates (HC), 1989). Around the same time, a similar motion was put forward in the House of Lords but was opposed by the UK

Government because it would "create complete obscurity" regarding the limits on 'reasonable' corporal punishment (Scottish Law Commission, 1992, p. 19-20). It also was withdrawn (Parliamentary Debates (HL, 1988-89).

Three years later, the Scottish Law Commission (1992) recommended the repeal of s12.7 and the prohibition of punishment using objects; risking or causing injury; or risking or causing pain or discomfort lasting more than a very short time. These recommendations reflected the findings of a public opinion survey they had commissioned in 1991 in which most respondents thought it should be lawful to smack a child with an open hand[2] but hitting with objects should not be lawful[3].

An amendment was brought forward during the passage of what became the Children (Scotland) Act 1995 – still the key piece of legislation concerning the care and welfare of children in Scotland today – to enact the Scottish Law Commission's proposals. The amendment sought to make clear that there should be no defence where: a child was struck with a stick, belt or other object; or in such a way as to cause, or to risk causing, injury; or in such a way as to cause, or to risk causing, pain or discomfort, lasting more than a very short time (Parliamentary Debates (HC, 1995)). This was ultimately defeated, with Members arguing that "the law as its stands—both statutory and common law—already offers sufficient protection to children from assault by parents" (Parliamentary Debates (HC, 1995, col 68)).

However, as with corporal punishment in schools, the UK Government was increasingly called upon to clarify the legal position due to a successful legal challenge on human rights grounds (A v UK (1998)). A was a nine-year-old boy whose brother disclosed that their stepfather was hitting A with a stick. The paediatrician who examined the bruises on A's legs and buttocks concluded that the marks were likely made "with the use of a garden cane applied with considerable force on more than one occasion" (para. 9). The stepfather was charged with assault but argued that the caning was "necessary and reasonable" (para. 10). The judge advised the jury that "It is not for the defendant to prove it was lawful correction It is for the prosecution to prove it was not" (para. 10). The stepfather was found not guilty of assault causing bodily harm. 'A' applied to the European Commission of Human Rights on the basis that the State had failed to protect him from ill-treatment, and that several Articles of the *European Convention on Human Rights* were violated.

The case was referred to the European Court of Human Rights which ruled in 1998 that English law on reasonable chastisement was in violation of Article 3 of the *European Convention on Human Rights*: "no one shall be subjected to torture or to inhuman or

degrading treatment or punishment". Given its similar legal position, this judgment about English law left Scots law open to challenge.

Also in 1998, the Scottish Parliament had been established by the *Scotland Act 1998*, devolving power from the UK Parliament to pass primary legislation for Scotland in areas such as education, health and justice. And so, in its very first parliamentary session, the nascent Scottish Parliament was charged with addressing the law on the physical punishment of children.

In 2002, following extensive public consultation, the Minister for Justice introduced the *Criminal Justice (Scotland) Bill (SP Bill 5I0)*, which included provisions on the physical punishment of children. The Bill was referred to a Parliamentary Committee for study. The Committee invited written evidence on any of the Bill's provisions. Of the 284 responses it received, 245 (86%) were concerned with the physical punishment provisions (Justice 2 Committee, 2002). As introduced, the Government's Bill would have prohibited all physical punishment of children under the age of three; blows to the head; shaking; and the use of objects (up to age 16, when young people gain the same protections as adults). These legal changes would have been accompanied by a public education and information campaign.

After significant debate, the Committee concluded that "there was no convincing evidence that [prohibiting physical punishment of children under three] would reduce harm to children to such an extent as to justify a blanket provision of this kind" (para. 141). The Committee did find, however, that "it is reasonable for there to be a blanket ban on blows to the head" (para. 140). There was little political consensus on outlawing shaking children, with attempts to introduce a 'reasonability' test around shaking and (retrospectively bizarre) discussions about this provision adversely affecting 'meek mothers shaking great, big rugby-playing sons' (Scottish Parliament, 2003). A survey of parents at the time, however, indicated that 79% supported a full ban on shaking (Anderson, Murray, & Brownlie, 2002).

Ultimately, what emerged from this process was section 51 of the *Criminal Justice (Scotland) Act 2003*, the law which introduced the concept of 'justifiable assault' of a child. It stated that "where a person claims that something done to a child was a physical punishment carried out in exercise of a parental right . . . then in determining any question as to whether what was done was . . . a justifiable assault", the court must consider:

(a) the nature of what was done, the reason for it and the circumstances in which it took place;

(b) its duration and frequency;

(c) any effect (whether physical or mental) which it has been shown to have had on the child;

(d) the child's age; and

(e) the child's personal characteristics (including, without prejudice to the generality of this paragraph, sex and state of health) at the time the thing was done."

However, a blow to the head, shaking or the use of an implement could never be deemed justifiable.

With that, the issue had seemingly been resolved. Child advocates continued to call for the absolute prohibition of children's physical punishment, on the grounds that the law continued to be in breach of children's rights, but over the coming years there was very little scope for further change. Advocates consistently raised the issue and sought amendment to any tangentially relevant piece of legislation coming forward but to no avail; politicians were not interested, and the issue was at an impasse. When the issue was sporadically debated in the press, it was presented as a binary debate of children's rights *versus* parents' rights, a false dichotomy which stifled any more nuanced consideration of the issue. As much as there were advocates for change, there also continued to be strong insistence for the status quo. Indeed, even in 2012 when advocates raised the spectre of including the issue in proposed legislation containing provisions concerned with advancing children's rights, the Scottish Government stated, "We have no plans to change the law on smacking. It is already illegal to punish children by shaking or hitting them with an implement and there are no proposals . . . to change this" (Adams, 2012). If the issue was going to progress any further, a new approach was needed.

Reframing the Issue

Changing the lens through which the issue of physical punishment was viewed was critical to securing legal reform in Scotland. Framing the physical punishment of children as a matter of children's rights (though it undoubtedly is) was not gaining traction with political decision-makers. We needed to shift the narrative from children's rights to public health and make the case that, at a population level, the physical punishment of children is harmful and therefore reform was needed to prevent this harm. Making this case required authoritative evidence.

In 2014, three non-governmental children's organizations – Barnardo's, Children 1st and the National Society for the Prevention of Cruelty to Children (NSPCC) – and the office

of the Children's Commissioner in Scotland commissioned a review of the international evidence on the impact of physical punishment on children. The review was led by Dr. Anja Heilmann and colleagues within the Department of Epidemiology and Public Health at University College London (Heilmann et al., 2015). They found that: 1) there is strong and consistent evidence that physical punishment is linked with childhood aggression and anti-social behaviour; 2) there is good evidence that the experience of physical punishment is related to depressive symptoms and anxiety in children; and 3) physical punishment carries with it a risk of escalation to injurious abuse. The authors recommended action on three fronts: legal reform so physical punishment is no longer permitted in law; information and awareness raising campaigns; and positive parenting support for families.

This evidence review provided the foundation for the advocacy that followed. Equipped with the most up-to-date international evidence, child advocates formed a coalition and set about developing a proactive, strategic campaign to persuade decision-makers of the urgent need for legal reform to protect children from harm.

Delivering Change

Having the evidence is one thing; translating this evidence into tangible change is quite another. We launched the research report in the press to generate public discussion and, having anticipated some media backlash and devised our press strategy accordingly, were surprised by its positive reception in the media. While we were prepared for an invasion-of-private-and-family-life backlash, this did not materialise. Most news outlets covered the release of this new report in a helpfully neutral fashion.

We held a small seminar with key stakeholders and decision-makers, including Government officials, to explore the findings of the research, the barriers to legal reform and how these might be overcome. The seminar followed the Chatham House Rule, under which those who came to the meeting were free to use the information discussed but were not allowed to reveal the identity or affiliation of any speakers or participants. In addition, questions were asked in Parliament to assess the Scottish Government's formal position on basis of the evidence now available to them (Scottish Parliament, 2016). While there was a welcome change in public messaging – with the Scottish Government noting the evidence and no longer expressly declining to change the law – the more private conversations at the seminar made it clear that proactively advancing legal reform was still not a government priority.

We also engaged opposition political parties in discussions of law reform. In the 2016 Scottish Parliamentary elections, held months after the report was published, the Liberal Democrats and the Scottish Green party made commitments in their election manifestos to abolish the 'reasonable punishment' defence (Scottish Greens, 2016; Scottish Liberal Democrats, 2016). This was huge progress; legal reform was now back as a mainstream political issue.

The incumbent Scottish National Party won the election and formed a minority government. Undeterred, the coalition approached the Scottish Green Party to see if any of their six elected Members of the Scottish Parliament (MSPs) would consider putting forward a bespoke Member's Bill[4] to repeal section 51 and related common law. John Finnie MSP, a former Police Officer, agreed to take it on.

The first step in the process was to hold a consultation on the legislative proposal. The consultation ran from March to August 2017, with 75% of respondents in favour of the change (Scottish Parliament, 2018). A final proposal was lodged in October 2017, at which point both the Scottish Labour Party and the governing Scottish National Party pledged their support (Davidson, 2017; The Scotsman, 2017). This meant that four of the five political parties in the Scottish Parliament - a majority of Members - now endorsed the draft legislation. The Bill was introduced in September 2018 and was passed in October 2019.

Throughout these processes, the coalition placed significant emphasis on meeting with a wide range of civil society organisations – from faith groups to professional bodies – encouraging them to engage in the debate and view the issue as their own. As children's organizations, it was of no great surprise to anyone that we were in favour of legislating to end physical punishment. To have individuals and organisations from a broader range of disciplines and perspectives stand up and advocate for the legislation had far greater weight in the media and with politicians. This broad consensus was a significant achievement of the campaign.

The legislation itself was short. The *Children (Equal Protection from Assault) (Scotland) Act 2019* removed the common law defence of reasonable chastisement and section 51 of the 2003 Act and placed a duty on Scottish Ministers to raise awareness and understanding of the legal change. The Bill stipulated that the repeal is not retrospective and will come into force twelve months after receiving Royal Assent[5]. Scotland repealed the defence of 'reasonable chastisement' or 'justifiable assault' on 7th November 2020.

In preparation for the provisions coming into force, the Scottish Government established an implementation group, with representatives from police, prosecution service,

social work and other key stakeholders. In addition, the Lord Advocate – the most senior Law Officer in Scotland, heading the criminal prosecution system – developed guidelines for Police Scotland on how to investigate and report allegations of parental assault to ensure a proportionate response, which were referenced in the National Guidance for Child Protection (Scottish Government, 2021b; see 4.143-4.160). The Scottish Government also undertook a range of activities to fulfil its awareness-raising duty, including leaflets, posters, fact sheets, and enhancements of the 'Ready Steady Baby!' online information for new parents.[6]

The Campaign against Legal Reform

Of course, support for repealing the section 51 defence was not unanimous. A small but vocal campaign against law reform was largely coordinated by the *Be Reasonable* campaign, which argued that the repeal of section 51 will turn good parents into criminals and "police and social workers will be flooded with trivial cases leaving them struggling to stop genuine child abuse" (see Be Reasonable Scotland, 2023). Their position was that "parents should decide whether to smack their children, not the government". This campaign was backed by the Christian Institute, which has vocally opposed law reform in the UK for many years, claiming that police will be obligated "to investigate any allegations of physical chastisement [which will be] deeply distressing for families and could see children removed from homes and parents' jobs affected" (see Christian Institute, 2023). The Free Church of Scotland also opposed reform on religious grounds.

A common concern raised by those opposed to the Bill was that repeal of the 'reasonable chastisement' defence would result in mass prosecutions of loving parents. Therefore, it was important to be clear that the intention behind legal reform was not punitive but rather to encourage a shift in the culture, to send a clear message that the physical punishment of children is unacceptable in contemporary Scottish society. We also made clear that there is no evidence of increased prosecutions in the 65 countries to-date which have prohibited all physical punishment.

Another common argument was the idea of a 'loving smack', that physical punishment is only used as a corrective measure of last resort and borne out of love. The *Equally Protected?* report reviewed studies showing that the impact of physical punishment on children is the same, irrespective of maternal warmth, remarking that "'the loving smack' might be a myth" (Heilmann et al., 2015, p. 7). In a qualitative exploration of Scottish parents' use of physical punishment, most parents did not defend their actions on the basis

that is was good for the child; rather it most often occurred when they themselves were feeling tired, angry and stressed (Anderson et al., 2002). Moreover, half (53%) of the parents said they felt guilt or regret afterward. Only 2% said they felt better.

Opponents also voiced incredulity that smacking was being conflated with abuse. In fact, they argued, there is a clear distinction (Scottish Parliament, 2019). We responded that, on the contrary, the existing law created a grey area, an invisible line as to what was 'reasonable' and therefore permissible, and 'unreasonable' and therefore not permissible. This ambiguity left children open to harm, whereas removing the defence would provide absolute clarity that no physical punishment is permitted.

Concerns were also raised that legal reform will lead to increased reports to police and social work services, leading to an overburdened child protective system. To respond to these concerns, it was critical to have the support of professional bodies who could speak directly to the potential impact on their work. Social Work Scotland, the professional body representing social workers in Scotland, was fully supportive of legislative reform while noting the short-term resourcing implications to provide good quality family support: "If this were to be properly resourced . . . we would not be taking anything away from parents, rather we would be giving them clarity about the legal position and a range of positive parenting supports" (Social Work Scotland, 2018, p. 4). This position aligns with recommendations from research which indicates that legislative reform is not sufficient to catalyse behaviour change by itself; it must be accompanied by increased support for parents to adopt more positive parenting approaches (Anderson et al., 2002; Heilmann et al., 2015).

Repeal of section 51 was also depicted as an unacceptable infringement into family life; parents should be free to bring up their children in the manner of their choosing and it is not for the State to interfere. In response, we noted that, while of course individuals have a right to private and family life (European Convention on Human Rights, Art. 8), this does not include a right to use physical punishment. No such right exists in law. Section 51 provided a defence to a charge of assault; it did not bestow a right to strike a child. Rather than placing parents' rights and children's rights in opposition, the UNCRC is clear that the family environment is the natural context for children, and that families should be supported to fulfil their children's right to be safe and protected (Convention on the Rights of the Child, 1989).

Ultimately, these arguments against repeal did not persuade a majority of the Scottish Parliament and the legislation as passed. Similar narratives abound wherever this issue is being discussed; they are not unique to the Scottish context. The arguments against repeal were very similar to those put forward during the passage of the 2003 legislation and

mirrored arguments being made against parallel reform being discussed in Wales at the time. They will undoubtedly be heard in Canada as the repeal of section 43 of the *Criminal Code* is debated.

Reflections and Learning

It is now over two years since the Scottish legislation came into force. It is difficult to measure tangibly its impact for several reasons. First, we lack baseline data on how often the defence had been used. Second, the legislation came into force in the midst of the COVID-19 pandemic, making it difficult to examine impacts on reports to police and/or social services, or on prosecutions. However, as of early 2023, the professional bodies involved in implementing the legislation have not voiced concern about its impact.

I have often been asked why the Scottish campaign was successful: how did Scotland go from its Government refusing to change the law in 2012, to its Parliament repealing it in 2019? There is no single answer to that question. I can, however, offer some reflections on contributing factors.

Framing and Language

Language was critical to achieving success, as it facilitated a greater understanding of the issue by the public, the media and decision-makers. For example, the dominant discourse in the media was around a 'smacking ban'. This term is erroneous for two reasons. First, we were not debating a ban, but a repeal of an existing defence to assault of a child. It was important to make this clear through the language of 'equal protection' which is what the law reform was actually about: the objective was for children to have the same protection from assault that adults are afforded. Second, the law is not about 'smacking', a word that minimises and trivialises the issue, and leads the debate into unhelpful hypothetical cul-de-sacs about which types of hitting are acceptable - a tap on the hand, a slap on the leg, and so on. These *de minimis* linguistic gymnastics derail the debate into the ugly realm of defining acceptable infliction of pain on children.

The debate's framing also was a factor in achieving equal protection for children, which can be cast as an issue of children's rights; one of public health; or one of child protection. All are aspects of the issue, but they resonate differently in different contexts. Interestingly, two parts of the UK (Scotland and Wales) and one British Crown Dependency (Jersey) have repealed their respective defences - and all for different reasons. In Scotland,

lawmakers were primarily concerned with public health and the evidence of physical punishment's harms. In Wales, lawmakers were focused on furthering children's rights under their UNCRC obligations (see Holland, this volume). The Welsh Government's information leaflet about the law change states, "We want to protect children and their rights, to give them the best start in life" (Welsh Government, 2022). In Jersey, child protection was most salient, as lawmakers were driven by making improvements in the care system following an inquiry into historic abuse on the Island (Independent Jersey Care Inquiry, 2017). The Jersey Inquiry concluded, "a care system in which insufficient effort is made to prevent children from being abused, whether physically, emotionally or sexually, or a justice system in which insufficient steps are taken to investigate and punish such abuse where it occurs, is indefensible" (p. 3-4). Different framings will be effective in different social and political contexts. I stress, however, that these are not just communication strategies or tactics; these are the litany of ways in which physical punishment affects children.

It was also important to ensure that any legislative remedy was not retrospective. This helped assure decision-makers, as well as the public, that change was not about making judgements about the past, but more about moving with the times and responding to the growing, contemporary evidence base.

Finally, it was important to directly address the concept of "justifiable assault" of a child that was enshrined in Scottish law in 2003. Twenty years from when they were drafted, the words "justifiable assault" were appropriately appalling to many when they were brought into the light for public scrutiny. This outrageous oxymoron helped to demonstrate just how untenable the existing legal position had become.

Working with Parliamentary Process

The processes through which law reform is achieved vary across countries. In the Republic of Ireland, for example, it was achieved through an amendment to an existing legislative proposal (see van Turnhout, this volume). In Scotland, however, law reform was secured via a bespoke piece of legislation, which meant line-by-line scrutiny in the full glare of the political and media spotlight. Embarking on a Member's Bill, certainly in Scotland, is a long and resource-intensive approach. It places a significant onus on the MSP's office and staff, and those of supporting organisations. Yet it also creates significant opportunities for civil society to contribute to the process. For example, we could facilitate a shift in the language of the debate which, in turn, shaped the name of the legislation to make its policy

intention central and unambiguous. This had two important impacts. First, scrutiny of the Bill was undertaken through a lens of equality, rather than solely justice. This was demonstrated in the choice of Committee charged with scrutinising the Bill[7] - the Equalities and Human Rights Committee, rather than the Justice Committee. Second, it affected how amendments were proposed. According to Scottish Parliamentary rules, amendments to draft legislation can be proposed only if they are consistent with the general principles of the Bill as agreed by Parliament (Scottish Parliament, 2023; see rule 9.10.5). Therefore, amendments could not be tabled that caveated the repeal of the defence or in any way undermined children having **equal** – that is, the same – protection from assault as adults. This helped ensure that the objective of repealing the defence could not be diluted.

Further, a Member's Bill has an impact on implementation. Whereas a governmental Bill would bring with it governmental resources and commitment, this is not necessarily the case with a Member's Bill. This is not to say that the Scottish Government was not invested in legal reform, but I contrast the Scottish experience to that of Wales, where change was brought about by the Government with significant resources attached to public education and information campaigns (see Holland, this volume). It could be argued that, as a result, Wales did more, better.

Lastly, there was an element of serendipity in the Bill's success. To avoid delay in implementation, the Act was drafted so that the legislation would come into force 12 months after Royal Assent, as opposed to giving Scottish Ministers the discretion to introduce it through secondary legislation at a time of their choosing. This proved fortuitous. No-one could have foreseen that a year later we would be in the middle of a global pandemic which could have delayed implementation indefinitely due to diversion of government attention, had commencement not been automatic.

Evidence-based Policy

The debate around physical punishment is often highly charged. The evidence review (Heilmann et al., 2015) enabled the discussion to rise above emotional reaction and political unease, enabling us to have an objective conversation with lawmakers about the negative impacts of physical punishment on children and the need for protective legislation. The evidence also helped to show that physical punishment does not improve children's behaviour, making its acceptance in law all the more nonsensical. Since then, the evidence base has been further strengthened, not least with the publication of a narrative review of 69

prospective longitudinal studies which showed that physical punishment consistently predicts increased child behaviour problems and never predicts positive outcomes over time (Heilmann et al., 2021).

Another important source of evidence was the views and experiences of children and young people. Although the central issue is the treatment of children, their voices are most often absent from the debate. An important mechanism for communicating their views is the Scottish Youth Parliament, a democratically elected body founded in 1999 to represent the views of young people in Scotland. In 2016, they conducted a survey of over 70,000 young people; 82% agreed that all physical assault against children should be illegal (Scottish Youth Parliament, 2016). At a meeting with Scottish Government Cabinet Ministers in early 2017, children and young people urged the Scottish Government to support proposals to repeal the 'reasonable chastisement' defence (Scottish Government, 2017). Both inputs were significant in demonstrating to politicians that children and young people themselves wanted the law to change.

(Un)usual Suspects

The coalition of four civil society organisations which came together to advocate for repeal of section 51 was central to Scotland's success. By collaborating, we were able to share resources, expertise, and workload, and develop common messaging. However, coalitions also bring challenges in terms of having different ways of working and establishing roles and responsibilities. Coalitions can very powerful and effective, but they require time, trust and energy.

Beyond the coalition was a wider group of supporters, who were critical to our success. As set out above, we deliberately sought to engage a wide group of organisations in the campaign to demonstrate the breadth of support that existed. Among vocal supporters were the Church of Scotland, Faculty of Public Health, Royal College of Paediatrics and Child Health, Scottish Police Federation, Law Society, Social Work Scotland, human rights organisations, academics, the women's sector and parenting organisations. The assembly of such a broad spectrum of civil society organisations, all calling clearly for legal reform to protect children from physical punishment, was impressive and influential.

Conclusion

Physical punishment of children is associated with a range of negative outcomes and is a breach of children's rights. It has no place in modern society. In 2020, Scotland became the first part of the United Kingdom to repeal the 'reasonable chastisement' defence making physical punishment of children illegal in all settings. This momentous and symbolic legal change was largely brought about through concerted efforts by civil society organisations at a time when there was political apathy to taking on what is often a controversial issue. The use of rigorous evidence, clear and accurate messaging, and the support of a wide range of advocates from across society contributed to a successful campaign to change the Scottish law.

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[2] 83% if the child was 3 years old; 87% if the child was 9 years old; 68% if the child was 15 years old.

[3] 94% if the child was 3 years old; 91% if the child was 9 years old; 85% if the child was 15 years old.

[4] For information on Members' Bills in the Scottish Parliament, see https://www.parliament.scot/bills-and-laws/about-bills/how-a-bill-becomes-an-act/members-bill

[5] For more on Royal Assent and the legislative process in Scotland, see: https://www.parliament.scot/bills-and-laws/about-bills/how-a-bill-becomes-an-act

[6] To access elements of the information campaign, see https://www.parliament.scot/chamber-and-committees/questions-and-answers/question?ref=S5W-32972

[7] Parliamentary Committees play a key role in the legislative process in Scotland. For more information, see: https://www.parliament.scot/chamber-and-committees/committees/about-committees

APPENDIX 2

Removing the "Reasonable Punishment" Defence in Wales

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Abstract

In January 2020, the Welsh parliament passed the Children (Abolition of Defence of Reasonable Punishment) (Wales) Act to repeal the "reasonable punishment" defence. The Act states that "corporal punishment of a child taking place in Wales cannot be justified in any civil or criminal proceedings on the ground that it constituted reasonable punishment." The Act also compels the Welsh Government to promote public awareness and to monitor and report on the impacts of the ban three and five years after coming into force. The Act received Royal Assent on March 20, 2020 and came into force two years later. This article traces the history of the campaign to prohibit corporal punishment by parents and those acting in loco parentis. Factors relating to the government, the population and civil society which may have contributed to success in Wales are laid out. Some factors are addressed that may explain the lack of progress so far in Wales's nearest neighbour, England.

Keywords: *corporal punishment, child, rights, prohibition, Wales*

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Grateful thanks are due to Dr. Anne Crowley, who worked tirelessly to change the law on physical punishment in Wales over the two decades prior to the legislative change. She reviewed a first draft of this article and gave valuable advice on both the history and the analysis.

Introduction

In this article, I trace the history of legislation prohibiting all corporal punishment of children in Wales in 2020 and identify some factors that contributed to that success. I address the question of why Wales finally succeeded in this endeavour when its larger neighbour, England, has not progressed in this area for nearly two decades. I conclude with a discussion of the law's implementation and the supportive measures put in place to optimize its impact. As the founding member of Academics for Equal Protection, and then Children's Commissioner for Wales in the years leading up to and following the passing of the legislation, I was also a participant in these events. This is *my* analysis, as someone with first-hand knowledge of the long journey, which continues today.

The Current Law

In January 2020, the Welsh Parliament – the Senedd - passed the *Children (Abolition of Defence of Reasonable Punishment) (Wales) Act* to remove the "reasonable punishment" defence to the common law offences of common assault or battery against a child. With corporal punishment having been previously prohibited in most institutional settings, the defence was by 2020 mainly available only to parents, and persons acting in a parental capacity. The Act states that "corporal punishment of a child taking place in Wales cannot be justified in any civil or criminal proceedings on the ground that it constituted reasonable punishment." The Act also compels the Welsh Government to promote public awareness and to monitor and report on the impacts of the ban three and five years after coming into force. The Act received Royal Assent on the 20th of March 2020 and came into force two years later. This reform marked the first time that the Welsh Parliament legislated for a difference in core criminal law between Wales and England (Welsh Government, 2022a, p.78).

For a prosecution to occur, there must be sufficient evidence that an offence has taken place, prosecution must be in the public interest, and it must be proportionate to the circumstances in which the incident took place. An out-of-Court disposal may be decided by the police as being more appropriate than referring the case to the Crown Prosecution Service (CPS) and even if a case is referred, the CPS may determine that an out-of-Court disposal is more appropriate. All these conditions were in place for reports of physical punishment prior to the law change. The key difference is that the defence of 'reasonable punishment' may no longer be used to justify the assault (Crown Prosecution Service, 2022).

The Welsh government placed the rationale for the law change firmly within a child rights framework (Cornish, 2022). When Julie Morgan, Deputy Minister for Health and Social Services, introduced the Bill in Cabinet, she clearly identified its primary rationale as fulfilling a commitment under the UN *Convention on the Rights of the Child* (UNCRC; UN General Assembly, 1989). Her statement read:

> As a government, we have a long-standing commitment to children's rights, based on the United Nations Convention on the Rights of the Child (UNCRC). We are committed to Wales being a nation where children and children's rights are respected, protected and fulfilled. The UNCRC, together with other international human rights conventions and declarations, recognise that children have the right to have their dignity and physical integrity respected under the law. The Children (Abolition of the Defence of Reasonable Punishment) (Wales) Bill will seek to protect children's rights in relation to the duty set out in article 19 of the UNCRC – the right to protection from all forms of violence. In doing so, children in Wales will be offered the same legal protection from physical punishment as adults (Morgan, 2019).

The Struggle to Bring Legislation Forward: A Chequered History

It is remarkable to see the government's enthusiasm for the law, and its certainty that this will further Wales's commitments to children's rights under the UNCRC (Welsh Government, 2022a), considering the chequered history of previous Welsh and UK Governments' attitudes towards the matter.

Context: The Devolution of Welsh Governance

The Bill was introduced by the Welsh Government, which (along with Scotland and Northern Ireland) has been devolved for a little more than 20 years. Devolution has been an ongoing process. The first devolved administration in Wales – the Welsh Assembly Government created in 1998 - did not have a separation of executive and legislature. It had no primary legislative powers. The *Government of Wales Act 2006* empowered it to draft primary legislation known as 'Measures' and legally separated the government from the legislature, forming a Welsh Government and Welsh Assembly (more recently re-named the Welsh Parliament/Senedd Cymru or Senedd). Despite this seeming progress in terms of the devolution of powers, legislative proposals were required to be scrutinized by Westminster,

meaning that proposals could be blocked by the UK government (Davies and Williams, 2009).

As of 2013, the Senedd has had legislative authority over devolved matters and can pass full Acts of the Welsh Parliament in areas including health and social care, education, and social services. This provided more scope for Wales to act on issues like corporal punishment. The UK Government retains control over issues like tax and most welfare benefits, defence and immigration.

Government at a Welsh level is still, therefore, a relatively new phenomenon and the gradual acquiring of powers in the first two decades has meant that for a period there was some confusion and debate about whether Wales had the powers to change the law about corporal punishment independently of England.

A Turning Point: A v UK

A critical turning point in the history of legal reform in Wales and the rest of the UK followed the 1994 case of A v UK (Council of Europe, 1998). 'A' was a 9-year-old boy who had been beaten by his stepfather. A paediatrician assessed the boy's injuries as "consistent with the use of a garden cane applied with considerable force on more than one occasion" (para. 9). The stepfather did not dispute that he had beaten the boy and was charged with assault occasioning actual bodily harm, which "need not be permanent but must be more than transitory or trifling" (para. 12). The stepfather contended that his actions amounted to necessary and reasonable punishment of a "difficult" boy. In his advice to the jury, the judge stated:

> What does 'unjustifiably' mean in the context of this case? It is a perfectly good defence that the alleged assault was merely the correcting of a child by its parent…provided that the correction be moderate in the manner, the instrument and the quantity of it. Or, put another way, reasonable. It is not for the defendant to prove it was lawful correction. It is for the prosecution to prove it was not. This case is not about whether you should punish a very difficult boy. It is about whether what was done here was reasonable or not and you must judge that (para. 10).

The British jury acquitted A's stepfather. His action had amounted to nothing more than reasonable chastisement of the child.

'A' appealed the ruling in the European Court of Human Rights (Council of Europe, 1998). He argued that the State had failed to protect him from ill-treatment by his stepfather,

breaching Article 3 of the European Convention on Human Rights (ECHR): “No-one shall be subjected to torture or to inhuman or degrading treatment or punishment” (Council of Europe, 1950). The Court ruled that the assault A experienced “reaches the level of severity prohibited by Article 3” of the ECHR (para. 21) and that “the law did not provide adequate protection to the applicant against treatment or punishment contrary to Article 3” (para. 24). Thus, the common law defence of reasonable chastisement undermined the State’s ability to protect children’s rights to protection from violence and abuse.

This ruling forced the UK Government to reconsider the defence. In 2004, the UK Government brought forward a *Children’s Bill* covering a wide set of reforms to children’s services, including strengthening child protection arrangements. The Bill proposed the removal of the reasonable chastisement defence, generating lengthy debate in Parliament. One of those who voted to remove the defence was Julie Morgan, MP Cardiff North, arguing that the debate harkened back to the 1970s, during the campaigns for legislation to prohibit domestic violence:

> We were told that such legislation would be unworkable and that in any case, "She must have done something to deserve it." In the early days of Women's Aid, domestic violence was considered a trivial issue and we had to campaign to get it up the political agenda. Of course, there was also the question of not interfering in family life (UK Parliament, 2004b, col. 257).

She argued that by removing the defence, “the Government would be giving a clear lead on what is acceptable” (UK Parliament, 2004b, col. 257).

Forty-five backbench Welsh MPs voted in favour of the proposal. But ultimately, the UK Parliament rejected it. Instead, the UK Government chose to narrow the circumstances in which the defence could be used, namely in situations where physical injury had been sustained. Section 58 of the *Children Act 2004* states:

> Battery of a child causing actual bodily harm to the child cannot be justified in any civil proceedings on the ground that it constituted reasonable punishment … “actual bodily harm” has the same meaning as it has for the purposes of section 47 of the Offences against the Person Act 1861 (UK Parliament, 2004a).

Three years later, the UK Government released a report reviewing the impact of s58 (Department for Children, Schools and Families, 2007). It concluded that, while the new law had improved legal protection for children, it was difficult for many to understand. “Assault is a criminal offence. But a parent who is prosecuted for common assault after smacking a child can [still] raise the defence of reasonable punishment” (para. 42). The report stated that

many were confused about whether s58 allows or prohibits parents from hitting their children. Professionals who wanted to advise parents not to smack their children found it difficult to do so.

> It seems that practitioners who tell parents that they shouldn't smack their children sometimes struggle to get this message across because although the reasonable punishment defence is restricted by section 58, it is still allowed in some cases and this can be used by parents as a justification for smacking. Some practitioners are concerned that this leaves the door open not just to mild smacking but to more severe punishment that would in fact not be covered by the reasonable punishment defence (para. 49).

However, the UK Government continued to resist full repeal of the defence. All subsequent attempts have failed, including a cross-party amendment in 2008 (UK Parliament, 2008). This situation highlights the difficulty in passing legislation that is not backed by the government within the UK's system of parliamentary democracy, both in Westminster and in the devolved administrations.

The Political Climate

In 2004, the UK and Welsh Assembly Governments were both Labour administrations. However, political differences were emerging: the 'New Labour' government in Westminster was positioning itself towards the centre-ground while Welsh Labour maintained a more traditional Labour Party agenda based on universal public services, a resistance to marketisation of public services and a focus on reducing inequalities. The Welsh Labour Party's move to distance itself from the UK Labour Party became known as 'Clear Red Water' (Davies and Williams, 2009).

In January 2004, the Welsh Government published *Children and Young People: Rights to Action*, which set out a comprehensive plan to make policy changes within a child rights framework (Welsh Assembly Government, 2004). The document noted some progress already made in the first four years of devolved government including: the establishment of an independent Children's Commissioner for Wales - the first such post within the UK; a new young people's consultation body called 'Funky Dragon' to facilitate child and youth participation; and the prohibition of corporal punishment in all day-care settings including childminding. This last action, set out in regulations, meant that the only corporal punishment now sanctioned in Wales was that inflicted by parents and those acting in parental roles. The

2004 document called for many changes in areas that were not within the Welsh Assembly Government's limited remit, including removal of the 'reasonable chastisement' defence:

> The Assembly Government believes that the current legal defence of 'reasonable chastisement' should be ended. We wish to encourage respect for children's rights to human dignity and non-violent forms of discipline, including through public education programmes. We have made representations to the UK Government about this (p. 4).

In 2007, the Welsh Government informed the UN Committee on the Rights of the Child that it was committed to ending corporal punishment (Welsh Government, 2019). The Government asked the Westminster Parliament to allow it the right to legislate on vulnerable children under a Legislative Competence Order - the only legislative means available to Wales at that time under the devolved settlement. The request was declined by Westminster, on the grounds that it would impinge on criminal law, which remained under UK jurisdiction (BBC News, 2008, January 18).

By 2011, much had changed. That year, the *Rights of Children and Young Persons (Wales) Measure* was passed, making Wales the first of the UK nations to implement the UNCRC in law (National Assembly for Wales, 2011). Under this Act, Welsh Ministers must pay due regard to the UNCRC when exercising any of their functions, including policy-making and new legislative proposals. Also in 2011, Julie Morgan, the MP who had supported removal of the defence in the UK House of Commons in 2004, was elected to the Welsh Senedd. And in the same year, the powers of the Welsh Assembly were set to increase following a referendum. First Minister Carwyn Jones stated that he believed that legislation regarding corporal punishment could now be passed in Wales (Morris, 2011).

Nonetheless, as late as February 2014, the Welsh Deputy Minister for Social Services, Gwenda Thomas, spoke against a cross-party amendment to the Social Services and Well-being (Wales) Bill, fearing that the UK Government would challenge to their right to legislate on the matter, which could derail the wider Bill (National Assembly for Wales, 2014). In these years Welsh Assembly members found legislative attempts to prohibit corporal punishment thwarted, usually through arguments that amendments were not the best vehicles for a potentially controversial change in the law. A 2014 promise by the Government to its backbenchers to establish a cross-party committee to consider how to proceed with legislation never came to fruition.

The Tide Turns

March 2015 saw the last unsuccessful attempt to change the law through a backbench amendment in Wales that was supported by a strong and united civil sector, including charities, academics and faith leaders. Julie Morgan's amendment to the *Violence Against Women, Domestic Abuse and Sexual Violence Bill* was defeated when the Labour Government did not support it, on the grounds that the public had not been properly consulted. Only two Labour Party representatives, Julie Morgan and Christine Chapman, defied the whip and voted for the amendment, alongside Liberal Democrat and Plaid Cymru representatives. As with previous amendments, the argument was made that the Bill was not the best vehicle for the legislative change, an argument that several members found difficult to fathom as the Bill was primarily focused on preventing and responding to violence in family settings.

Despite this setback, in 2015 there were unofficial reports to the press that some cabinet members were pushing for the party to take a more proactive stance on the matter before the 2016 election (Shipton, 2015). Sustained pressure from NGOs, the Children's Commissioner and some politicians kept the issue in the forefront. Welsh Ministers sometimes argued that public support to change the law should be sought through an election. The salience of the issue at that time was highlighted by the fact that removing the defence was included in three party manifestos: Welsh Labour, Plaid Cymru and the Welsh Liberal Democrats. The likelihood that the next government would be formed by Welsh Labour on its own or in coalition with one of the other two parties was high.

Following the May 2016 elections, Welsh Labour formed a government alongside the sole Liberal Democrat representative, Kirsty Williams, who previously had brought and supported amendments to end the reasonable punishment defence. The Welsh Government included a plan to seek cross-party support to remove the defence in its 2016 Legislative Programme. The following year saw the passage of the *Wales Act 2017*, which shifted the administration from a "conferred powers" model to a "reserved powers model" (Welsh Government, 2022c). Under the latter model, "a legislature is able to legislate on any matter unless it is expressly prevented from doing so" (Welsh Government, 2022c). The Act established the Welsh Government's legislative competence to legislate on 'parental discipline' (sL12).

On March 25, 2019 Julie Morgan, now Deputy Minister for Health and Social Services, introduced the *Children (Abolition of Defence of Reasonable Punishment (Wales)*

Bill along with an *Explanatory Memorandum* which set out guidelines for implementation, including prosecution (Welsh Government, 2020). The Bill was referred to the Children, Young People and Education Committee for consideration of its general principles. The Committee carried out a 6-week public consultation, receiving 650 online responses (National Assembly for Wales, 2019). Then they held 12 oral evidence sessions, ensuring that parents and carers with differing views on the Bill were invited, as well as the Welsh Youth Parliament. The Committee examined evidence and opinions on issues including legal clarity, the developmental impact of physical punishment, the role of the state in family life, the potential impact of law reform on families, and children's rights. After analysing all of the material presented, the Committee made several recommendations, including that: 1) the National Assembly support the Bill; 2) sufficient time be allocated to provide public information about the change, provide support to parents, and update relevant training and guidance; 3) the Welsh Government, police, Crown Prosecution Services, and relevant departments develop a pathway to diversion away from the criminal justice system and toward parent support; and 4) the Welsh Government, police and relevant departments develop clear guidelines for investigating allegations of physical punishment of children (National Assembly for Wales, 2019).

Ultimately, in March 2020, the Welsh Parliament passed the *Children (Abolition of Defence of Reasonable Punishment) (Wales) Act 2020* (National Assembly for Wales, 2020). The legislation abolished the reasonable punishment defence in Wales.

Ingredients of Success

After years of highs and lows in this long journey, it is important to reflect on which factors coalesced to move the government and legislature in Wales towards removing the defence of reasonable punishment. This is particularly important considering that England, our nearest neighbour and with which, until 1999, Wales had a wholly shared its government and legal system, has not yet prohibited physical punishment in the home.

The Role of Civil Society

Like many other nations, Wales had a long-standing coalition of children's charities and individuals supporting law reform. All leading children's charities were part of this coalition, including the Welsh arm of the highly respected National Society for the Protection of Children (NSPCC) who brought calls for removal of the defence into the mainstream. The

umbrella campaign group, Children are Unbeatable (Wales), which was partly funded by the NSPCC, provided a stream of informed, bilingual briefings for press and legislators.

A powerful voice in the effort was that of Archbishop Barry Morgan, who was Archbishop of the Anglican Church of Wales between 2003 and 2017. He was able to address any suggestion that beating children may be endorsed or even required by Biblical teaching. In his words:

> Jesus believed that children were not just an asset for the future, or a commitment to be undertaken for the sake of society. There were of infinite value as children. They deserved as much respect and care as any other human being (Church Times, 2012).

While it was disappointing that some other large faith groups did not speak up in favour of the law change, they did not provide any form of organised opposition.

In contrast to the USA (Miller-Perrin and Perrin, 2018), there was no real academic debate within Wales on the evidence around physical punishment and no senior academic in Wales publicly opposed the law change. Indeed, a group of senior academics formed 'Academics for Equal Protection' with leading researchers in social work, education, developmental psychology, paediatrics, family law and criminology presenting a united view that the evidence is overwhelming that physical punishment is harmful to children. With a web page and a few spokespeople, the group provided a consistent message about the research evidence on physical punishment's outcomes.

As I was the founding member of Academics for Equal Protection, my 2015 appointment as the independent Children's Commissioner for Wales meant that the issue received considerable media attention at the time of my appointment. The previous two Children's Commissioners in Wales had expressed support for law reform but had not made it a leading issue for their offices. In my meetings with Ministers, including First Minister Carwyn Jones, I made it clear that the reasonable punishment defence was a clear breach of children's rights under the UNCRC and that it was the only law in Wales which gave children less protection from harm than adults. The role of independent national human rights institutions like a Children's Commissioner is different from most other members of civil society in that governments are often bound by law to respond to them. In frank and open conversations with ministers, I was able to explore concerns about policing and prosecutions, seek answers from the criminal justice system, and continue the discussion in follow-up meetings.

By no means was my role as Children's Commissioner the deciding factor in persuading the Welsh Government to change the law, but in that role, I was able make them

publicly defend what was increasingly becoming indefensible in a government that promoted itself as a proud defender of children's rights. By the 2010s, the government was finding it increasingly challenging to dismiss the largely united voice of civil society and those of committed, persistent back-bench politicians.

The Role of Government

It is virtually impossible to bring forward legislative change without the support of the incumbent government. In UK legislatures, backbench-led Bills and amendments generally require government support due to the system of 'whipping' votes by political parties. Several governmental factors may have influenced Wales's success. It is important to point out, however, that none of these automatically led to success; there were a few years of resistance despite these conditions being in place since 1999. Nonetheless, once the political decision had been made to move forward, these factors strengthened government resolve and confidence in situating the proposed legislation as an inevitable step in the journey of a nation that fully upholds children's human rights.

Political Composition of Welsh Assemblies and Governments

There has been an unbroken series of left-leaning governments in Wales, since devolution in 1999. Conservative governments can, of course, take socially progressive steps, such as the legalisation of same-sex marriage under the Conservative UK Prime Minister David Cameron in 2013, and the ban on corporal punishment in state-funded schools in 1986 under Thatcher's Conservative government, although the latter example was a response to a European Court of Human Rights judgement, rather than a proactive initiative by the government. Conversely, socially progressive parties have not always been prepared to act on corporal punishment, as in 2004 when the Labour Government refused to endorse the removal of the defence for England and Wales. Nonetheless, left-leaning governments tend to be more prepared to 'intervene in family life' than conservative ones (Stubbs & Lendvai-Bainton, 2019). Since devolution, all governments in Wales have been Labour governments, sometimes in coalition with other parties, but always with Labour First Ministers. Welsh governments have been willing to intervene in people's everyday lives in the pursuit of public and environmental health. For example, they were the first UK government to charge consumers a fee for single-use plastic bags and introduced 'deemed consent' for organ donation in 2015. These actions undoubtedly gave the government confidence that public

health measures that may face ideological opposition were possible without losing political capital.

High Proportion of Female Elected Members

The Welsh Assembly, later Parliament, has featured a much higher proportion of female elected members than the UK Parliament throughout its history, achieving 50% representation in 2003. The first cabinet had a female majority and the life of this young legislature saw a series of inclusive measures such as avoiding evening sittings. An analysis of contributions during the early years of the Welsh Assembly found that women spoke twice as often as their male counterparts on topics such as domestic abuse and childcare; there is evidence of a 'cross-party sisterhood' on gendered matters (Chaney, 2006, p. 704). While concern about physical punishment of children is not limited to women, in this legislature, women were more prepared to speak on matters affecting families.

Overt Commitment to Children's Human Rights

Early in the life of the new devolved government, under the leadership of First Minister Rhodri Morgan, the Welsh Assembly Government committed to upholding children's rights. The 2011 *Rights of Children and Young Persons (Wales) Measure* required ministers to pay due regard to children's rights when developing or reviewing policy. This remains the strongest step any UK nation has taken to integrate the UNCRC more firmly into legislation. In 2016, the UN Committee on the Rights of the Child (2016) urged the UK in all devolved administrations to "prohibit as a matter of priority all corporal punishment in the family, including through the repeal of all legal defences, such as 'reasonable chastisement'"(para. 41(a)). The Government's lack of action was becoming a matter of embarrassment for some Ministers, and one that was no longer possible to blame on the UK government.

Ministers' Professional Backgrounds

When the legislation was passed, the government included at least three Ministers who were qualified social workers: the First Minister Mark Drakeford had been a social policy professor and probation officer; Julie Morgan, Deputy Minister for Social Services was an experienced child social worker; and Jane Hutt, Deputy First Minister, had been a community development worker and a founder of Welsh Women's Aid. These Ministers

understood the difficulties caused by grey areas and the lifelong harm that childhood violence can cause.

Relationships with Civil Society

Building relationships with civil society has been a political aim of the government since devolution (Chaney, 2002). In a small nation of three million people, where government ministers know key civil society actors due to their professional backgrounds, there is an openness to meetings among civil society leaders, ministers and senior civil servants. The Children's Commissioner, for example meets regularly with ministers and annually with the First Minister. During the COVID-19 pandemic, the First Minister met with civil partners in regular online meetings to hear about issues facing the population and brief them on policy decisions. Given this level of engagement, by 2015 it had become uncomfortable for several government ministers to defend to a civil society their refusal to move forward on the removal of the reasonable punishment defence.

Societal Factors

Several societal factors facilitated a positive public reception of the law change.

Public Attitude Shifts

Welsh attitudes were changing quickly. In a 2015 survey of a large representative sample of parents of young children, 71% disagreed (55% strongly disagreed) that 'it is sometimes necessary to smack a naughty child'; by 2017, 81% disagreed (68% strongly disagreed) (Timmins & Knight, 2018). Annual surveys of the general adult population conducted between 2018 and 2020, show that about one-third agreed that "it is sometimes necessary to smack a child"; only 20% of 16- to 34-year-olds agreed (Timmins, 2021). While legislative change to further public health and/or human rights should not wait for attitude change, it undoubtedly aids the courage of politicians.

Increasing Secularisation

In Wales, 56% of the population has 'no religion', the highest proportion of the UK nations (Bullivant, 2017). With the Anglican Church in Wales supporting law reform and others not opposing it, Biblical arguments for physical punishment did not enter the debate.

A Competitive Spirit

While perhaps not a strong factor, many politicians and some of the population take pride in being pioneers within the UK, and particularly being ahead of England. In the media, First Minister Mark Drakeford said, “Wales joins Scotland in being the first parts of the UK to see through a positive change to this key piece of legislation” (Middleton, 2020). A Conservative member of the Welsh Parliament who suggested that the law might discourage English tourism (Middleton, 2020) faced widespread ridicule on social media channels. Many commented that English visitors who wished to smack their children were not the tourists that Wales wished to encourage.

Opposition to the Law Reform

While there was no public outcry following the government’s announcement of its plan to change the law, there was some limited opposition that may have helped to strengthen the implementation plans.

Opposition to the changes came from two sources. The first was the Be Reasonable[1] campaign, which operates in other countries considering law reform (Be Reasonable Wales, 2023). Styling itself a ‘grass roots’ campaign, it appeared to be at least partially funded by a non-Welsh organisation, the England-based Christian Institute[2], which funds legal challenges on issues contrary to conservative Christian beliefs, including the elimination of corporal punishment of children (Christian Institute, 2019). As Biblical arguments were unlikely to be persuasive in Wales, the Be Reasonable campaign did not mention religion. Instead, it perpetuated myths such as that ‘mild smacking’ has no ill effects. Despite having little popular following in Wales, the group garnered a fair amount of media coverage because publicly funded media must present a balanced view and could find few commentators who opposed the law change.

The second source of opposition was several Conservative and Independent members of the Welsh Parliament. With Labour, Plaid Cymru and Liberal Democrat members united in support of the legislation, a majority vote was never in doubt. It could be argued that questions raised by opposition members strengthened plans for implementation, as the government sought to respond to concerns about public awareness and how authorities would respond if physical punishment was reported.

Why Has England Not Progressed with Law Reform?

The UK Government's remit covers non-devolved matters for all of the UK, such as most taxes and welfare benefits, defence and border control, and England-only matters in areas otherwise governed by the devolved governments. England does not have a separate government. For England to remove the reasonable punishment defence will require an act of the UK Government. The lack of progress on the matter is puzzling, as English public support for corporal punishment shows a similar decline to Wales (NSPCC, 2022) and religiosity is also largely in decline.

Governmental factors are the most likely reason for the lack of progress. In Scotland and Wales, governments supported law reform within a framework of children's rights. At a UK level, the last few years have seen increasingly hostile language from a succession of Conservative Prime Ministers (Bowcott, 2020). It seems unlikely that a child rights argument would persuade the current government to remove the defence for England.

Like in Wales and Scotland, there have been many calls by charities and children's rights organisations and individual academics in England for a change in the law, but unlike in Wales, there is no organised academic voice on the issue. Most Children's Commissioners for England have stated their support for a change in the law, but more recently have tended to prioritise other pressing matters. In April 2023 the UK Government responded to renewed civil society calls for reform by ruling out prohibition (BBC News, 2023, April 12).

Implementation of the Welsh Law: Plans and Progress

Lansford et al. (2017) found inconsistent attitudinal changes following legal bans on parental corporal punishment across 7 nations, concluding that strong educational campaigns are required to optimize the positive impacts of law reform. The Welsh Act, passed in March 2020, required Ministers to promote public awareness prior to its coming into force in March 2022. A survey conducted in November 2020 found that 68% of adults already believed that 'smacking' was illegal and only 27% were aware of the law change at that time (Timmins, 2021). By early 2022, 84% of adults believed that 'smacking' was illegal and 66% were aware of the law change (Timmins, 2023).

Prior to the Act's passage, Government had a positive parenting initiative, *Parenting: Give it* Time,[3] which provided information on non-violent parenting and sources of help. Linked to this, a new campaign was started with £2.8m (CAD$4.6m) of government funding. An accessible information leaflet[4] was delivered to every household in Wales and

advertisements appeared in bus shelters and on billboards. Leaflets, videos, posters, factsheets and training sessions are available to parents, professionals in all children's sectors, police and prosecutors[5].

A set of television and radio announcements using the slogan 'The Sound of Change' turned what sound like slaps into joyful interactions between parents and children[6], conveying a sense that Wales has moved on and it is time to embrace change. Three months after the legislation took effect, the Welsh Government organized a series of 'summer roadshows.'[7] These were public drop-in sessions at supermarkets and other public locations, where parents could get practical advice and learn about the new law. Additionally, the existing 'Flying Start' programme for children up to the age of three and their parents, which provides boosted health visitor contact, parenting classes (including information on non-violent parenting) and high-quality childcare in areas of higher socio-economic need, was further expanded (Welsh Government, 2022b).

While criminal prosecution is possible, it has remained rare – fewer than 5 cases were referred to the Crown Prosecution Service in the year after the law came into force (Welsh Government, 2023). Over four years, local authorities have access to £2.9m (CAD$4.9m) to provide tailored parenting support as an alternative to prosecution, known as an out-of-court disposal (Cornish, 2022). In the first 6 months after the Act came into force, police across Wales made 55 referrals to out-of-court parenting support; all referrals were taken up and 30 have completed the sessions (Welsh Government, 2023). To date, 35 individuals have reported a positive outcome, defined as improved child behaviour or increased parental wellbeing or efficacy. Data are not yet available on changes in referrals to social services since the Act came into force.

Wales's relatively comprehensive public awareness strategy, alongside an unambiguous legal prohibition of physical punishment and waning public acceptance of "smacking" should create the ideal conditions for a rapid decline in physical punishment and a non-punitive system response. It is vitally important that professional responses to physical punishment reports and trends in attitudes and behaviours are regularly evaluated to document the impact of providing full legal protection to children.

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[1] See https://www.bereasonable.wales/

[2] See https://www.christian.org.uk/campaign/reasonable-chastisement/

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APPENDIX 3

Attitudes toward smacking in a New Zealand probability sample: Psychological and demographic correlates

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This research was conducted following the 2009 citizens-initiated referendum that aimed to overturn the 2007 legislative change that repealed parents' right to use force in the correction or discipline of children. Using a national probability sample of 5,752 New Zealand adults, the study investigated the prevalence and correlates of positive attitudes towards the physical discipline (i.e., smacking) of children. Three distinct items assessing attitudes to use of physical discipline were embedded within a large postal survey. New Zealanders expressed more favourable views toward smacking when responding to items framed in terms of supporting the legal rights of parents. This included the item replicating the 2009 referendum question. However, New Zealanders expressed less favourable attitudes toward smacking when assessed using a more general Likert-style item. Political conservatism, Big-Five personality and low education were the most reliable predictors of physical discipline attitudes. Ethnicity, immigrant status and level of poverty versus affluence were not significantly associated with physical discipline attitudes. Our findings suggest that the way the question was asked could have introduced differences into people's apparent level of support versus opposition toward the use of force to discipline children. The social policy implications of this work are discussed.

Keywords: corporal punishment, smacking, physical discipline, parenting, attitudes, national sample

Parents' right to use physical force (e.g., smacking) as a child discipline strategy is a highly contentious issue around the world, particularly when legislative bans of the physical discipline of children are on a country's political agenda. This has been the case in New Zealand over the past two decades, as increasing national and international pressure have been placed on the government to implement strategies aimed at reducing violence against children (Wood, Hassall, Hook, & Ludbrook, 2008). In 2007, this pressure culminated in the repeal of section 59 of the Crimes Act 1961, which had provided a statutory defence for adults prosecuted for assaulting a child if the assault was for the purpose of parental discipline. The law change meant that New Zealand joined the 33 countries around the world that have enacted legislation to abolish parental physical discipline (PD) of children (Center for Effective Discipline, 2011).

The change in legislation was not without opposition. Groups opposed to the new "anti-smacking law" as it was popularly termed, argued that the repeal of section 59 was intrusive and took away parental discretion to choose physical punishment as a means of disciplining their child (Office of the Children's Commissioner, 2008). The primary argument used to garner public resistance to the change was that the new law criminalised parents, with the implication being that parents could be prosecuted unfairly for smacking their child (Wood et al., 2008). Such arguments were used to promote a petition that generated sufficient support to force a citizens-initiated referendum about the legislation in August 2009. Consistent with lobby groups' prevailing public message about the criminal implications of the new law, the referendum asked the question, *"Should a smack as part of good parental correction be a criminal offence in New Zealand?"* Fifty-six percent of eligible voters took part in the referendum, and 87% of responders voted 'no' (Peden, 2009), indicating strong support for parliament to overturn the repeal of section 59. However, the 'Yes-Vote coalition', which generally comprised family and women's organizations and child health and welfare agencies in New Zealand, argued that the result was not an accurate reflection of public attitudes towards physical discipline because the question was ambiguous and leading (The Yes Vote Coalition, 2009).

The outcome of the referendum was non-binding in Parliament and the Prime Minister chose not to revisit the repeal of section 59. However, lobby groups that opposed the change in legislation continue to contend that the results of the referendum were representative and suggested that the vast majority of New Zealanders were against legislative bans on the physical punishment of children (Satherley, 2010). Unfortunately, there is little evidence regarding New Zealanders' attitudes towards the use of physical discipline to accurately evaluate this assertion. One telephone survey of 750 adults that took place one year after the initial law change, but prior to the referendum, suggested that public attitudes towards physical punishment were more divided than the referendum results suggested as 43%

said they firmly supported the legislative ban on physical discipline of children, while 28% were firmly opposed (Office of the Children's Commissioner, 2008). Since the time of that survey, however, there has been intense and extensive media coverage of the issue because of the referendum. Further, the survey provided limited information about the profile of individuals who endorse the physical discipline of children. Women were found to be less supportive, but there were inconsistent findings related to ethnicity and age (Office of the Children's Commissioner, 2008).

Indeed, very little is known about the impact of ethnicity on the use of PD in New Zealand, let alone the association between ethnicity and general attitudes towards PD. New Zealand is a multi-cultural nation with a unique ethnic make-up. Sixty-eight percent of New Zealanders identify as being of European descent, 15% Māori, 9% Asian, and 6% Pasifika; 23% of New Zealand residents were born overseas (Statistics New Zealand, 2007). As with indigenous groups in other countries, Māori are over-represented in statistics on a number of negative child and family outcomes, including statistics on family violence and child maltreatment (Ministry of Social Development, 2004, 2010). A large-scale national interview-based survey carried out during the time that the repeal of section 59 was enacted found that, after adjusting for age, both Māori and Pacifika boys were more likely to have been physically punished by their primary caregiver in the four weeks before the survey compared to boys in the total population (Ministry of Health, 2008). However, the extent to which these statistics are representative of general attitudes towards the use of physical discipline is not clear.

Internationally, only a handful of studies have examined factors associated with supportive attitudes towards physical punishment of children. A history of being physically disciplined, greater political conservatism, lower levels of religiosity, older age of the respondent's child, and the expression of attitudes that devalue children have been found to be associated with acceptance of PD (Ateah & Parkin, 2002; Gagné, Tourigny, Joly, & Pouiliot-Lapointe, 2007; Jackson et al., 1999). Similar results have been found in the large number of studies that have examined correlates of actual smacking behaviour. It has been found that PD is more likely to be used if parents are younger, less educated, of lower income, are single, Christian, or are stressed or depressed (Berlin et al., 2009; Day, Peterson, & McCracken, 1998; Smith & Brooks-Gunn, 1997; Straus & Stewart, 1998; Wissow, 2001; Woodward & Fergusson, 2002). Within New Zealand, retrospective reports of exposure to harsh or severe PD among participants from the Christchurch Health and Development Study were predicted by younger maternal age, maternal family-of-origin use of strict discipline, interparental violence, and elevated levels of child conduct problems (Woodward & Fergusson, 2002).

Findings related to ethnicity have been mixed and have mostly come from American samples. While studies have found that African American parents are more likely to use PD with their children compared to European American (Berlin et al., 2009; Day et al., 1998; Wissow, 2001) and Latino American parents (Berlin et al., 2009; Regalado, Sareen, Inkelas, Wissow, & Halfon, 2004), other studies have found no association between ethnicity and the use of PD (Hemenway, Solnick, & Carter, 1994; Smith & Brooks-Gunn, 1997; Straus & Paschall, 2009). Pinderhughes et al. (2000) indicated that associations between ethnicity and physical discipline are better explained by proximal factors related to family hardship and stress, as well as parent attributional and emotional processes. Further work is needed to elucidate the role of ethnicity, particularly in other countries, like New Zealand, with different cultural and political landscapes.

The current study draws on data collected from the 2009 New Zealand Attitudes and Values Study (NZAVS), which was conducted in late 2009 in the months directly following the August referendum. The survey provided a unique opportunity to take a more nuanced approach to examining differences in people's views about the physical punishment of children. It allowed for a comparison among people's general beliefs, their views on the specific law that repealed the right of parents to use physical force for correction, and their view on the referendum question. Furthermore, the survey allowed for an examination of the impact on levels of endorsement of the language used to ascertain public attitudes towards physical discipline. . This study also aimed to identify factors related to the endorsement of PD. This type of information is critical since both individual and societal approval of parental physical punishment are powerful predictors of its use (Ateah & Durrant, 2005; Durrant, Rose-Krasnor, & Broberg, 2003; Vittrup, Holden, & Buck, 2006). We examined the associations between PD attitudes and sociodemographic factors (e.g., age, gender, ethnicity, immigrant status, socioeconomic deprivation, religiosity), individual personality and attitudinal factors (political conservatism), and psychological functioning (self-esteem, social support, and life satisfaction).

Method

Sampling procedure

This study analysed data from the 2009 New Zealand Attitudes and Values Study (NZAVS-2009). The NZAVS-2009 contained responses from 6518 participants (complete data for those analyzed here was available for 5752 participants).

The NZAVS-2009 is the first wave of a planned 20-year longitudinal study aiming to track change and stability of various social attitudes and indicators in the New Zealand population. The NZAVS-2009 questionnaire was posted to 40,500 participants from the 2009 New Zealand electoral roll. The publicly available version of the 2009 electoral roll contained 2,986,546 registered voters in NZ. This represented all citizens over 18 years of age who were eligible to vote regardless of whether or not they chose to vote, barring people who had their contact details removed due to specific case-by-case concerns about privacy. The statement of accuracy for the electoral roll was .966, it was therefore estimated that the questionnaire reached a total of .966 x 40,500 = 39,123 participants.

The sample frame for the

NZAVS-2009 was spilt into 3 parts. Sample Frame 1 constituted a random sample of 25,000 people from the electoral roll conducted in October-November 2009 (4,060 respondents). Sample Frame 2 constituted a second random sample of a further 10,000 people from the electoral roll (sampling without replacement) and was conducted in November 2009 (1,609 respondents). Sample Frame 3 constituted a booster sample of 5,500 people from mesh block area units of NZ that had a high proportion of Māori, Pacifika and Asian peoples (670 respondents). The booster sample thus aimed to oversample people from these ethnic groups and was posted in increments during the November 2009-February 2010 period. A further 175 people responded but did not provide contact details and so could not be matched to a sample frame.

The estimated response rate (adjusting for address accuracy of the electoral roll) for respondents in Sample Frame 1 was 16.8%. The estimated response rate for respondents in Sample Frame 2 was 16.7%. The estimated response rate for respondents in Sample Frame 3 (the booster sample) was 12.5%. The overall estimated response rate for the total sample (including anonymous responses) was 16.6%. In sum, roughly 1.36% of all people registered to vote in NZ were contacted and invited to participate. Roughly 0.23% of all registered voters completed and returned the questionnaire. It was explicitly stated in the information and consent forms that by responding participants were signalling that they were willing to be contacted for up to the next 20 years and invited to complete yearly follow-up questionnaires. The fairly low response rate of 16.6% presumably occurred because people were opting in to a planned 20-year longitudinal study. Despite this low response rate, the proportion of respondents from different ethnic groups closely matched those expected based on 2006 census figures (see below).

Participant details

We limited our analyses to participants for whom complete data were available; 5,752 participants of the full sample of 6518 (the majority of missing data was due to people not reporting their household income). Participants (3,424 women, 2,328 men) had a mean age of 47.54 (*SD* = 15.52). Seventy five percent of the sample were parents (4,321). Parents had an average of 1.99 children (*SD* = 1.68). Roughly 40% of participants reported that one or more children lived with them at home (2,378), and 44% of the participants (2,555) stated that they were religious (measured by asking 'do you identity with a religion and/or spiritual group?). Fifty-five percent of participants were married (3,175) and 15% were unmarried but living together (855). In terms of ethnicity, 4,145 participants identified as New Zealand European/Pākehā (72% of the sample versus 75% of the population according to the 2006 census); 1,000 identified as Māori (17% of the sample versus 14% of the population); 270 identified as Asian (4.7% versus 8.8% of the population); 189 identified as being Pasifika (3.3% versus 6.6% of the population); and 148 were coded as other/unreported.

Median household income was $NZ 67,500. Mean household income was $NZ 85,087 (*SD* = 70,926). These figures are slightly higher than population estimates provided by statistics New Zealand in 2006. According to 2006 census figures, the median household income for New Zealanders in 2006 was $NZ 59,000, roughly $8000 less than that estimated by the NZAVS three years later (Statistics New Zealand, 2006). In terms of (ordinal-ranked) level of education, 22% (1,243) reported no formal qualification or did not report their level of education, 30% (1,702) reported some high school education, 16% (932) had a diploma or certificate, 23% (1,336) had an undergraduate degree, and 9% (539) had a post-graduate qualification.

Measures

We assessed attitudes toward child discipline using three separate questions, interspersed in different sections of the questionnaire. Participants rated their agreement with the statement "It is OK for parents to use smacking as a way to discipline their children" on a seven point scale (1 = strongly disagree; 7 = strongly agree). Participants rated their support to the following policy item "The current anti-smacking bill. (i.e., it being illegal to smack children)" on the same 7-point scale. Participants also rated their endorsement of the 2009 referendum question "Should a smack as part of good parental correction be a criminal offence in NZ?" which was rated on a continuous scale (1 = definitely NO; 7 = definitely YES). The latter two items were reverse-scored so that a higher rating on all three items indicated more support for the use of physical discipline.

Personality was measured using the Mini-IPIP6 developed by Donnellan et al. (2006) from the International Personality Item Pool and extended by Sibley et al. (2011). The Mini-IPIP6 assesses six broad dimensions of personality using four-item subscales rated from 1 (very inaccurate) to 7 (very accurate). Items were reverse coded where needed and averaged to give overall scale scores. Sample items, and internal reliability estimates for the current sample were as follows: Extraversion (α = .71; "Am the life of the party"); Agreeableness (α = .66; "Sympathise with others' feelings"); Conscientiousness (α = .65; "Get chores done right away"); Neuroticism (α = .64; "Have frequent mood swings"); Openness to Experience (α = .67; "Have a vivid imagination"); Honesty-Humility (α = .78; "Feel entitled to more of everything"). An interpretation of each Mini-IPIP6 factor, including example traits, and likely adaptive benefit and costs is available in Sibley et al. (2011). The Mini-IPIP6 has been validated for use in the New Zealand context, and shows a reliable six-factor structure (Sibley et al., 2011) and acceptable item response properties (Sibley, 2012). Extensive information on New Zealand specific norms for the Mini-IPIP6 are also available (Sibley & Pirie, 2013).

Life satisfaction was assessed using two items from the five-item scale developed by Diener, Emmons, Larsen, and Griffin (1985). These two items formed a reliable composite, α = .76). An example item is "In most ways my life is close to ideal." Perceived social support was measured using three items from Cutrona and Russell (1987; α = .75). An example item is "There are people I can depend on to help me if I really need it." Self-esteem was measured using three items from Rosenberg (1965; α

= .70). An example item is "On the whole I am satisfied with myself." Items assessing life satisfaction, self-esteem, and social support were rated on scale from 1 (strongly disagree) to 7 (strongly agree) and averaged to give overall scale scores.

Political orientation was assessed by asking "Please rate how politically conservative versus liberal you see yourself as being." Participants rated their political orientation on a scale from 1 (extremely liberal) to 7 (extremely conservative).

Participants' addresses were matched to their meshblock location in order to identify the level of deprivation versus affluence of each participants' immediate neighbourhood. The percentile NZDep2006 assigns a ranked decile score from 1 (most affluent) to 10 (most impoverished) to each meshblock area (White et al., 2008).

Results

Overview of analyses

We separated our analyses into three parts. We first present an analysis of association among the three measures of PD attitudes. This provided information on the extent to which the three items overlapped in assessing a common core of shared variance in global PD, versus reflecting potentially distinct aspects of PD attitudes. We next present an analysis of the distinction and mean level of support for PD as measured using each of our three questions. This allowed us to examine the extent to which levels of support for PD differed in mean level depending upon the specific question framing, or whether similar mean levels were observed across different question frames. Finally, the third section of the results outlines a series of regression models examining the demographic and psychological factors that predicted variation in support for PD. We conducted comparable regression models for each of our three measures of PD attitudes. These models allowed us to examine similarities and potential differences in the demographic correlates of PD across the three different question frames.

Analysis of similarities and overlap between the three measures of physical discipline

Support for PD when framed in terms of it being "OK for parents to use smacking" was moderately to strongly positively correlated with support for PD when framed in terms of support versus opposition for Section 59 of the crimes act "the current anti-smacking bill" ($r(5557) = .68$, $p < .01$; $R^2 = .46$), and less strongly associated with support for PD when framed as it was in the 2009 referendum, by asking "should a smack as part of good parent correction be a criminal offence…" ($r(5528) = .54$, $p < .01$; $R^2 = .29$). Support for PD framed in terms of "the current anti-smacking bill" was also moderately-to-strongly correlated with support framed as it was in the 2009 referendum, by asking "should a smack as part of good parent correction be a criminal offence…" ($r(5574) = .62$, $p < .01$; $R^2 = .38$).

These correlations indicate that ratings of support for smacking, as expected, tended to go together across all three measures. However, while these correlations were reasonably strong, when we take R^2 to estimate shared variance between measures, the data indicate that these three measures all shared slightly less than half of their variance. Put another way, this indicates that while ratings on these three items certainly did go together to a reasonable extent, over half of the variance in ratings of the three items did not overlap. The three questions index highly correlated, but reasonably distinct aspects of support for PD. This in turn suggests that the way the question was asked could have introduced differences in people's responses to a reasonable extent.

Analysis of differences in support for physical discipline depending on question framing

The distribution of responses to the three different items measuring opposition versus support for the use of physical force to discipline children is presented in Table 1. These figures provide an indicator of the extent to which people were supportive of smacking children depending on how the question was asked. When the question was framed in terms of agreement with it being "OK for parents to use smacking," 10% of people strongly disagreed and 23% strongly agreed ($M = 4.89$, $SD = 1.90$). When the question was framed in terms of support versus opposition for Section 59 of the crimes act "the current anti-smacking bill", 9% strongly supported the bill and 43% strongly opposed it ($M = 5.34$, $SD = 2.01$). When the question was asked as it was in the 2009 referendum, by asking "should a smack as part of good parent correction be a criminal offence…", 7% of people rated 'strongly YES' and 65% rated a response of 'strongly NO' ($M = 5.93$, $SD = 1.87$).

We compared mean levels of support for smacking across the three items by comparing mean item scores using paired-samples t-tests. Support for smacking was lower when framed in terms of it being "OK for parents to use smacking" than when framed in terms of support versus opposition for Section 59 of the crimes act "the current anti-smacking bill" ($t(5557) = -21.12$, $p < .001$) or when framed as it was in the 2009 referendum, by asking "should a smack as part of good parent correction be a criminal offence…" ($t(5528) = -42.22$, $p < .001$). Support for PD when framed in terms of Section 59 of the crimes act "the current anti-smacking bill" was also lower than when framed as it was in the 2009 referendum ($t(5574) = -25.35$, $p < .001$).

Regression model predicting support for physical discipline

Our third set of analyses used multiple regression to examine the demographic and psychological factors that independently predicted some people being higher in support for the use of physical discipline. For each model, demographic predictors were entered as a block at step 1, and the psychological predictors entered at step 2 to assess the extent to which indicators of personality, wellbeing, and political orientation explained variation in support above and beyond that already explained by demographic factors. Full results of the Step 2 models are presented side-by-side in Table 2. These models present unstandardised (b and se) and standardised parameters (β) along with tests of statistical significance (t-values) and bivariate associations (r) for the Step 2 model.

The demographic model predicting support for PD when framed in terms of

Table 1.
Distribution of Responses to Items Assessing Support for Smacking and the Use of Physical Force to Discipline Children.

Response options	It is OK for parents to use smacking as a way to discipline their children. (scored so that a higher score indicated agreement)			The current anti-smacking bill. (i.e., it being illegal to smack children). (scored so that a higher score indicated opposition to bill)			Should a smack as part of good parental correction be a criminal offence in NZ? (scored so that a *higher* score indicated 'NO')		
	%	*Cum. %*	*n*	%	*Cum. %*	*n*	%	*Cum. %*	*n*
1 –Disagree/Support/YES	9.5	9.5	530	9.4	9.4	525	6.9	6.9	385
2	6.2	15.7	345	5.4	14.8	303	3.8	10.7	214
3	6.2	21.9	344	5.0	19.8	281	3.1	13.8	173
4 –(scale midpoint)	11.8	33.7	656	7.5	27.3	421	4.5	18.3	250
5	19.1	52.8	1060	10.0	37.3	563	4.6	22.9	255
6	24.0	76.8	1332	20.0	57.4	1121	11.8	34.7	658
7 –Agree/Oppose/NO	23.2	100.0	1291	42.6	100.0	2390	65.3	100.0	3640

it being "OK for parents to use smacking" explained 9% of the variance in this measure ($F(18, 5684) = 29.97$, $p < .001$). The addition of psychological characteristics significantly improved the predictive utility of the model ($\Delta R^2 = .06$, $\Delta F(10, 5674) = 40.53$, $p < .001$). This full model explained a total of 15% of the variance in support for PD assessed by the "OK for parents to use smacking" item ($F(28, 5674) = 35.08$, $p < .001$).

The demographic model predicting support for PD when framed in terms of support versus opposition for Section 59 of the crimes act "the current anti-smacking bill" explained 6% of the variance in this measure ($F(18, 5732) = 19.10$, $p < .001$). The addition of psychological characteristics improved the predictive utility of the model ($\Delta R^2 = .06$, $\Delta F(10, 5722) = 35.70$, $p < .001$). The full model explained a total of 11% of the variance in support for PD ($F(28, 5722) = 25.77$, $p < .001$).

The demographic model predicting support for PD when framed as it was in the 2009 referendum, by asking "should a smack as part of good parent correction be a criminal offence…" explained 5% of the variance in this measure ($F(18, 5702) = 14.96$, $p < .001$). The addition of psychological characteristics at Step 2 significantly improved the predictive utility of the model ($\Delta R^2 = .05$, $\Delta F(10, 5692) = 31.64$, $p < .001$). The full model containing all predictors explained a total of 10% of the variance ($F(28, 5692) = 21.43$, $p < .001$).

As shown in Table 2, the three smacking attitude items were predicted by broadly similar factors. The two strongest predictors of PD attitudes were (low) education and political conservatism. These effects were consistent across all three models. For all three models, we did not detect any reliable ethnic group differences in PD attitudes. We also included gender x ethnicity interactions, which examined the extent to which it might only be men of one or more particular ethnic group who would be higher or lower than others in PD attitudes. We failed to detect statistically significant differences at our criteria of $p < .01$ for any such interactions.

These regression models paint an empirical sketch of those who support the use of physical force to discipline children. PD supporters were just as likely to be parents as not, were just as likely to live in wealthy neighbourhoods as in poor neighbourhoods, and just as likely to be Pakeha/European as to be of Māori, Pasifika or Asian ancestry. They were, however, more likely to be male than female, more likely to be religious, and of all demographics considered, more likely to be low in education.

In terms of psychological factors, people who support PD were no more or less likely to be high in Neuroticism or social anxiety, nor were they any more likely to be low in aspects relating to psychological wellbeing, such as self-esteem, experiences of social support or their overall satisfaction with life. However, they were more likely to be extroverted and sociable, and tended to be higher in Conscientiousness, preferring routine and organization in their lives. New Zealanders more supportive of the use of physical force to discipline children were also more likely to be low in Openness to Experience; that is, they were more likely to prefer certainty and to search for

Table 2.

Regression Models Predicting Support for Smacking and the Use of Physical Force to Discipline Children.

	It is OK for parents to use smacking as a way to discipline their children. (scored so that a higher score indicated agreement)					**The current anti-smacking bill. (i.e., it being illegal to smack children).** (scored so that a higher score indicated opposition to bill)					**Should a smack as part of good parental correction be a criminal offence in NZ?** (scored so that a higher score indicated 'NO')				
	b	*se*	*β*	*t*	*r*	*b*	*se*	*β*	*t*	*r*	*b*	*se*	*β*	*t*	*r*
Constant	4.70	.07				5.15	.08				5.68	.07			
Demographic Factors															
Parental Status (0 non-parent, 1 parent)	-.21	.09	-.05	-2.23	-.01	.07	.10	.01	.69	.04	.08	.09	.02	.90	.07
Gender (0 women, 1 men)	**.47**	**.06**	**.12**	**7.84***	**.14**	.28	.06	.07	4.42*	.09	.18	.06	.05	2.99*	.04
Children Living at Home (0 no, 1 yes)	-.16	.07	-.04	-2.49	-.04	-.15	.07	-.04	-2.07	-.01	-.18	.07	-.05	-2.76*	-.03
Number of Children	.07	.02	.07	3.69*	.05	.04	.02	.04	1.97	.07	.05	.02	.05	2.54	.09
Mesh Block NZ Deprivation Index (centred)	.01	.01	.02	1.26	.02	.01	.01	.01	.80	.01	.01	.01	.01	.91	.01
Age (centered)	-.01	.00	-.08	-4.56*	.00	-.01	.00	-.07	-3.62*	.03	.00	.00	-.01	-.48	.08
Age Squared (centered)	.00	.00	.05	3.41*	.07	.00	.00	.04	2.50	.04	.00	.00	.02	1.64	.05
Relationship (0 single, 1 marital/serious)	-.13	.06	-.03	-2.30	-.03	-.10	.06	-.02	-1.70	-.04	-.03	.06	-.01	-.44	-.02
Religious (0 no, 1 yes)	.19	.05	.05	3.87*	.07	.14	.05	.04	2.70*	.06	.12	.05	.03	2.36	.07
Education (ordinal coded)	**-.27**	**.02**	**-.18**	**-13.69***	**-.23**	**-.25**	**.02**	**-.16**	**-11.71***	**-.19**	**-.19**	**.02**	**-.13**	**-9.32***	**-.17**
Employment (0 unemployed, 1 employed)	-.13	.06	-.03	-2.25	.01	-.16	.06	-.04	-2.57*	.00	-.09	.06	-.02	-1.43	.03
Immigrant (0 no, 1 yes)	.03	.06	.01	.51	-.01	-.05	.07	-.01	-.75	-.03	.00	.06	.00	-.07	-.03
Maori Ethnicity (0 no, 1 yes)	-.02	.08	.00	-.23	.01	-.14	.09	-.03	-1.57	-.01	.12	.08	.02	1.48	.02
Pacific Nations Ethnicity (0 no, 1 yes)	-.20	.17	-.02	-1.20	.02	-.29	.18	-.03	-1.64	.00	-.05	.17	-.01	-.30	-.02
Asian Ethnicity (0 no, 1 yes)	.12	.15	.01	.79	.01	-.03	.16	.00	-.17	-.02	-.03	.15	.00	-.20	-.03
Gender x Maori	-.20	.13	-.03	-1.56	.03	-.11	.14	-.01	-.77	.01	-.29	.13	-.04	-2.21	.00
Gender x Pacific	.05	.24	.00	.21	.04	.14	.26	.01	.54	.02	-.49	.24	-.04	-2.02	-.02
Gender x Asian	-.02	.22	.00	-.09	.02	.06	.24	.00	.26	.00	-.05	.22	.00	-.23	-.01

Personality and Attitudes																
Extraversion (centered)	.08	.02	.05	3.60*	-.01	.10	.02	.06	4.10*	.01	.08	.02	.05	3.47*	.00	
Agreeableness (centered)	-.08	.03	-.04	-2.99*	-.12	-.06	.03	-.03	-2.03	-.08	-.01	.03	-.01	-.38	-.04	
Conscientiousness (centered)	.09	.02	.05	3.78*	.03	.11	.02	.06	4.27*	.06	.15	.02	.09	6.63*	.10	
Neuroticism (centered)	-.01	.03	-.01	-.44	-.01	-.06	.03	-.03	-2.11	-.05	-.05	.03	-.03	-2.00	-.05	
Openness to Experience (centered)	-.16	.02	-.09	-6.80*	-.16	-.11	.02	-.06	-4.41*	-.13	-.10	.02	-.06	-4.14*	-.13	
Honesty-Humility (centered)	-.10	.02	-.07	-5.47*	-.12	-.04	.02	-.02	-1.72	-.05	-.05	.02	-.04	-2.71*	-.03	
Political Conservatism (centered)	**.30**	**.02**	**.19**	**14.68***	**.24**	**.34**	**.02**	**.21**	**15.59***	**.24**	**.28**	**.02**	**.19**	**13.86***	**.22**	
Psychological functioning																
Self-Esteem (centered)	-.02	.03	-.01	-.56	-.01	.00	.03	.00	.12	.02	-.03	.03	-.02	-1.20	.02	
Social Support (centered)	-.02	.02	-.01	-1.00	-.06	-.04	.03	-.02	-1.51	-.04	.00	.02	.00	.11	-.01	
Life Satisfaction (centered)	.05	.03	.03	1.86	.01	.01	.03	.00	.28	.02	.02	.03	.01	.79	.03	

Note. Standardised effect sizes ≥ .10 printed in bold. All three outcome variables were measured on scales from 1 to 7 where a higher score reflects a view of physical discipline as more permissible.
b = unstandardised regression coefficient, *se* = standard error of *b*, *β* standardised regression coefficient, *t* = *t*-value of *b*, *r* = bivariate correlation of each predictor with the outcome variable.
* p < .01.

absolutes, and to be less interested in novelty or thinking for the sake of thinking. They were also likely to be lower in Honesty-Humility, the converse of which relates to being higher in Narcissism and a willingness to exploit others. More than any other predictor that was considered, people supportive of PD were also highly likely to rate themselves as politically conservative and to be right-wing in their political and social attitudes.

Discussion

The present study employed a representative sample of New Zealanders to investigate attitudes towards the physical punishment of children. Specifically, we were interested in comparing rates of endorsement across three items; one that replicated the recent referendum question ("should a smack as part of good parent correction be a criminal offence…"), a second that assessed views on the specific law that criminalised PD in New Zealand (support versus opposition for Section 59 of the crimes act "the current anti-smacking bill"), and one that was designed to assess attitudes more generally without any mention of government legislation or legal ramifications ("It is OK for parents to use smacking…"). It was found that New Zealanders, on average, were fairly opposed to a legal ban on PD , but many did express a personal view that PD is not acceptable. Clearly, the legality, and thus criminal culpability, implied in the referendum question was important in determining an individual's response. As a society, New Zealanders place a strong emphasis on privacy and protection from intrusion (Rose, 2006). The distribution of responses across the three items indicated that there are some individuals who do not view PD as an acceptable parenting practice, but also do not believe it is something the government has the right to legislate against. It seems then that there are a group of individuals who do not want PD regulated and presumably do not want to lose the privacy to choose how they wish to discipline. Interestingly, there was also a difference between endorsement of lack of support for the anti-smacking bill and the referendum question with participants having a greater "no" endorsement of the referendum question compared to opposition to the repealed section 59. While the reasons for this are unclear, one possible explanation is that the referendum question actually was ambiguous and misleading as the Yes-Vote coalition suggested. The coalition pointed out that the very law that the referendum was addressing was not mentioned in the question, making it less clear for voters to understand what they were actually voting on. Also, the question equated smacking and good parenting which the coalition argued was not accurate based on national and international research. For parents who do not view PD as an acceptable practice, it may be confusing to agree with a statement that implies that smacking is a part of "good parental correction".

A recent systematic review examining the impact of legislative bans of physical punishment in 24 countries suggested that once a ban against PD has been passed, attitudes of that country's citizens change over time resulting in an increase in endorsement of the ban (Zolotor & Puzia, 2010). In the case of the present study, the data

were collected relatively soon (two years) after the repeal and immediately following the referendum. It is likely that the attitudes of the citizens were still in the early stages of change, and the referendum is likely to have temporarily bolstered support for the anti-ban stance. The difference between personal views and a lesser agreement with a legal ban may reflect this transition in attitudes that has been found elsewhere.

The present study also provided important information regarding the demographic, personality, attitudinal, and psychological correlates of views on PD. Among the large number of variables assessed, political conservatism and level of education emerged as the strongest and most reliable predictors of pro-PD attitudes. These findings are in line with previous research with parents that has found that greater political conservatism is associated with support for the use of PD (Jackson et al., 1999), while lower education is related to greater likelihood of using physical punishment as a discipline strategy (Day et al., 1998; Jackson et al., 1999; Smith & Brooks-Gunn, 1997).

Parental use of physical punishment with children is an issue that is deeply connected to an individual's underlying values and belief system (Benjet & Kazdin, 2003; Ellison, Bartkowski, & Segal, 1996). The finding that political conservatism was the strongest unique predictor of attitudes to the physical discipline of children is in line with this notion. The core features of political conservatism have been identified as resistance to change and a preference for inequality, which are manifested in traditional views of the family, the treatment of children, and the role of women, as well as an emphasis on deference to authority figures (Jost, Glaser, Kruglanski, & Sulloway, 2003). There is a clear connection between this belief system and favourable attitudes towards the PD of children, such as the use of an authoritative parenting style, which is characterised by intrusive and strict control and punitive discipline practices (Peterson, Smirles, & Wentworth, 1997).

Of equal interest in building a picture of individuals who support PD are those factors that did not emerge as unique predictors. Importantly, level of poverty, immigrant status, and ethnicity were not related to PD attitudes. These factors are often identified as being linked to the use of PD by parents, particularly in the US literature (e.g., Berlin et al., 2009; Day et al., 1998; Smith & Brooks-Gunn, 1997; Wissow, 2001). Even New Zealand research indicates that children from Māori and Pasifika families are at higher risk of being physically disciplined by their parents or caregivers (Ministry of Health, 2008), while media messages and public policy often focus on the over-representation of Māori children in statistics on child maltreatment. The present findings challenge this work, possibly because here we assessed attitudes towards physical discipline in the general public rather than actual discipline practices in a sample of parents. In addition, the ethnic and socioeconomic circumstances in New Zealand are not the same as the US where much of the research has been conducted, and so replication is needed to evaluate the extent to which these findings generalise internationally. Nevertheless, the current findings tell us that individuals from certain socioeconomic or ethnic backgrounds are no more or less likely to hold positive attitudes towards PD than individuals who identify with other groups. Instead, it seems that ideological characteristics along with education are more important in determining an individual's view on PD, at least within New Zealand.

The above findings need to be considered in light of several key limitations. Firstly, the focus here was on attitudes towards PD in the general adult population, so no measure was taken of actual use of physical discipline methods among those in the sample who were currently parents. In the Dunedin and Christchurch longitudinal studies, participants reported as young adults that around 80% had experienced physical punishment from their parents at some time during their childhood, and between 4-6% had experienced harsh or severe physical punishment (Fergusson & Lynskey, 1997; Millichamp, Martin, & Langley, 2009). However, updated information on baseline rates of physical discipline practices among the parenting population in New Zealand is needed to determine whether the 2007 legislation has been effective in actually reducing rates of PD. The study is also limited by the reporting of cross-sectional findings, although the data presented here are from the first phase of a large-scale longitudinal study on trends over time in values and attitudes of New Zealanders. Finally, the response rate to the postal survey was low, potentially limiting the generality of the findings to the broader New Zealand population. However, comparisons to New Zealand census data indicate that the sample was representative on key demographic characteristics such as ethnicity and socio-economic status. Women, however, were over-represented relative to men in the sample.

Implications and directions for future research

The current work provides a starting point for an evaluation of long-term trends in attitudes towards PD following the 2007 law change. This work is an important addition to current international findings that the introduction of legislative bans on PD is associated with declines in public support for PD in many countries, with this attitudinal shift coinciding with a decrease in the prevalence of the use of physical discipline (Zolotor & Puzia, 2010). Further waves of the NZAVS will enable an investigation of whether there are similar declines in support in New Zealand and will provide other countries contemplating similar legislation changes important information regarding the impact of these bans on public attitudes.

One issue for further investigation is the extent to which attitudes towards PD predict actual parental behaviour, and what factors contribute to the translation of beliefs into action. Research that has examined this issue has found that, although the prediction of parental behaviour is complex and involves the consideration of other factors including the child's age, parental cognitive and attributional processes and family stress, parental beliefs about the acceptability of physical discipline is an important predictor of behaviour (Jackson et al., 1999; Pinderhughes et al., 2000). This linkage between attitudes and parental disciplinary behaviour provides an

opportunity for intervention, which is likely to be most effective in producing discernible change in social attitudes if it occurs at a population level (Sanders, 2008). In fact, such work could begin before people transition into parenthood as endorsement of PD has been observed as early as adolescence (Deater-Deckard, Lansford, Dodge, Pettit, & Bates, 2003) and could be a part of broader anti-violence programs that are often implemented in schools, technical colleges and universities.

The current findings underscore the central importance of the language used to assess public support for legislative reforms. Governments contemplating changes in PD-related legislation should aim to contribute to a balanced public discourse in a way that prevents control of how the issue is framed, and how public opinion is measured, by pro-PD groups. Large-scale campaigns to engender support for changes in PD-related legislation will also need to take into account findings reported here and elsewhere that individuals with lower education or particular ideological characteristics are likely to be more resistant to efforts to shift social attitudes to the PD of children, or more subtly, the right of government to criminalise PD, by tailoring media messages or campaign material to address their concerns. Overall, it is likely that a more inclusive approach will be required to produce population-level attitude and behaviour change.

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