

The Swedish Prohibition against Corporal Punishment from a Comparative Perspective - Effects and Challenges¹

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1 A Swedish version of this article has been published in Juridisk tidskrift, No. 3, 2014, pp. 578-601. The bulk of the work here was conducted as a visiting scholar at Monash University, Australia, financed by Stockholm University Academic Initiative. In addition to my thanks to Stockholm University for its economic support, thanks are also directed to Monash University, Faculty of Law, for providing practical support and an inspiring research environment. When it comes to the work with this article, specific thanks need to be given to colleagues at Monash University, Bronwyn Naylor, Faculty of Law and Bernadette Saunders, Faculty of Medicine, Nursing and Health Sciences, with whom I have had many interesting discussions with respect to this subject. Thanks are also given to Professors Mauro Zamboni and Wiweka Warnling-Nerep, both at the Faculty of Law, Stockholm University, for their valuable comments as to previous drafts. Particular thanks for help with this translation are given to Associate Professor Laura Carlson, also at the Stockholm Faculty of Law. Any errors or mistakes remaining however are clearly my own.

1 Introduction – Topic, Objective and Method

Sweden internationally is often associated with Volvo, Ingmar Bergman and Swedish House Mafia. Another area for which Sweden is well-known, at least in certain circles, is as the first country in the world to introduce in 1979 a prohibition against the corporal punishment of children. In this respect, Sweden is seen by many as a model. This prohibition exists in § 6:1 of the Parent Code (*Föräldrabalken*, 1949:381), which states that children may not be exposed to bodily punishment or other types of abusive behaviour. The objective with the 1979 reform was to change attitudes and the use of corporal punishment in childraising. Studies conducted after the enactment have shown remarkable changes, both as to parental views and the use of physical punishment directed towards children.² Even if the Swedish reform ought to be seen in a larger context, and that a series of factors together worked towards the development leading to the now low tolerance as to corporal punishment, the reform in itself must be seen as a legal political success in the sense that the objective articulated by the legislature to a high degree has been fulfilled.³ In contrast with the situation before the ban was introduced, the majority of Swedish parents today has a very negative view and low tolerance for corporal punishment as a part of disciplining a child. The restrictions in the parents' ability to determine how to raise their children is scarcely questioned by the public or even generally debated.

From an international perspective, both the prohibition in itself and the negative attitudes towards corporal punishment as a part of raising a child are rather the exception. Prohibitions against corporal punishment can be found in forty-two⁴ of the approximately two hundred countries, which is considerably more than for a decade ago. This number however can be seen as remarkably low taking into consideration the strong stance towards the enactment of a prohibition many international bodies, among others the United Nations and the Council of Europe, have adopted.⁵ Proponents for the enactment of a

2 Legislative Inquiry 1978:10 *Barnets rätt I – om förbud mot aga*, p. 23 and legislative bill 1978/79:67 *Om förbud mot aga*, p. 5. These studies and their results are described more closely in section 3.4 *supra*.

3 For a distinction between “legal output” (how a legal reform can be seen to have changed a legal system) and “legal outcome” (the result of a legal reform in the community), see Zamboni, M., *The Policy of Law*, Hart publishing, Oxford, 2007, p. 139 ff. The term “legal political success” as used here refers to that which Zamboni terms “legal outcome.”

4 This is the number of states having introduced a ban in January 2015. For current information on how many, and which countries, see the website of the international organization End Corporal Punishment on “endcorporalpunishment.org”.

5 See the UN Committee on the Rights of the Child and their General Comment Nr. 8 (CRC/C/GC/8), in which the convention states in accordance to Article 19 of the Child Convention with respect to the child's right to protection from violence and abuse in the home environment is more clearly stated, as well as the Council of Europe, for example, *Council of Europe policy guidelines on integrated national strategies for the protection of children from violence*, 2009. Those countries not having taken such a step are repeatedly criticized by the UN Committee in its country reports, which are compiled and published every five years for the convention states. The review of whether the convention states

prohibition against corporal punishment in all of the world's countries often use Sweden as a model, referring to those studies showing positive results with respect to attitude changes since the reform.

However, there is a risk that the situation in Sweden is described and analysed in a somewhat oversimplified manner, and without problematizing the vulnerability of children from a broader perspective. Despite the fact that the Swedish reform must be seen as a success and a model, there are reasons to critically review the Swedish prohibition from a broader perspective. Included in this is the need to analyse the child protection system in which the prohibition works. Much speaks to the fact that the Swedish system with respect to protecting children from violence and vulnerability in their homes is currently facing a series of challenges. As discussed in this article, certain of these challenges might even be tied to the enactment of the prohibition against corporal punishment. The corporal punishment prohibition in Sweden is here reviewed and placed in its broader context, both historically and contextually, in order to then examine its consequences and effects on a deeper level. When analysing both the Swedish prohibition and child protection system, significant advantages can be gained from including a comparative law perspective. Contrasting the Swedish system with those of another country quite simply provides valuable insights and premises for a deeper analysis – both as to that posited as the advantages and success factors, as well as the challenges and problems in the Swedish system. By complementing the legal academic analysis with a comparative law perspective, other types of problems and new solutions can be identified and proposed.⁶ For this, a comparison with the situation in Australia, a country without a prohibition against corporal punishment, is conducted. This adds an outsider perspective which creates the premises necessary for a deeper understanding of the situation in Sweden.⁷ Consequently, such a comparison contributes to a critical legal academic analysis.

Sweden is contrasted in this article with the system and situation in Australia, in which similarities with Sweden exist regarding developing child protection systems, but where there is no prohibition against corporal punishment. In addition to this distinction with respect to the prohibition, the starting point in the comparison between the two countries, Australia is also a relevant comparison object to Sweden for several other reasons. Even if there are differences as to how the policies regarding children and families and the welfare state are to be created, between Sweden and Australia (where there are

follow the Child Convention stems from Article 43. For more information on the committee's work and country reports, see its website at "www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx".

6 See further Jacobsson, Herbert, *Att finna, att fastställa innehållet i främmande rätt*, JT, No 2, 2012-13, for a discussion regarding different objectives and methodological assessments that comparative law research can include.

7 See further on comparative law aspects and methods, Zweigert, Konrad & Kötz, Hein, *Introduction to comparative law*, 3 ed. Clarendon, Oxford, 1998, p. 15.

also differences between the different Australian states),⁸ and that a comparison between these countries gives rise to serious challenges, there is in these countries arguably a clear ambition as to safe schools, health care as well as social services for children and their families.⁹ Both countries have also ratified the United Nations Convention on the Rights of the Child (the Child Convention) and therefore are required to meet the standards in its article 19 as to effective protection for children against violence and abuse in their home environments.¹⁰

A more concrete reason to contrast Sweden against Australia in this context is the observations of the child protection systems in both countries that have been done within the purview of another study focusing on the judicial system's treatment of child protection cases.¹¹ There it was noted that child protection work, even if the objective of protecting children is the same, takes different directions in Sweden and Australia, and that a child's vulnerability appears to be identified and treated in different manners. As stated in earlier

8 Both countries are also considered to be wealthy, and in the comparative studies done by UNICEF have relatively low rates of child deaths due to lack of care, a common measurement for the welfare of children in different countries. See UNICEF, *A league table of child maltreatment death in rich nations*, Innocenti Report Card No. 5, Innocenti Research Centre, Florence, 2003.

9 In Esping-Andersen's influential and often cited typology of welfare states – in which distinctions are made between liberal, conservative and social democratic systems – Australia is described as belonging to the group, liberal welfare states, while Sweden belongs to the group, social democratic systems. See Esping-Andersen, Gøsta, *The Three Worlds of Welfare Capitalism*, Princeton University Press, Princeton, NJ, 1990. This typology has later been used but is also problematized and further developed by many authors. Even if Sweden and Australia can be seen as different types, they have been viewed as relevant and adequate objects of comparison, not in the least within the field of social work, see for example, Healy, Karen, Lundström, Tommy. & Sallnäs, Marie., *A Comparison of Out-of-Home Care for Children and Young People in Australia and Sweden – Worlds Apart?*, Australian Social Work, vol. 64, 2011, focusing on the child protection systems in Sweden and Australia. In this study, the countries are compared as to the frequency of the placement of children and youths in out-of-home-care, as well as similarities and differences with respect to age and reasons for placement.

10 Article 19 of the Child Convention states:

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

11 Leviner, Pernilla, *Domstolens funktion i LVU-ärenden – behov av specialiserade barndomstolar?*, Nordisk socialrättslig tidskrift, No. 5-6, 2012. Note that the child protection work in Australia is conducted at the state level with several differences. The system particularly studied by this author is that of the state of Victoria, but information and knowledge as to other systems in the other states was also obtained. With respect to the observations relevant here, the states are similar.

studies, there exists in Sweden a type of cooperative paradigm within the child protection system in which cooperation with the parents is prioritized rather than the identification and investigation of a child's vulnerability.¹² This entails that violence against children to a certain degree is rendered invisible in the Swedish child protection work. Representatives in the Australian child protection system, the compared perspective, appear to speak more clearly and directly with respect to the basis for a child's vulnerability, including violence against children. These comparative observations gave rise to the issue that is the starting point of this article; what does the Swedish prohibition against corporal punishment mean and what role does it have in the child protection system as a whole? What are the consequences of the prohibition and how can these be compared with the situation in Australia where such a prohibition does not exist? Can it be the case that because the prohibition against corporal punishment is so taken for granted in Sweden, that we have stopped discussing violence against children while at the same time, the number of reports to both the police and social services with respect to crimes against children and child vulnerability is steadily rising? These questions lie at the heart of this article. The focus is on analysing and describing the Swedish prohibition's origins, content, effects as well as its role and function within the child protection system. The analysis of the Swedish system occurs as stated above against the backdrop of a comparison with the situation in Australia without these national systems in themselves being purely contrasted with each other more than as to certain topics.

This article begins with a description of the situation in Australia as to the regulation of the abuse of children, the views with respect to the use of corporal punishment in the few studies that have been done as well as a general description of the discussions and debates occurring as to an eventual enactment of a prohibition against corporal punishment. The path of the Swedish prohibition is thereafter described, in other words, the historic, political and legal background to the corporal punishment reform, as well as the prohibition's legal content. The prohibition in Sweden is also placed in the context of the "Swedish model" and the ties between the construction and structure of the corporal punishment prohibition and the welfare system – particularly the child protection system. With this as a background, the effects and results of the corporal punishment reform and the welfare contributions to children and families on attitudes and the use of corporal punishment, including the consequences the prohibition can be seen to have had within the police and social services, will be described and examined. Finally, the challenges and dilemmas that the Swedish child protection system as a whole is now facing are discussed, which once again are contrasted to the situation in Australia. How the experiences in Sweden – both positive and negative effects and stated challenges – can be utilized in Australia and other countries not yet having enacted a prohibition against corporal punishment.

12 Leviner, Pernilla, *Rättsliga dilemman i socialtjänstens barnskyddsarbete*, Jure förlag AB, Stockholm, 2011.

2 The Absence of a Prohibition and the Debate in Australia

Australia consists of six states (and two territories¹³) that have a high degree of self-determination. Consequently, there is in fact nine legal jurisdictions, the states, territories (to the extent of their powers) and the Commonwealth, which have specific powers granted by the Constitution. Relevant to this topic is the fact that criminal law lies mainly within the jurisdiction of the states while family law lies within the jurisdiction of the federal system and federal family courts.¹⁴ There is no prohibition against corporal punishment by parents on either the state or federal levels, in neither the criminal nor the family law regulations.¹⁵ Abusing a child in all states is criminalized in the same manner as abusing an adult, with the distinction that when it is a question of a child victim, a defence is available as defined in the common law (or case law) or codified in the State penal law, that the act can be seen as “reasonable chastisement” or “lawful correction.” In other words, it is permissible to hit a child when it is reasonable for the purpose of correction, and the central question then is what is considered reasonable.¹⁶ Proponents of a prohibition against corporal punishment propose removing the defence of reasonable chastisement from the state penal legislation so that the general criminal law of assault would then apply.¹⁷ Proposals as to enacting a pedagogically-focused prohibition in the family regulations (in other words, in the federal and overarching regulations) comparable to the Swedish one as described below, as far as known, have not been yet made. Taking into consideration that the United Nations Committee on the Rights of the Child clearly recommends an explicit prohibition against corporal punishment, it is not surprising that the same committee has time and time again criticized Australia for not taking this step as to the enactment of such a prohibition.¹⁸ In light of this criticism and

13 The territories do not have the same right of self-determination as the states, but rather lie under the control of the federal government.

14 See further as to Australia’s governance system, the website of the Australian federal government at “www.australia.gov.au/about-australia”.

15 Corporal punishment in government-run schools has been banned in Australia with state-based legislative amendments passed from the early 1990s through to the late 2000s. See further on the website of The Australian Institute of Family studies, at “www3.aifs.gov.au/cfca/publications/corporal-punishment-key-issues”.

16 Only one state, New South Wales, has legislated to restrict the use of corporal punishment. According to the legislation in this state, parents are only permitted to cause a low level of harm, and to limited parts of the body. See Naylor, Bronwyn & Saunders, Bernadette, *Parental Discipline, Criminal Laws and Responsive Regulation*, in Freeman, M. (Red.), *Law & Childhood Studies*, Oxford University Press, Oxford, 2012 and Saunders, Bernadette & Goddard, Chris, *Physical Punishment in Childhood - The Rights of the Child*, Wiley-Blackwell, UK, 2010.

17 See for example Nicholson, Alistair, *Choose to Hug, Not Hit*, *Family Court Review*, 2008, Vol. 46 and Naylor, Bronwyn & Saunders, Bernadette, *Whose Rights – Children, Parents and discipline*, *Alternative Law Journal*, Vol. 34, 2009.

18 See UN Child Committee in their General Comment Nr. 8 (CRC/C/GC/8). Criticism against Australia was raised latest in 2012 when the country reports were published. See

clear recommendation, the fact that no government on either the state or federal levels appears to have this question on its agenda is somewhat surprising.

The questions of the parents' right to corporally punish a child and the (un)suitability of enacting such a prohibition have often been discussed and debated in recent years in Australia. "Public surveys" have been published in the daily newspapers, which can mainly be seen as demonstrating that the public does not want such a prohibition.¹⁹ This question was much discussed in 2012 based on one book – *The Slap* – written by an Australian author, which became the basis for a TV-series.²⁰ The course of events the book addresses is how people react after a barbecue in which a man slaps another guest's son in order to discipline the child for bad behaviour.

The main argument against a prohibition as to corporal punishment and the debates (as can be interpreted from the above-referenced articles) somewhat simplified appears to be that such a prohibition would be an illegitimate incursion by the law with respect to the right to private life as well as the parents' right to self-determine how to best raise their child. Tied to this argument is the belief that the family structure will be at risk of collapsing if parents no longer have the right to physically discipline their children. Another argument is that parents who use mild forms of physical discipline would be seen as criminals with such a prohibition, that prosecuting such parents would be wrong and that a criminalization would in the long run affect children in a negative way. It is also argued that mild forms of corporal punishment do not harm children as well as that physical discipline can be less harmful than psychiatric and oral discipline. Certain individuals argue that they themselves have been subjected to corporal punishment and that it did not harm them.²¹ These arguments can be compared to those presented in Sweden by those who were negative to the Swedish reform, for more on this see section 3.1 below.

An interesting debate to follow, keeping in mind the subject of this article and the comparison between Sweden and Australia in this context, is the

Concluding Observations, August 2012, CRC/C/AUS/CO/4, section C 43-47, at their website, "www.2.ohchr.org/english/bodies/crc/crcs60.htm".

19 See for example the following articles with their descriptive headlines: The Daily Telegraph, 4 February 2012, *Don't ban smacking: Nation is slap happy*, via "www.dailytelegraph.com.au/archive/national-old/dont-ban-smacking-nation-is-slap-happy/story-e6freuzr-1226262294383" and The Herald Sun, 3 February 2012, *Debate rages after call for smacking children to be made illegal*, via "www.heraldsun.com.au/news/victoria/time-to-ban-smacking/story-fn7x8me2-1226261278090". For a general description and analysis of the debate in Australia, see Saunders, Bernadette. & Cashmore, Judy, *Australia – The Ongoing Debate about Ending Physical Punishment*, in Durrant, Joan & Smith, Anne (Eds.), *Global Pathways to Abolishing Physical Punishment*, Routledge, Hoboken, 2011. It can be noted that such public surveys usually have been highlighted in the press for example after a prestigious group of physicians has called for a ban. Such surveys then can be viewed as a response to the arguments put forward by the 'intellectual elite'.

20 See further on Wikipedia via "en.wikipedia.org/wiki/The_Slap". The book has also been published in Sweden, see Tsiolkas, Christos, *Örfilen*, Leopard förlag, Stockholm, 2012. The TV-series based on the book was broadcasted in Australia in 2011, and in Sweden in 2013.

21 See footnote 19 *supra* with further references for example to articles in the media during recent years.

discussion which took place in Australia (and certain other countries) based on the Swedish book published during the fall of 2013, *Hur barnen tog makten* [How the Children Took the Power],²² by Psychiatrist David Eberhard. This book, which can be described as a critical analysis of how we in Sweden raise our children – or rather how we have stopped raising our children – has received attention in Australia as somewhat simplified that Swedish parents have since the enactment of the prohibition against corporal punishment have lost control of their children and as a result, that Swedish children are enormously spoiled.²³ It appears that the situation of the spoiled Swedish children taking the power over their parents is raised as "evidence" of the negative effects of the prohibition against corporal punishment as to parents raising children and the argument is made against the enactment of such a prohibition in Australia.²⁴

In addition to the more public debate, the questions of corporal punishment and any eventual prohibition have also been discussed in a more academic context, which can be followed within the academic forum, *The Conversation*.²⁵ Arguments raised here with respect to an enactment are, partially that a prohibition is required to fulfil the requirements of the Child Convention, and partially psychological in that research shows that corporal punishment is harmful to children both in the short and long terms. This latter argument according to its proponents has received increased legitimacy through an American study showing that even lesser violence can cause harm and suffering for children in the short and long terms in the form of depression, panic attacks, chemical dependency and personality disorders.²⁶ Proponents of a prohibition also argue that such a reform would entail an emphasis on "

22 Eberhard, David, *Hur barnen tog makten*, Bladh by Bladh, Stockholm, 2013.

23 See for example articles in the newspaper, *The Age*, with headlines, *Sweden's liberal parents 'spoil children rotten'* from 3 November 2013, "www.theage.com.au/lifestyle/life/swedens-liberal-parents-spoil-children-rotten-20131102-2wtjy.html".

24 In an article in the Swedish newspaper, *DN*, with the headline, *Internationella medier: Svensk uppfostran skapar snorungar* [International news: Swedish childraising creates brats], 4 November, Dr. David Eberhard commented on the foreign attention and stated somewhat surprised that the international media connected the book with the Swedish prohibition against corporal punishment. Dr. Eberhard stated that his book did not take up the prohibition at all and that he entirely supported the Swedish regulations in this aspect. He argued that the book describes the situation in Sweden as a general problem in Western society and was not at all limited to Swedish parents and children, see "www.dn.se/ekonomi/internationella-medier-svensk-uppfostran-skapar-snorungar".

25 See for example, the article, *Time for an end to parental tough love*, published in August 2012 at "www.theconversation.edu.au/time-for-an-end-to-parental-tough-love-8688". For more articles, a search "corporal punishment" can be done on the forum's website – "www.theconversation.edu.au".

26 Tracie, Afifi, Mota, Natalie, Dasiewicz, Patricia, MacMillan, Harriet, and Sareen, Jitender, *Physical Punishment and Mental Disorders - Results From a Nationally Representative US Sample*, *Pediatrics*, Vol. 130, 2012.

positive disciplining”,²⁷ in other words, confirmation and conversations with children, which always is a much better and effective method of childraising.²⁸

When it comes to the data as to the attitudes towards the corporal punishment of children, studies from 2003 and 2006 have shown the 75 % and 69 % respectively of those Australians asked consider that at times it is necessary to smack a disobedient child.²⁹ In a study from 2006, 45 % viewed it as reasonable that a physical correction left a “mark,” which should be interpreted to mean redness, a bruise or something similar.³⁰ A later 2009 study, in which both adults and children were asked as to experiences of discipline, concluded that even if Australian’s attitudes to that which could be seen as “normal” had changed in the direction towards questioning the suitability of physical punishment, the use of the punishment still appears to be “normalized” for children.³¹ No comprehensive studies comparable to those continuously performed in Sweden with respect to attitudes and the use of corporal punishment (see further the discussion below in section 3.4) have been made in Australia. For example, there are no studies demonstrating to what extent Australian parents actually use corporal punishment as a disciplinary method or in general hit their children.

One of the possible side effects of the fact that corporal punishment is not prohibited in Australia, but that the issue is debated, as can be seen from the above-referenced articles, is that violence against children and unsuitable parental behaviour is discussed, both in the media and as a question that is present when authorities meet with children and parents.³² That such can be the case is derived from observations as stated in the introduction during a study concerning the courts’ role and function in child protection matters, where

27 The term “positive disciplining” is derived to a great degree from the method that the Canadian researcher. Joan Durrant constructed and disseminated, particularly in cooperation with her work with Save the Children. See Durrant, Joan, *Positive Discipline in Everyday Parenting*, Save the Children, 2013. Briefly, the method is in trying to find other methods as to childraising that do not use violence or other types of abusive treatment such as threats.

28 See for example the above referenced article in *The Conversation* at footnote 25 *supra*.

29 Tucci, Joe, Mitchell, Janise & Goddard, Chris, *Tolerating Violence Against Children - Community Attitudes about Child Abuse*, Australian Childhood Foundation and Child Abuse and Family Violence Research Unit, Monash University, Melbourne, 2003 and Tucci, Joe, Mitchell, Janise & Goddard, Chris, *Crossing the line – Making the case for changing Australian laws about the physical punishment of children*, Australian Childhood Foundation, Melbourne, 2006.

30 Tucci, Joe et al., *Crossing the line*, 2006.

31 Saunders, Bernadette & Goddard, Chris, *Physical Punishment in Childhood - The Rights of the Child*, Wiley-Blackwell, UK, 2010, p. 92.

32 Anecdotally, the questions of parental violence against children and appropriate parenting, are common topics of informal discussions in the community amongst parents themselves. There are no studies confirming this, but this perhaps is quite different from the situation in Sweden, where it could be said that there is a taboo as to discussing violence against children, and where parents may be hesitant to ‘admit’ to using physical disciplining against their children.

Sweden and Australia were compared in this respect.³³ This can be contrasted with that described in the following regarding the situation in Sweden, in which the prohibition against corporal punishment has been seen as so self-evident that it can have resulted in both individuals and authorities discussing to a lesser degree violence against children, despite the fact that such violence is still a continual problem in our society. The issue of how the authorities address a child's vulnerability however is also probably related to the overarching focus in the countries' child protection systems. The Australian system, similar to those systems in the United States and Great Britain, has been characterized as protection-oriented, while the system in Sweden, similar to the other Nordic countries systems, typically is designated as a family support-orientated system.³⁴ Somewhat simplified, the distinction lies in the fact that in child protection-oriented systems, the focus to a higher degree is on protecting the children from the parents' harmful behaviour, and that the risks and dangers are emphasized. In the support-oriented systems, the focus instead is on broad welfare measures and that which is central is working for change through measures given in cooperation with parents.³⁵

Despite the international criticism as seen above, there appears to be no political will to enact a prohibition against corporal punishment in Australia. This does not mean, however, that corporal punishment is a method of childraising that is widely accepted. Neither does it mean that the abuse of children is not addressed by measures taken by the authorities. Furthermore, the debate with respect to corporal punishment and the Australian attitude in this question should not be "over-interpreted" to mean that the majority of the population believes corporal punishment to be good. The opposition possibly is not strong, but from that which can be seen from studies referred to above, one can detect a sort of "public distance" from a prohibition against corporal punishment. This appears to be supplemented by a lack of political will or possibly lack of political interest. This can be compared to that described further below as to the Swedish current general negative attitude towards corporal punishment and the broad political will to reform that existed in Sweden already in the 1970's.

3 The Swedish Prohibition against Corporal Punishment - A Critical Review and Analysis

The Swedish prohibition against corporal punishment in many ways broke new ground from an international perspective, as Sweden was the first country in the world to enact such a prohibition. In order to understand why this occurred

33 Leviner, Pernilla, *Domstolens funktion i LVU-ärenden*, 2012.

34 Gilbert, Neil, Parton, Nigel & Skivenes, Marit (Eds.), *Child Protection Systems – International Trends and Orientations*, Oxford University Press, Oxford, 2011.

35 *Ibid.* at p. 3.

precisely in Sweden and why this early, the reform needs be put into a historical and contextual perspective.

3.1 *The Path to the Prohibition*

The historian Ewa Bergenlöv describes how the enactment of the prohibition against corporal punishment and the view as to children and families are tied to how we in Sweden have for a long time viewed the relationship between the individual and the state.³⁶ While the family is the basis for welfare in many other societies, there is according to Bergenlöv a long tradition in Sweden of society "helping" the individual without this being seen as a threat against the family as an institution. According to Bergenlöv, the basis for this can be found in our unique history with independent farmers who were not dominated by the nobility, church or state, which resulted in direct contacts between "plain folk" and the state authorities based on a type of mutual trust. In such a culture valuing the independence of the individual and where there is a type of fundamental trust in authority, reforms that in other cultures would be seen as encroaching or hostile, can be accepted to a high degree.³⁷ Another explanation often given as to the enactment of the prohibition against corporal punishment in Sweden, are the legal reforms enacted in the 19th century in which men were expressly forbidden from hitting their wives and that masters no longer had the right to physically discipline servants.³⁸

An additional background explanation to the prohibition tied to the above-described historical relationship between the authorities and the individual in Sweden, are the welfare reforms effected in the first decades of the 20th century, often focusing specifically on families with children, and issues with respect to housing, hygiene and health care³⁹ During this same period, a public health campaign was conducted in which the negative consequences of physically and psychologically disciplining children were stressed. The idea behind these campaigns originated in ideas radical for this period of time, the development of children on a scientific basis that challenged previous religiously-influenced ideas as to childraising. According to these new ideas,

36 Bergenlöv, Eva, *Drabbade barn – aga och misshandel i Sverige från reformation till nutid*, Nordic Academic Press, Lund, 2009.

37 *Ibid.* at p. 157.

38 Janson, Staffan., Långberg, Bodil & Svensson Birgitta, *Sweden – A 30-year Ban on Physical Punishment of Children*, in Durrant Joan & Smith, Anne (Red.), *Global Pathways to Abolishing Physical Punishment*, Routledge, Hoboken, 2011, p. 245.

39 See Hirdman, Yvonne, *Att lägga livet till rätta – studier i svensk folkhemspolitik*, Carlsson, Stockholm, 2010 p. 64 f. and p. 92, Modéer, Kjell Åke, *Juristernas nära förflutna – rättskulturer i förändring*, Santérus, Stockholm, 2009, p. 317 and Janson, Staffan., et al., *Sweden – A 30-year Ban on Physical Punishment of Children*, 2011, p. 244.

raising children should be based on honesty and trust, and that parents should not demand obedience but instead try to understand their children.⁴⁰

Despite these "new" views of children and childraising that began to be accepted at the beginning of the 20th century, parents were still given the legal right to physically discipline children. However, this successively began to change, first through legislative changes in 1949 in which parents were instead "only" permitted the right to use disciplinary measures that could be seen as suitable. This was intended to denote that more physical discipline should be avoided. A prohibition against physical discipline in schools was enacted in 1958, and scarcely a decade later, the wording permitting parents the right to physically discipline a child was removed from the Parent Code.⁴¹ However, no direct prohibition was enacted at this time and there still was a defence in the Penal Code (Brottsbalken 1962:700). This situation, that the right to physically discipline no longer was explicitly expressed while there still was a criminal defence on that basis, can be compared with the legal situation in Australia today, as described above. The discussion in Sweden continued however, not in the least against the background of physicians beginning to realise, that cases which previously would have been seen as unclear cases of harm actually were often caused by parental violence.⁴² Based on these debates, a committee was appointed in 1977 to investigate the "child's right" which gave rise to the 1979 prohibition.⁴³

As seen, the enactment of the prohibition at the end of the 20th century (which the author and debater, Ellen Key, already at its beginning declared to be the "century of the child"⁴⁴) can be seen as a "natural step" in a process in which children were successively viewed as independent individuals with the right to suitable life circumstances and no longer the possessions of parents. Stated in the legislative bill that was the basis for the prohibition was the following:

With such a provision, one reaches the end of the legal developments that have meant that society has rejected corporal punishment as a method for raising a child. This development reflects in its turn the nowadays dominant position that

40 Janson, S. et al., *Sweden – A 30-year Ban on Physical Punishment of Children*, 2011, p. 243. For a deeper description of the background explanations as to the Swedish prohibition against corporal punishment, see the above cited book by Eva Bergenlöv in its entirety and also Berggren, Henrik & Trägårdh, Lars, *Är svensken människa? – gemenskap och beroende i det moderna Sverige*, Norstedts, Stockholm, 2006.

41 Legislative Inquiry 2001:18 *Barn och misshandel – En rapport om kroppslig bestraffning och annan misshandel i Sverige vid slutet av 1900-talet*, p. 21.

42 Janson, Staffan., Jernbro, Carolina & Långberg, Bodil, *Kroppslig bestraffning och annan kränkning av barn i Sverige – en nationell kartläggning 2011*, Stiftelsen Allmänna barnhuset, Stockholm, 2011, p. 28 and Legislative Inquiry 2001:18, p. 22. In this respect, the work of American researcher Kempe broke new ground, see Kempe, Henry, *The Battered Child Syndrome*, Journal of the American Medical Association, Vol. 181, 1962.

43 Legislative Inquiry 1978:10 *Barnets rätt 1 – om förbud mot aga*.

44 See Key, Ellen, *Barnets århundrade*, Informationsförlaget, Stockholm, 1996.

children are independent individuals who can demand total respect for their persons.⁴⁵

3.2 *The Legal Content of the Prohibition*

Even if the prohibition as to corporal punishment had strong support both among Parliamentarians and the population, and that it can be seen as a natural step in the development with respect to individual rights, it was not seen as a self-evident reform by all. The reasonableness of the prohibition was debated and arguments were raised, to a great extent similar to those presented in Australia today (see above), with the content that parents must themselves determine suitable methods for raising children, that “no one has been harmed by a little smack”, that children must know their place, etc.⁴⁶ Despite these arguments against a reform, an unanimous Parliament voted for the prohibition in March 1979, with the support of all the political parties. The ban was enacted in the Parent Code as follows:

Children have the right to care, security and good up-bringing. Children are to be treated with respect for their person and individuality and may not be subjected to physical discipline or other abusive behaviour.⁴⁷

The objective of the prohibition was stated to be clarifying that children have a right to grow up without violence. Every act entailing that a child suffers bodily injury or pain, even if the disturbance is minimal or temporary, is forbidden in accordance with this provision. On the other hand, it was emphasized in the legislative bill that parents must have certain rights to address physical resistance by children in order to be able to exercise the duty to supervise children, for example to lift or move a child in order to keep him or her from hurting themselves or others. As can be seen from the statutory text, the prohibition entails also psychological punishments (the reference to “other abusive” treatment) such as threats, ridicule, or purposively ignoring a child.

It can be clearly seen from the legislative bill that the purpose of the prohibition was not to criminalize parents, the objective was to change attitudes as to the issue of corporal punishment and thereby “convince” parents that

45 Legislative Bill 1978/79:67, p. 6.

46 Examples of the debate can be found at the website of Swedish Radio, “www.sverigesradio.se/sida/artikel.aspx?programid=1602&artikel=4681623” (last read January 2015).

47 The prohibition today is in the Parent Code, Föräldrabalken, and as follows:

6 kap. Om vårdnad, boende och umgänge - Inledande bestämmelser

1 § Barn har rätt till omvårdnad, trygghet och en god fostran. Barn skall behandlas med aktning för sin person och egenart och får inte utsättas för kroppslig bestraffning eller annan kränkande behandling. Lag (1983:47).

violence is not to be used when raising a child.⁴⁸ In accordance with this objective and in order to achieve this effect, the prohibition with its “educational purpose” was to be complemented by educational campaigns and support in the form of parental education.⁴⁹

Keeping in mind the pedagogical-focus of the reform, the prohibition was placed in the Parent Code without any sanctions tied to it. This means that a parent using corporal punishment as a part of raising a child cannot be charged under the Parent Code. Criminal liability for assaulting a child (or an adult) is regulated instead in the assault section 3:5 of the Penal Code, which states:

A person who inflicts bodily injury, illness or pain upon another or renders him or her powerless or in a similar helpless state, shall be sentenced for assault to imprisonment for at most two years or, if the crime is petty, to a fine or imprisonment for at most six months.⁵⁰

The crime of assault can occur in many different ways, with or without counterattacks or invoking additional violence, but also through omission.⁵¹ By bodily harm is meant not only such types of injuries as sores, swelling, broken bones or joint injuries, but also functional disturbances of different types, such as paralysis, or injuries to eyesight or hearing.⁵² As to disease, in addition to bodily diseases this also includes psychiatric diseases, psychiatric invalidity, as well as psychiatric suffering constituting a medically-provable effect, for example a psychiatric shock. There is a certain hesitation as to drawing boundaries between physical and psychiatric suffering, but the intent here is simply to show that more difficult forms of psychiatric influences would fall under the concept of assault.⁵³ Assaults, as seen from the provision, can also be found if an action has given rise to pain, by which is meant physical suffering

48 See however below in Section 3.5 in which it is clear that the number of police reports concerning assault have increased dramatically in the past two decades.

49 Legislative Bill 1978/79:67, p. 6. As described in section 3.4 below the ban was complemented with a large information campaign with debates, posters and brochures in different languages and information was also published on milk cartons in order to reach families with children.

50 In Swedish, ”[d]en som tillfogar en annan person kroppsskada, sjukdom eller smärta eller försätter honom eller henne i vanmakt eller något annat sådant tillstånd, döms för misshandel till fängelse i högst två år eller, om brottet är ringa, till böter eller fängelse i högst sex månader.”

51 See for a general description of the crime of assault, Asp, Petter, Ulväng, Magnus & Jareborg, Nils, *Kriminalrättens grunder*, Iustus förlag, 2010 and more specifically in the issue of crimes against children, Forsman, Maria, *Rättsliga ingripanden vid föräldrars våld och övergrepp mot barn*, Norstedts juridik, 2013. When it comes to omission, this is relevant in the parents’ roles as guardians (*garanter*), then an assault, for example, can be where a parent fails to take a sick child to a hospital.

52 Legislative Inquiry 1953:14, *Brottsbalk*, p. 134 and Legislative bill 1992/93:141, *Om ändring i Brottsbalken m.m.*, p. 28.

53 Legislative Inquiry 1953:14, p. 134 and Legislative bill 1962:10 part B, p. 90.

of a not insignificant intensity or duration.⁵⁴ In order for a crime to be found to exist based on the causing of pain, but without a bodily injury or disease, the bodily disturbance must not be of a too minor or temporary degree.⁵⁵ This can be compared to the prohibition against corporal punishment, which as stated above includes less physically violent hits that can give rise to minor and temporary disturbances as well as other violative treatment. The prohibition in the Parent Code with its pedagogical-focus rather than criminalization-focus is arguably broader than the assault provision in the Penal Code. Consequently, there is a certain type of “milder” corporal punishment not sanctionable under the criminal provisions, in other words not criminal, but still not permissible.

3.3 *The Prohibition in Context – A Component in the Creation of the Swedish Welfare State*

The enactment of the prohibition must be seen in the light of a series of reforms that generally have been part of the creation of the Swedish welfare state, in which the focus has been on measures to families with children, as stated above. In addition to the historical perspective already discussed, these welfare reforms to a high degree have arguably been enacted in accordance with a tradition that has its basis both in Scandinavian legal realism and in the social democratic ideology that was strongly dominant in Sweden during the 20th century. This tradition, which in the typical comparative law categorization is included in the Nordic legal family,⁵⁶ somewhat simplified entails a view of the law as an instrument of reform with whose help society can be changed in order to guarantee welfare for example to all on equal conditions.⁵⁷ This can be compared with the liberal tradition that has a strong basis in both the Anglo-American common-law tradition but even within civil law traditions – in France, for example, the ideas forming the basis for the French Revolution and in Germany, particularly the emphasis on civil rights after World War II.⁵⁸ The law within the liberal tradition is seen as a guarantee for protecting the individual against the public power and illegitimate encroachments by society. The law according to this liberal tradition is a conflict resolution mechanism instead of being an instrument of reform.⁵⁹

54 Legislative Inquiry 1953:14, p. 135.

55 *Ibid.* at p. 135.

56 See further Zweigert, Konrad & Kötz, Hein, *Introduction to comparative law*, 1998, regarding the division into legal families and their different traditions and character.

57 Ross, Alf, *On Law and Justice*, University of California Press, Berkeley, 1959, p. 261. see also Warnling-Nerrep, Wiweka, *Vad är rätt?*, Norstedts Juridik, Stockholm, 2012, p. 52 for a closer description of the Swedish “folk home” and the law as the art of social engineering.

58 See for example Glenn, Patrick, *Legal Traditions of the World – Sustainable Diversity in Law*, 3 ed., Oxford University Press, Oxford, 2007, p. 139.

59 See for example Hampshire, Stuart, *Justice Is Conflict*, Princeton University Press, Princeton, 2000, p. 4.

The enactment of the prohibition against corporal punishment in Sweden must be understood in the greater historical and cultural contexts. The same is true with respect to the effects and consequences of the prohibition, which also must be understood against the background of the welfare system in which they work. The prohibition is complemented quite simply by welfare contributions and forms of support and services to children and families. Significant efforts were made during the 20th century in order to improve the life conditions of children. An important later reform in this context was the enactment of the new social services law in the beginning of the 1980's.⁶⁰ This law and its fundamental principles are clear examples of the Swedish or Nordic tradition in which politicians invoking the laws and instruments desire to create the conditions for a more equal society through welfare measures.⁶¹ The goal of the reform of social services according to the law's preamble paragraph (which is still in force) is to "[o]n the basis of democracy and solidarity, promote the economic and social security of individuals, equality in life conditions and active participation in the community." The objectives under that same paragraph are that contributions and activities within social services are to be focused on freeing and developing the resources of individuals and groups and that voluntariness and self-determination are to always be prioritized.⁶² This is to be the case with respect to support and help to custodians in their parental roles. In this aspect, this reform can be seen as a clear deviation from the earlier tradition in which intervention in less well-off families occurred on a type of moral basis by the elite of society.⁶³

After the significant social services reform at the beginning of the 1980's, the welfare system in Sweden, as was the case for the majority of other industrialized countries, was challenged by economic crises. This naturally changed the possibilities of giving intended support and services to children and families. The system however is still based to a high degree on these same principles and legal framework. Arguably, although the economic crises have obstructed the realisation of the ideas of the welfare state as formulated in the 1980 social services reform, the measures and support offered today to children and families in Sweden, for example, the generous parental leave, subsidized day-care, child allowances, parental education, prenatal and child health care, are generous and well-functioning from an international comparison. In studies comparing the situations of children in different countries, children in Sweden are consistently found generally to live under very good conditions, which can be explained to a large degree by the broad welfare measures for families with children.⁶⁴

60 This law has been the subject of a series of reforms since its enactment in 1982 but its basic framework and fundamental principles have remained unchanged.

61 See Legislative bill 1979:80:1 *Om socialtjänsten*.

62 § 1:1 of the Social Services Act.

63 Legislative Bill 1979/80:1, p. 124 and Legislative Inquiry 2009:68 *Lag om stöd och skydd för barn och unga (LBU)*, p. 111.

64 Gilbert, Ruth, Spatz Widom, Cathy, Browne, Kevin, Fergusson, David, Webb, Elspeth, Janson, Staffan, *Burden and consequences of child maltreatment in high-income countries*,

The system with broad welfare measures offered to all families at no or low costs is complemented in Sweden by a specific societal responsibility for children in situations in which there are indications that the parents are not able to meet the children's needs or when a child risks been exposed to serious harm in his/her home environment. The ultimate responsibility for children lies with the municipal Social Councils as articulated in the Social Services Act (*socaltjänstlagen* 2001:453). This is reinforced by the obligation that the majority of societal actors have in reporting abusive situations and concerns for children to the Social Services.⁶⁵ If the Social Services, through reports or in another way, receives information that a child risks harm, a child care investigation is to be commenced.⁶⁶ This type of investigation can be conducted even if the custodian and/or qualified youth oppose such. In accordance with the strong emphasis on voluntariness in the Social Services Act, investigations and measures as an absolute main rule are always to be given and formed in cooperation with those parties affected. An investigation can end with an offer as to specific support (in other words, measures requiring a decision) but voluntary measures can also be offered in order to support the children and parents.⁶⁷ Involuntary intervention can only occur in absolutely exceptional cases in which voluntary measures are not sufficient or possible, and the situation is so serious that there is a tangible risk for injury to a child. Such measures are regulated by the Act on the Care of Youth (*lagen 1992:52 med särskilda bestämmelser om vård av unga*, LVU) and can only occur after a judicial hearing and decision by a court.

In conclusion, the enactment of the prohibition against corporal punishment in Sweden, as well as the effects herein described, must be seen in light of the greater context in which the prohibition exists. Much speaks for the fact that the changed attitudes and decreased use of corporal punishment to a high degree depended on the supporting "net" and welfare measures existing in Swedish society. As discussed in this article's conclusion below, more research needs to be done concerning how the system functions for those families in which there actually is a need for measures as to protecting children from violence. When the Swedish prohibition with respect to corporal punishment is compared to the situations in other countries, how welfare and child protection systems in general function must also be taken into consideration. As can be seen in section 2 above, Australia has a child protection system typically designated as protection-oriented. This means that the focus to a high degree is

The Lancet, Vol. 373, 2009 and Gilbert, Ruth, Fluke, John, O'Donnell, Melissa, Gonzales-Izquierdo, Arturo, Brownell, Marni, Gulliver, Pauline, Janson, Staffan, Sidebotham, Peter, *Child Maltreatment – variation in trends and policies in six countries*, The Lancet, Vol. 379, 2012. It ought to be emphasized that these are international comparisons on a general level, and that these studies do not contradict that found in other investigations as to the increase in child poverty and other vulnerability of children in Sweden. See for example, Save the Children's Report, *Barnfattigdomen i Sverige 2012*.

65 The Social Service's primary responsibility can be seen from § 5:1 of the Social Services Act and the duty to report in its § 14:1.

66 §§ 11:1-2 of the Social Services Act.

67 § 4:1 of the Social Services Act.

on protecting children from harmful behaviour by parents and that the risk and danger are emphasized, while the system in Sweden instead is typically designated as a family protective-oriented. This is a natural consequence of the focus of the welfare system in its entirety and the social law regulations as described above in which the main priority lies with cooperating with the parents.⁶⁸

3.4 *The Effects and Results of the Prohibition and the Welfare Reforms*

In accordance with the overarching objective of changing attitudes with respect to corporal punishment, a large information campaign was conducted in order to increase knowledge concerning the prohibition and primarily as to the unsuitability of physically disciplining children. Debates within different forums were arranged, posters and informational brochures were published in several different languages, information as to the prohibition was even published on milk cartons in order to reach families with children.⁶⁹ The result of these campaigns was that the public quickly became informed of the prohibition. Two years after its enactment, more than 90 % of the public knew that the law had been changed.⁷⁰ In addition to the public knowledge of the prohibition, it was also seen to be quickly socially accepted, and as described below, use of physical discipline as a part of childraising has been reduced considerably since the enactment of prohibition. Already in the legislative preparatory works to the prohibition, investigating the effects of the reform was seen to be important and since 1979, four large investigations have been conducted, in which both parents and children have been questioned as to attitudes to and experiences of child corporal punishment.⁷¹ The results of these studies have been summarized in the latest report from 2011,⁷² upon which the description in next section is mainly based.

The investigations in the 1960's indicate that over 90 % of all children at that point of time had experienced physical discipline in the home, and that there was widespread acceptance that parents hit their children as a form of discipline. Already a decade later, just prior to the enactment of the prohibition, the tolerance and acceptance of child corporal punishment had both decreased,

68 Gilbert, Neil et al., *Child Protection Systems*, 2011, p. 3.

69 Modig, Cecilia, *Aldrig våld – 30 år av svensk lagstiftning mot aga*, The Swedish Government Offices and Save the Children, 2009, p. 13.

70 *Ibid.* at p. 16.

71 Edfeldt Åke, "Allt vad i gören", Slutrapport från SUSA- projektet om aga och våld i hemmet, Proprius, Stockholm, 1985, Legislative Inquiry 2001:18, *Barn och misshandel - En rapport om kroppslig bestraffning och annan misshandel i Sverige vid slutet av 1900-talet*, Janson, Staffan, Långberg, Bodil & Svensson, Birgitta, *Våld mot barn 2006-2007 – en nationell kart- läggning*, Stiftelsen Allmänna Barnhuset och Karlstads Universitet, 2007 & Janson, Staffan et al., *Kroppslig bestraffning och annan kränkning av barn i Sverige*, 2011.

72 Janson, Staffan et al., *Kroppslig bestraffning och annan kränkning av barn i Sverige*, 2011.

and this decrease was even greater during the 1980's. In a survey conducted 1994-95, the first in which children were questioned as to their experiences, one-third of the children stated that they had at some point of time during their childhood been hit. After the year 2000, this statistic decreased further and has since then stabilized at a level of under 15 %, in other words, approximately 10 % of the children in Sweden state that sometime during their childhood they had been hit by their parents. In the most recently published survey with respect to child corporal punishment in Sweden from 2011, 90 % of the parents stated that they thought it was wrong to hit a child (including "milder" forms of physical corrections or punishments), even in cases where a child had made the parents very angry.⁷³ The 2011 study also addressed the speculation as to whether parents who do not hit their children instead insult or ridicule them. The study found that this is not the case but rather the opposite, that there was a strong tie between denigrating treatment and physical punishment, in other words, that children who were psychologically violated to a higher degree experienced physical corrections and/or violence as well as the obverse.⁷⁴

It ought to be noted that in the past two studies from 2007 and 2011, a certain increase in the use of physical discipline could be detected. This is primarily with respect to pushing, squeezing and shaking of a child, such had increased and which these studies distinguished from hitting a child.⁷⁵ This result is discussed in the studies and a factor that is identified as a plausible explanation for this are the more authoritarian childraising methods and attitude towards children which during the beginning of the 21st century have begun to be established by the new super nanny programs. Whether this has possibly influenced attitudes and the use of physical discipline in a negative manner has been discussed.⁷⁶ It can be generally stated that though the changes over time as to the attitudes about corporal punishment and the use of corporal discipline with respect to children are remarkably positive, there are observations in the studies from later years indicating a certain increase in the use of violent behaviour towards children.

When discussing the effects of the prohibition against corporal punishment in Sweden, it must also be noted that the more serious forms of physical abuse of children have not decreased in the same manner as the "less serious" forms of physical punishment. Studies have shown that the number of children in Sweden that at some point of time under their childhood have been exposed to serious abuse has been relatively stable at 3 to 4 % during past decades (compared with approximately 10 % of children reporting having experienced

73 *Ibid.* at p. 87.

74 *Ibid.* at p. 128.

75 A 2011 study emphasizes that with a comparison over time as to this aspect, it must be taken into consideration that the 2000 study was based on interviews, while the studies conducted in 2007 and 2011 were conducted as postal surveys. This renders the comparisons on a detailed level somewhat uncertain. See Janson, Staffan, et al., *Kroppslig bestraffning och annan kränkning av barn i Sverige*, 2011, p. 95.

76 Janson, Staffan, et al., *Våld mot barn 2006-2007*, 2007 p. 56.

being subjected to corporal punishment).⁷⁷ In addition to the observations noted above, certain risk factors have also been highlighted in the studies. The most serious risk factor for children with respect to being exposed to physical discipline and abuse is when there is violence between the adults in the home. Parental drug or alcohol dependency also increases the risk of violence towards children. Another factor identified is that children who suffer from chronic illnesses or disabilities of different types have double the risk of being exposed to physical discipline than other children. Studies have also shown that parents born outside of Sweden and parents with low levels of education, have a less negative, in other words, more tolerant, attitude towards child corporal punishment than others.⁷⁸ Even if the studies with international comparisons demonstrate that the incidence of serious abuse against children and that those cases in which children die as a consequence of violence in the home, are significantly lower in Sweden than in several other industrialized countries,⁷⁹ violence against children is still a problem in Sweden. One question naturally is what can be done to combat this and this is addressed further in the conclusion below.

3.5 *The Effects from the Perspective of the Police*

The objective of the enactment of the prohibition against corporal punishment as stated above was not to criminalize parents. Quite simply, it was stated that this was not a sought after result, that parents be indicted and charged to an increased level for having physically disciplined their children. However, the number of reports to the police concerning child abuse actually has increased tangibly during recent decades. From the years 1990 to 1999, such reports increased with 190 %.⁸⁰ Between the years 2001 and 2010, such reports continued to increase. In the age group of children between the years of 7 to 14, the increase was 62 % and with respect to children under the age of 7 years, the increase in the number of reports was 176 %.⁸¹ This increase, which cannot be described other than as dramatic, has obviously raised the question of how the situation for children in Sweden appears today and whether it can be the case that the abuse of children, despite that which has been demonstrated in the studies concerning attitudes as to the use of child corporal punishment, has instead actually increased. In those studies in which this question has been

77 Gelles, Richard & Edfeldt, Åke, *Violence towards children in the United States and Sweden*, Child Abuse & Neglect, Vol. 10, 1986, Legislative Inquiry 2001:18, p. 45 and Janson, Staffan, et al., *Kroppslig bestraffning och annan kränkning av barn i Sverige*, 2011, p. 91.

78 Janson, Staffan, et al., *Kroppslig bestraffning och annan kränkning av barn i Sverige*, 2011, p. 123.

79 Gilbert, Ruth et al., *Burden and consequences of child maltreatment in high-income countries*, 2009 and Gilbert, Ruth et al., *Child Maltreatment*, 2012.

80 Legislative Inquiry 2001:18, p. 33.

81 Brottsförebyggande rådet, *Den polisanmälda barnmisshandeln*, Stockholm, 2011.

reviewed, the conclusion however has been that the increase in the number of police reports is not dependent on the circumstance that more children are being abused, but rather that the rate of reporting has increased. Representatives for the authorities as well as individuals quite simply are more willing to report suspected child abuse to both the police and social services.⁸² Consequently, this indicates that the number of unreported incidences of child abuse has decreased and that we today to a higher degree have the information necessary in order to be able to understand how large the problem of violence against children actually is.

Against the background of the increase in the number of police reports, it is interesting and important to note that an increase in the comparable number of cases in which an individual is prosecuted or in another manner brought before the authorities, has not occurred. Research indicates that only 15 % of the reported child abuse cases are prosecuted and that only in a few cases in which there are clear evidence as to physical injuries is a party found guilty of assault.⁸³ This appears to be the “same type” of cases which led to prosecution prior to the changing attitudes in the question concerning child corporal punishment. One explanation discussed for this low frequency of prosecution is that the police consider lesser forms of abuse to be more social problems than police problems.⁸⁴ The same type of attitude can be seen as an explanation for the tendency found in the judgments by the courts, in which a parent is “only” judged to petty assault. One example of this can be found in the Swedish Supreme Court judgment, NJA 2003 p. 537, concerning a mother who admitted that she had hit her son with a spatula. Stated in the judgment was that the abuse consisted of five to seven hard hits and that the abuse was interrupted by the mother’s friend. The Supreme Court found the mother guilty of petty assault as these hits were a one-time phenomena, that the hits caused pain of a lesser nature and that the mother was in a stressful situation.

Taking into consideration that the objective with the enactment of the prohibition was not to criminalize the use of physical discipline with respect to childraising, the result in this case is possibly not so remarkable. However, it could be argued that the crime against the child was not taken seriously where the courts ignore this type of lesser violent act, despite the fact that there is a prohibition against it. Whether this is a type of violence that can be seen as lesser in this case from the perspective of the child can also be questioned. It might be that the rates of prosecutions as well as attitudes in courts in these cases are changing. Possibly, we can be facing a paradigm shift in which lesser types of abuse more often lead to prosecution. In recent years, more and more of such cases have been reported in the news. Over the long run, this can

82 Legislative Inquiry 2001:18, p. 38 and Janson, Staffan, et al., *Kroppslig bestraffning och annan kränkning av barn i Sverige*, 2011, pp. 26 and 58.

83 Diesen, Christian & Diesen, Eva, *Övergrepp mot kvinnor och barn*, Norstedts Juridik, Stockholm, 2009, p. 122 and Kaldal, Anna, Diesen, Christian, Beije, Johan and Diesen, Eva, *Barnahusetredningen 2010*, Jure förlag, Stockholm, 2010, p. 67.

84 Diesen, Christian & Diesen, Eva, *Övergrepp mot kvinnor och barn*, 2009, p. 267.

possibly lead to discussions as to a backlash of whether this is the correct way to proceed as is further discussed in the conclusion below.

3.6 *The Secondary Effects of the Prohibition within the Child Protection System*

With an increase in the overall willingness to report violence against children, and the reduced tolerance with respect to the corporal punishment of children, one could think that there would be a corresponding increase in children taken into care by the social authorities today as compared to the period prior to the enactment of the prohibition.⁸⁵ However, this is not the case. There is no indication that children to an increased degree are placed in out-of-home-care than in previous decades. Furthermore, in comparison with other industrialized countries (for example, Australia),⁸⁶ more children are not placed outside of the home in Sweden.⁸⁷ This can be seen as a positive result if it is the case that children risking harm in their home environments are identified in other ways and receive adequate support and protection as well as preventive measures on a voluntary basis. However, we do not know if such is the case. Quite frankly, there is limited research in Sweden as to which results and which effects the social care of children have for vulnerable children and their parents.⁸⁸

A tendency has been observed that the child protection work of the social services, to a significant degree based on the formulation of the legal regulations, tends to be focused on the parents with the main concentration on motivating parents to accept measures rather than investigating a child's need for protection, despite the fact that the reason for the investigation is usually a concern for a child's need of protection and suspicions as to criminal conduct.⁸⁹ Consequently, it has been shown that suspicions of a crime against a child are not the focus in the investigations conducted in order to identify the needs of the child for support and protection. Interviews with social secretaries demonstrate that there is also a reluctance to report to the police crimes against

85 Janson, Staffan, et al., *Kroppslig bestraffning och annan kränkning av barn i Sverige*, 2011, pp. 25, 44 and 132. See also Gilbert, Ruth et al., *Child Maltreatment*, 2012.

86 In one study comparing the situation in Sweden and Australia of children and youths placed outside the home, it was shown that the number of children placed was about the same per capita, but that the ages of the placed children differed. In Australia, younger children were placed at a higher rate, while in Sweden, teenagers were placed at a higher rate. See Healy, Karen et al. *Comparison of Out-of-Home Care for Children and Young People in Australia and Sweden*, 2011.

87 Gilbert, Ruth et al., *Burden and consequences of child maltreatment in high-income countries*, 2009 and Gilbert, Ruth et al., *Child Maltreatment*, 2012.

88 Sundell, Knut, Egelund, Tine, Andréa Löfholm, Cecilia & Kaunitz, Catrine, *Barnavårdsutredningar – en kunskapsöversikt*, Gothia, Stockholm, 2008, p. 181.

89 Leviner, Pernilla, *Rättsliga dilemma i socialtjänstens barnskyddsarbete*, 2011. See also Lindell, Charlotta, *Child Physical Abuse – Reports and Interventions*, Linköpings universitet, 2005 in which it is shown that support and measures by social services to families having problems with violence are only given to a limited extent.

children as well as an ambivalence regarding how to ask parents questions about suspicions as to children exposed to violence in their home environments.⁹⁰ A recently published study has also shown that parents to children with disabilities, who according to the research have a considerably higher risk of being exposed to violence than other children (see section 3.4 above), are not questioned with respect to violence in the home in their contacts with the authorities.⁹¹ The study raises the question of whether this can be an expression that the prohibition and the negative attitudes with respect to physical discipline have had the consequence of possibly creating a taboo concerning violence against children, in other words, a resistance to speaking about violence and the mistreatment of children. This clearly is a challenge for the Swedish system, how children who are exposed to violence and other types of mistreatment in their home environments are to be identified, how questions of violence and child corporal punishment are to be addressed and handled as well as how support and other types of help are to be provided to children exposed to violence and their families. This type of violence taboo has possibly contributed to the fact that we in Sweden today do not distinguish "lesser situations" of violence from more serious violence or physical punishment as a part of childraising and from other types of actions taken by parents in stressful or crisis situations. This is unfortunate, as these different types of situations require different types of reactions and measures by the authorities.

4 Discussion – A Child's Right to Protection, Proactivity and Reactivity

The prohibition against corporal punishment and its consequences in Sweden as seen in this article are a complex question. A two-folded and possibly paradoxical depiction is given in this context. The Swedish system, through the use of a comparative law perspective invoking Australia as a contrast, has been critically reviewed and analysed in order to illustrate both the advantages and disadvantages challenging it. This dual depiction will be summarized here in this concluding section, after which certain of the dilemmas and paradoxes will be specifically discussed. The overarching questions are – what are the challenges facing the Swedish system and what can other countries learn from the Swedish experience?

As seen above, studies show that parents in Sweden are much more reluctant to hit a child than previously and in comparison with other countries such as Australia. The majority of Swedish parents in general probably do not hit their children and believe that all forms of violence against children are unacceptable. This must be viewed as a great legal success in relation to how the situation for children was 35 years ago. It seems improbable that arguments

90 Leviner, Pernilla, *Rättsliga dilemma i socialtjänstens barnskyddsarbete*, 2011.

91 Svensson, Birgitta, Eriksson, Ulla-Britt & Janson, Staffan, *Exploring risk for abuse of children with chronic conditions or disabilities – parent's perceptions of stressors and the role of professionals*, *Child: Health Care and Development*, Vol. 39, No. 6, 2013.

similar to those raised today in Australia without a prohibition and in Sweden during the 1970's, could be successfully raised today in Sweden. That the view as to children's rights in this respect is different in Sweden compared with many other countries becomes clear from the discussions in the foreign media, particularly related to a much reported case in the summer of 2011: An Italian father visiting Stockholm with his family was arrested by the police and sentenced for assault after having shaken and lifted his 12-year-old son by the hair on the open street in Gamla Stan (Old town, a tourist area in central Stockholm). Bystanders tried to intervene while persons in the Italian group around the family stated that everything was okay. The discussions in the Italian media, as in certain other countries, made it into a case of Swedes overreacting when it was actually just a question of a father invoking his privilege to raise his son.⁹² This discussion demonstrates that even if Sweden is raised as a model, that the opposite can also at times be true. This was also the case with the above referenced discussion in the international media resulting from the book by Psychiatrist David Eberhard, *Hur barnen tog makten* [How Children Took the Power].⁹³ That which Eberhard posited with respect to Swedish parents not setting boundaries, i.e., an absence of childraising in Sweden, was taken among others by the Australian media as evidence of the negative effects of the prohibition against corporal punishment.

Much speaks for the fact that the welfare system in Sweden as a whole has worked preventively and proactively for reducing violence against children. In an international comparison, the number of cases in which children are seriously harmed or die as a consequence of violence and lack of care is lower in Sweden than in most other developed countries.⁹⁴ It is impossible to ascertain the influences that the prohibition against corporal punishment and the welfare system respectively as a whole, have had on the child protection system specifically, but in this aspect, Sweden must in a comparison with other countries on a general level be seen as a model in creating good conditions for children. As seen from this article, Sweden however faces a series of challenges tied to the right of children to suitable living conditions. There are certain worrying tendencies traced in the studies during the 21st century that the use of certain physical discipline – pushing, jerking, and shaking younger children – has increased among Swedish-born parents.⁹⁵ That which has been raised as a possible explanation for this change is the “new” childraising methods of a more authoritarian nature, which have received a certain acceptance at the beginning of this century. The negative effects of these new childraising methods on Swedish parents as to children and the possible

92 See for a description of the events and references to the discussion in the Italian media – SvD, 7 September 2011 via “www.svd.se/nyheter/inrikes/kulturkrocken-barnaga-vacker-debatt-i-italien_6449640.svd” and Expressen, 12 September 2011 via “www.expressen.se/nyheter/dokument/fallet-som-kan-andra-italiens-syn-pa-barnaga”. For a discussion as to this case and the Swedish context, see further in Warnling-Nerep, W. *Vad är rätt?*, p. 34.

93 See Section 2 and footnote 21 *supra*.

94 See Section 3.4 and footnote 75 *supra*.

95 Janson, Staffan, et al., *Våld mot barn 2006-2007 – en nationell kartläggning*, 2007, p. 56.

connection to the increased use of physical discipline has also been raised by the paediatrician and author, Lars H. Gustafsson. In his book, *Växa inte lyda* (Develop, not obey), he describes American and British TV programs with "super nannies" at the beginning of the 2000's, moving into our living rooms with an increased use of new old methods such as room arrests and time-outs in shame corners.⁹⁶ This in combination with studies showing that 3-4 % of children at some time during their childhood are exposed to serious assault and that the police reports concerning crimes against children continue to increase, demonstrate that violence against children is a continued problem in Sweden.

The proactive prohibition against corporal punishment and the broad welfare measures to families with children have arguably not succeeded in changing the situation and the underlying problems in those families in which children still are exposed to more serious assault and abuse. We now in this new millennium must also be observant that even lesser types of violence possibly are having a tendency to increase. The large question of course is how to handle this problem, particularly against the background of the knowledge we have with respect to risk factors concerning violence against children within families, where there is violence between adults, the influence of alcohol and chemical dependency, children with chronic illnesses or disabilities, as well as parents born outside of the country or parents having low levels of education.

A specific challenge that can be seen from this article is how children in need of support and protection are to be identified today in Sweden. There is limited research in Sweden as to which results and which effects the social care of children have for exposed children and their parents.⁹⁷ The social services in Sweden tend to have a parental perspective in their work as described above, and studies show that there are also indications that a taboo has been created with respect to discussing violence against children.⁹⁸ This possibly is tied to the overarching direction of the child protection system and the difference that is typically discussed between child protection-oriented and family support-oriented systems, both of which have the objective of ensuring that children do not suffer harm in their home environments.⁹⁹ It can also be the case, however, that the prohibition against corporal punishment in itself contributed to this situation in that it is now so stigmatized to hit children that professionals do not want to risk insulting parents by asking such questions (neither of the children or the parents) and that parents do not dare "confess" that they need help even if they realize they do. The prohibition against using corporal punishment as a method of childraising and the "zero-tolerance" against violence towards children have possibly resulted in that we no longer can distinguish between "lesser" and more serious types of violence. This in combination with the

96 Gustafsson, Lars H., *Växa inte lyda*, Norstedts, Stockholm, 2012, p. 136.

97 See Section 3.6 and footnote 84 *supra*.

98 See Section 3.6 *supra* with further references for example to Svensson, Birgitta, et al., *Exploring risk for abuse of children with chronic conditions or disabilities*, 2013 and Leviner, Pernilla, *Rättsliga dilemman i socialtjänstens barnskyddsarbete*, 2011.

99 Gilbert, Neil, et al., *Child Protection Systems*, 2011.

violence taboo can lead to that the system that is to protect children is ill-equipped to identify even the more serious violence against children. When both single instances of a slap on the head and long-term serious violence are not permissible, it is possibly more difficult to become "oriented" in the sorting, investigations and measures. Clearly a challenge for the Swedish system is how to identify children who are exposed to violence and other abusive treatment in their home environments, how questions of violence and child corporal punishment are to be addressed and handled as well as how the help to children exposed to violence and their families is to be formed.

A separate question is how to address that described above with respect to the great increase in the number of police reports, at the same time as the percentage of prosecutions in cases concerning child abuse is still low. The low percentage of prosecutions of parents hitting children can be seen as a significant problem and a sign that crimes against children are not taken seriously. The low frequency of prosecutions can also possibly be sending a signal that such actually is accepted. As already discussed above, there are indications of that more and more cases are prosecuted today compared to before. Again, this raises questions on whether this is a good thing or not. Arguably that which is most important is not the investigations and prosecutions but rather focusing on informing parents as to the unsuitability and danger of hitting children as well as supporting parents to find other ways to handle difficult and conflict ridden situations. There can also be a proactive value in reporting cases to the police and investigations, even if few lead to prosecution, as this sends an important signal that it is unlawful to hit children. The police, as is the case with the majority of other actors in society, are responsible for reporting concerns as to children to the social services, and the police investigation therewith can be a beginning and reason for the social authorities to become involved. These different arguments and positions with respect to the question of how proactive campaigns and preventive measures are to be preferred over sanctions and reactive measures in the form of police investigations and prosecutions demonstrate that the issue of how crimes against children are best combated is very complex.

From a Swedish perspective, it is important to track the consequences of the increased number of police reports as to suspected child abuse in combination with the still low number of prosecutions when it comes to the attitudes regarding the corporal punishment of children. Is the prohibition, which soon will be 35 years old, "sufficient" for demonstrating society's rejection of violence against children, or ought this pedagogical prohibition be combined with a "tougher" criminal agenda, in other words, a tough on crime agenda with a greater focus on prosecution? Again, this raises questions as to if this is the way forward in protecting children from violence. Another important question for the Swedish system already indicated above is assessing how the prohibition can best be complemented with measures for children exposed to crimes and parents in need of support and help in order to create a safe environment for children. Can it be so that the pedagogical prohibition and the proactive support system have a "blind spot" when it comes to identifying vulnerable children? Is an underlying effect of the prohibition and the now "self-evident" negative attitude to physically punishing children such that a

taboo has been created with respect to violence against children, in other words, has the prohibition led to that both representatives for authorities and parents are reluctant to discuss violence as it is so stigmatized. Further research is necessary in order to investigate and follow these developments. On the overarching level, it is also important that the content and objective of the prohibition is not taken for granted as too “self-evident.” As seen above, we cannot rest on our laurels that there is a prohibition, but rather the situation of children and their vulnerability are something that needs to continually be on our agenda. Otherwise, the prohibition can possibly lead to that we no longer debate or talk about children's rights to lives without violence and abuse as well as to suitable living conditions. This can be compared to the debate being conducted in Australia as to this issue, and there, the authorities and parents are perhaps more willing to discuss the use of corporal punishment and help needed in order for reaching an end to this. It perhaps is the case that debates and conversations as to the use of corporal punishment in themselves can increase the consciousness and thereby reduce the violence by parents and other care providers against children.

Even if the Swedish system is facing a series of difficulties, it must be emphasized that Sweden in many ways is a model country with respect to the living conditions of children. The incontestable positive effects of the prohibition against corporal punishment but also the challenges that the increased number of reports entail, are important sources of knowledge in the work with creating a more effective and well-functioning prohibition in other countries such as Australia. Taken into consideration the positive effects that the prohibition has had in Sweden, it can be questioned whether other countries in the world have legitimate reasons for waiting with the enactment of similar prohibitions. In addition to the experiences from Sweden demonstrating that the prohibition functions and that the enactment of such a prohibition is an obligation in accordance with the Child Convention, research now also shows a clear tie between lesser physical abuse and harm to children in the form of depressions, panic attacks, and personality disturbances.¹⁰⁰

From the Swedish perspective, it is important to highlight the challenges and dilemmas the system is currently facing. The “solution” to these problems however can possibly be sought in that which was already stated in the legislative preparatory works to the 1979 reform concerning the new view of children as “independent individuals who can demand total respect for their persons”. In many ways, this broke new ground and possibly was more visionary than intended in an era when collective welfare measures rather than individual rights were emphasized. This statement can now 35 years later be seen as an important starting point in how the challenges and problems surrounding the vulnerability of children should be tackled today. With this view of children as independent individuals, there can be no doubt that the most fundamental right for children (as is also the case for adults) is to live free from violence in order to be able to completely develop, become educated and

100 See for example Afifi, Tracie et al., *Physical Punishment and Mental Disorders*, 2012.

thereby be able to participate on equal conditions in the short term, but also in the long term, as an adult.