

**CUTTING THE CANE:  
A COMPARATIVE ANALYSIS OF THE  
STRUGGLE TO BANISH CORPORAL  
PUNISHMENT FROM SCHOOLS IN  
BRITAIN AND SOUTH AFRICA  
(PART 1)**

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**SUMMARY**

For centuries corporal punishment was used as a method for disciplining school children in Britain. Britain was one of the last countries in the European Union to abolish this form of punishment in its schools, and did so only after a long and bitter struggle waged in parliament, on the streets, and in various courts of law. This article traces the manner in which this practice became deeply entrenched in the British way of life, as well as the long battle to dislodge it. The focus then shifts to the evolution and eventual demise of this form of punishment in South African schools. During the long years of British rule in South Africa, British attitudes towards the corporal punishment of school children profoundly influenced those responsible for education in this African country. However, the attachment of South African educational authorities, educators, and parents to corporal punishment cannot be explained simply by reference to the influence of British educational values, and the article seeks to take account of the general history of corporal punishment in the African context. This history is entwined with the history of colonialism on the continent, and the article explores the unique social meanings attached to this form of punishment in the African context, as well as its historical importance as a means of social control.

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The article is divided into two parts. In part one of the article, the evolution and eventual demise of corporal punishment in British schools is traced, followed by a brief general overview of corporal punishment in the African context, as well as a short discussion of the use and eventual abolition of this form of punishment in South African schools. In part two of the article, the continued use of corporal punishment in South African schools, even after this form of punishment was legally abolished following the end of apartheid, is examined in detail.

## **1 INTRODUCTION**

For centuries corporal punishment was used as a method for disciplining school children in Britain. It is only relatively recently that this practice was outlawed in that country. Britain was one of the last countries in the European Union to abolish this form of punishment in its schools, and did so only after a long and bitter struggle waged in parliament, on the streets, and in various courts of law, including the European Court of Human Rights. The manner in which this practice became deeply entrenched in the British way of life, and the long battle to dislodge it, will be traced in this article.

This article will then focus on the evolution and eventual demise of this form of punishment in South Africa. During the long years of British rule in South Africa, British attitudes towards the corporal punishment of school children profoundly influenced those responsible for education in this African country. But the attachment of South African educational authorities, educators, and parents to corporal punishment cannot be explained simply by reference to the influence of British educational values. The general history of corporal punishment in the African context needs to be taken into account. The history of corporal punishment in Africa is entwined with the history of colonialism on the continent. The unique social meanings attached to corporal punishment in the African context and the historical importance of this form of punishment as a means of social control, will be explored in this article.

The strength and continuing tenacity of the hold which the practice of corporal punishment exerts on the minds of many South Africans today, more than a decade after the advent of democracy, also requires explanation. This article will trace the ongoing public debate on this issue amongst South African parents, teachers and politicians, including the strident calls that continue to be made in favour of the reintroduction of corporal punishment in South African schools. The fact that this form of punishment continues to be used in many schools in South Africa at present, will be discussed and explored.

This article is divided into two parts. In Part One, the evolution and eventual demise of corporal punishment in British schools is traced, followed by a brief general overview of corporal punishment in the African context, as well as a short discussion of the use and eventual abolition of this form of punishment in South African schools. In Part Two, the continued use of corporal punishment in South African schools, even after this form of punishment was legally abolished following the end of apartheid, is examined in detail.

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## 2 THE EARLY STAGES OF THE STRUGGLE TO ABOLISH CORPORAL PUNISHMENT IN BRITISH STATE SCHOOLS

The use of corporal punishment as a means of enforcing school discipline has a long history in Britain. In 1669 an anonymous author drew up the "Children's Petition", to protest against the severity of school discipline in England. In a clear reference to corporal punishment, the petition referred to "this vile way of castigation in use, wherein our secret parts, which are by nature shameful, and not to be uncovered, must be the anvil exposed to the immodest eyes, and filthy blows of the smiter ..."<sup>1</sup> More than three centuries were to pass before the cane was finally abolished in British state schools.

During the twentieth century, the first real agitation to ban corporal punishment in British schools occurred in the late 1940s. An organization known as "The Committee against Corporal Punishment in Schools" was formed, which at one point enjoyed the support of 50 Members of Parliament. In 1947 the government agreed to commission the National Foundation for Educational Research to conduct an enquiry into the effects of various forms of punishment and reward on pupils. The Foundation found that the overwhelming majority of British teachers supported corporal punishment, and recommended that it should be retained as a means of ensuring school discipline.<sup>2</sup>

In the years following publication of the Foundation's report in 1952, support for the abolition of the cane declined, and it was only towards the end of the 1960s that pressure for abolition began to increase once more. In 1967 the Plowden Committee of Enquiry recommended that the use of physical pain as a method of punishment should not be allowed in British primary schools.<sup>3</sup> In 1968 the Cardiff Education Authority banned corporal punishment in the primary schools under its control, but in the face of bitter opposition from teachers' unions it was forced to reverse the ban after two months.<sup>4</sup> The organization STOPP (The Society of Teachers Opposed to Physical Punishment) was also formed at this time, and in the years which followed was to play an important role in the battle against corporal punishment in schools.<sup>5</sup>

During the 1970s, two Private Members' Bills were introduced in Parliament calling for the abolition of the cane in schools. One of the Bills was presented to the House of Lords in 1973 by Baroness Wootton, who commented that "apparently in this country at the present time, the only people who can wield the cane with impunity in the exercise of their professional activity are teachers and prostitutes". The Bill was defeated by

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<sup>1</sup> Freeman "The Children's Petition of 1669 and its Sequel" 1966 14(1) *British Journal of Educational Studies* 217.

<sup>2</sup> Newell *A Last Resort? Corporal Punishment in Schools* (1972) 23-26.

<sup>3</sup> Newell (1972) 28-31.

<sup>4</sup> *The Independent* 24 November 1988.

<sup>5</sup> Newell (1972) 35-36.

only 16 votes.<sup>6</sup> The other Bill was introduced in the House of Commons in 1976 by Labour Party Member of Parliament, Canavan. It was defeated by 181 votes to 120.<sup>7</sup>

It was to take more than agitation at the national level, however, to convince the government to support a ban on corporal punishment in British schools. The turning point in the “abolitionists” struggle finally came in 1982, with the decision of the European Court of Human Rights in the case of *Campbell and Cosans v The United Kingdom*.<sup>8</sup>

### **3 CAMPBELL AND COSANS V THE UNITED KINGDOM**

The *Campbell and Cosans* case involved two Scottish schoolboys, Gordon Campbell from Fife and Jeffrey Cosans from Strathclyde. The boys attended separate schools, each of which used corporal punishment as a means of enforcing discipline. The parents of Gordon Campbell sought an assurance that corporal punishment would not be imposed on their son, but the school he attended refused to give this assurance. Jeffrey Cosans was threatened with corporal punishment for attempting to take a prohibited short cut through a cemetery on his way home from school, and on the advice of his father he refused to accept the punishment. He was duly suspended, and missed the final eight months of his schooling. Neither boy was actually beaten.<sup>9</sup>

An application was made to the European Commission of Human Rights on behalf of both boys, alleging that the United Kingdom was in breach of Article 3 of the European Convention on Human rights, as well as Article 2 of protocol 1 to the Convention. Article 3 stipulates that:

“No one shall be subjected to torture or to inhuman or degrading treatment.”<sup>10</sup>

Article 2 of Protocol 1 states:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”<sup>11</sup>

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<sup>6</sup> National Council for Civil Liberties *A Case Against Corporal Punishment* (1974) 2; Heptinstall “Does the Caning have to Stop?” October 1977 26 *Community Care* 20-23.

<sup>7</sup> Gibson *The English Vice – Beating, Sex and Shame in Victorian England and After* (1978) 97.

<sup>8</sup> 1982 4 E.H.R.R. 293.

<sup>9</sup> Society of Teachers Opposed to Physical Punishment (STOPP) *Britain’s Violent Teachers – A Dossier of Beatings Reported to STOPP in 1982* (1982) 9; Newell *Children are People Too – The Case Against Physical Punishment* (1989) 114-115; and Phillips “Teachers, Corporal Punishment and the Criminal Law – A Retrospect and Prospect” January 1992 *Juridical Review* 1 7-8.

<sup>10</sup> Warbrick “‘Federal’ Aspects of the European Convention on Human Rights” 1989 10(2) *Michigan Journal of International Law* 698 726.

<sup>11</sup> Warbrick 1989 10(2) *Michigan Journal of International Law* 732.

The matter was eventually referred to the European Court of Human rights for decision, and the court issued its judgment on 25 February 1982. Although the court accepted that even a threat of inhuman or degrading treatment might amount to a breach of Article 3, it held that the threat of corporal punishment to which the two boys had been exposed, did not amount to such a breach. The court did find that there had been a violation of Article 2 of Protocol 1, in that the United Kingdom had failed to respect the philosophical views of the boys' parents against corporal punishment.<sup>12</sup>

The British government had ratified the European Convention on Human Rights in 1951, and in terms of international law was obliged to honour the court's judgment and to take steps to bring the country into line with the rest of Europe.<sup>13</sup> Within Britain, however, there was still strong support for the retention of corporal punishment. A survey carried out among teachers indicated that a majority were in favour of the retention of the cane in the schools.<sup>14</sup> The government thus found itself on the horns of a dilemma. On the one hand, it could opt for the complete abolition of corporal punishment in schools, and thereby risk alienating many of its supporters. On the other hand, it could simply retain the status quo, which would mean that Britain would remain in breach of international law.

#### **4 SIR KEITH JOSEPH'S COMPROMISE BILL OF 1985**

In the face of the unpleasant political dilemma described above, the government at first vacillated, and then attempted a compromise solution which was doomed to failure from the start. It proposed a "dual" system which would allow parents to decide for themselves whether or not their children should be subject to corporal punishment. Two classes of children would thus be created - the "beatable" and the "unbeatable". Towards the end of 1984 it was announced that a Bill to this effect would be introduced in the next parliamentary session.

The various teachers' organizations were predictably concerned that the plan was unworkable. The National Union of Teachers forecast that, if the Bill became law, it would lead to tension and confusion in schools. The deputy general secretary of the National Association of Schoolmasters/Union of Women Teachers denounced the Bill as "a recipe for confusion and chaos". The pressure group STOPP (Society of Teachers Opposed to Corporal Punishment) announced that the only proper course for the government to follow was to abolish corporal punishment completely.<sup>15</sup> At the other end of the spectrum were those who did not want the *status quo* to change. About 40 members of the Tory backbench education committee warned that they intended to oppose the Bill. They

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<sup>12</sup> Children's Legal Centre "Education (Corporal Punishment) Bill – Unworkable and Unjust" March 1985 15 *Childright* 11 14.

<sup>13</sup> *The Times* 5 July 1985.

<sup>14</sup> *The Guardian* 22 October 1984.

<sup>15</sup> *Ibid.*

urged the Education Secretary, Sir Keith Joseph, to leave the discretion to impose corporal punishment on pupils, with the headteachers of the schools.<sup>16</sup>

The government refused to bow to pressure from either side, and the Education (Corporal Punishment) Bill was published on 11 January 1985.<sup>17</sup> The situation in Scotland was slightly different to that in England and Wales, since persons over 16 were endowed with legal standing by Scottish law. Scottish pupils who were over 16 would thus be able to decide for themselves whether or not to accept corporal punishment!<sup>18</sup>

As soon as it had been published the Bill was subjected to fierce criticism from various teachers' organizations. Mr John Pollock, general secretary of the Educational Institute of Scotland, dismissed it as unworkable and "educational nonsense", and STOPP accused the government of attempting to establish a system of "disciplinary apartheid".<sup>19</sup> Various Conservative Members of Parliament also voiced opposition to the Bill and claimed that it had been forced on the government by an "interfering" European Court.<sup>20</sup>

The Bill was introduced into Parliament on 28 January 1985. Conservative backbenchers condemned it as "bizarre", "absurd" and "a nonsense".<sup>21</sup> The opposition parties also vigorously attacked the Bill. The Labour Party spokesman on education condemned the Bill as a "farfical nonsense" and urged the Education Secretary to follow the example of the Secretary of State for Scotland, who had called on Scottish local authorities to abolish the use of the tawse in schools under their control.<sup>22</sup> The Liberal Party Member of Parliament for Cambridgeshire pointed out that Britain was the only country in Europe to retain corporal punishment in its schools.<sup>23</sup> Even the Education Secretary himself was forced to admit that he had never spoken on anything with less conviction, but explained that the proposal set out in the Bill was the least objectionable solution available in the circumstances.<sup>24</sup> The Guardian accurately summed up the mood of the House in the following amusing extract:

"The Bill is opposed by three groups of MPs – those who see it as typical of the niminy-piminy, namby-pamby, nanny-state approach which brought the country to its knees ...; those, mainly Labour, who cannot sanction corporal punishment at all, except perhaps during brief upsurges of passion when the Chancellor of the Exchequer is speaking; and those who do not really care whether children are beaten or not, but **who** are damned if such decisions are going to be influenced **by** the heavy breathers in Brussels."<sup>25</sup>

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<sup>16</sup> *The Guardian* 25 October 1984.

<sup>17</sup> *The Guardian* 12 January 1985.

<sup>18</sup> Children's Legal Centre March 1985 15 *Childright* 11-15.

<sup>19</sup> *The Guardian* 12 January 1985.

<sup>20</sup> *The Guardian* 25 January 1985.

<sup>21</sup> *The Guardian* 29 January 1985.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

There was strong extra-Parliamentary pressure for abolition. On 20 May 1985, for example, the Advisory Centre for Education published a report, which estimated that there were 250,000 officially recorded beatings per year in the schools of England and Wales at this time. If this estimation was correct, it meant that a beating took place every 19 seconds during each school day in England and Wales.<sup>26</sup>

The Bill was eventually passed amidst fierce controversy by the House of Commons, and reached the House of Lords committee stage on 4 June 1985. An attempt by Baroness David (Labour Education Spokesperson) to introduce an amendment into the Bill to abolish corporal punishment in state schools, was defeated by a mere 18 votes.<sup>27</sup> The progress of the controversial Bill finally ground to a halt when it came before the House of Lords for the second time during its report stage a month later. Baroness David once again led the opposition to the Bill and she received support from various quarters. The Education spokesperson for the Liberal Party condemned the Bill as unworkable and divisive, and a representative of the Social Democratic Party expressed concern that, in many cases, both the administrators and the receivers of corporal punishment got sexual gratification out of the experience.<sup>28</sup> After a fierce debate, the House of Lords voted by 108 votes to 104 to approve Baroness David's amendment completely banning the use of corporal punishment in state schools.<sup>29</sup> Following the vote in the House of Lords the government decided to abandon the Bill.

## 5 THE ABOLITION OF CORPORAL PUNISHMENT IN BRITISH STATE SCHOOLS

For nine months after the failure of the government's plan to introduce a dual system of corporal punishment into British schools, no further action was taken on the matter. In the face of government inaction it was the House of Lords which took the initiative. When the new Education Bill came before it on 17 April 1986, by a vote of 94 to 92, the House of Lords inserted a clause into the Bill abolishing corporal punishment in British state schools.<sup>30</sup>

Once again the government was forced into the uncomfortable position of having to confront this sensitive issue head on. The new Education Secretary, Kenneth Baker, must have been well aware that there was still strong support for the practice of corporal punishment among parents and teachers. A MORI (Market and Opinion Research International) opinion poll taken at this time indicated that 65 % of parents would give permission for the use of corporal punishment on their children at school, while only 33 per cent favoured abolition.<sup>31</sup> In his first major speech as Education Secretary,

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<sup>26</sup> *The Guardian* 20 May 1985.

<sup>27</sup> *The Guardian* 5 June 1985.

<sup>28</sup> *The Financial Times* 5 July 1985 8.

<sup>29</sup> *Ibid.*

<sup>30</sup> *The Guardian* 18 April 1986.

<sup>31</sup> *The Times* 11 June 1986.

Mr Baker promised Conservative Members of Parliament a free vote on the matter when it came before the House of Commons, but made it clear that he personally supported the retention of corporal punishment.<sup>32</sup> A leading article in *The Guardian* pointed out that more than four years had passed since the European Court of Human Rights had made its ruling in the *Campbell and Cosans* case, and more than ten years since the cases had first come before the British courts. "In all that time", stated *The Guardian*, "Britain has consistently prevaricated in every possible way both on the substantive question of corporal punishment abolition and on the enforcement of the 1982 ruling on parental rights."<sup>33</sup>

A period of intense lobbying followed. The pressure group STOPP (Society of Teachers Opposed to Physical Punishment) together with the Children's Legal Centre launched a concerted campaign to convince wavering Conservative Members of Parliament to vote for abolition.<sup>34</sup> STOPP's Secretary wrote to a thousand parents whose children had been beaten, to suggest that they should lobby their local Members of Parliament to vote against corporal punishment.<sup>35</sup> The Children's Legal Centre published a legal opinion by two respected legal practitioners which pointed out that a vote in favour of corporal punishment would put Britain in breach of her obligations under the European Treaty.<sup>36</sup> Most teacher organizations now supported a ban on corporal punishment in British state schools, and the Secondary Heads Association urged all Members of Parliament to vote for abolition. This call was supported by the National Association of Head Teachers.<sup>37</sup> On the day of the debate the *London Standard* printed a shocking photograph of the badly bruised bottom of a 13-year old boy who had been caned for not doing well enough in an examination.<sup>38</sup> Despite all the lobbying, parliamentary opinion was very evenly divided on the issue. *The Times* predicted that the vote would be a cliffhanger.<sup>39</sup>

The crucial debate in the House of Commons took place on 22 July 1986 and lasted for three and a half hours. The debate was closely contested and it became clear that the result was poised on a knife-edge. Whereas the Labour Party Members of Parliament were placed under a three-line whip to vote for abolition, the Conservatives were allowed a free vote on the issue as had been promised.<sup>40</sup> When the issue finally came to the vote, the abolitionists achieved a dramatic victory by the narrowest of margins. The House of Commons voted to confirm the amendment to the Education Bill by 231 votes to 230.

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<sup>32</sup> *The Times* 11 June 1986.

<sup>33</sup> *The Guardian* 12 June 1986.

<sup>34</sup> *Today* 17 June 1986; and Newell (1989) 122.

<sup>35</sup> *The Economist* 26 July 1986.

<sup>36</sup> *The Guardian* 21 July 1986.

<sup>37</sup> *The Guardian* 17 June 1986; and *The Times* 18 June 1986.

<sup>38</sup> *The Economist* 26 July 1986; and Newell (1989) 122.

<sup>39</sup> *The Times* 22 July 1986.

<sup>40</sup> *Ibid.*



The victory of the abolitionists by a single vote elicited widespread reaction in the press. The *Today* reported that the victory had been greeted by loud cheers in the Commons.<sup>41</sup> *The Times* stated that the debate on the issue had been “lengthy and sometimes impassioned”, and that there were “scenes of jubilation and dismay” in the House when the result of the vote was announced.<sup>42</sup> Fate may also have played a role in the abolitionists’ victory. *The Guardian* reported that Members of Parliament on both sides of the debate were angry because traffic jams caused by pre-royal wedding day celebrations had resulted in them missing the vote.<sup>43</sup> The leader of the Conservative Party was among those who did not vote, since she was attending a dinner at the United States Embassy in honour of Mrs Nancy Reagan, the wife of the American President.<sup>44</sup> *The Guardian* commented as follows in a leading article:

“Mrs Thatcher, whose decision may well have been crucial, did not vote. And so, more by luck than judgment, Britain has finally exorcized the ghost of Wackford Squeers, put a gallant group (Society of Teachers Opposed to Physical Punishment) into voluntary liquidation and cast one of the more public symptoms of *la vice Anglais* into superannuated oblivion ... It is perhaps symbolic that it has taken the might of the supposedly archaic House of Lords aided (perhaps) by preparations for the royal wedding to shame the House of Commons into falling into line. A case maybe, of spare the Lords and spoil the Commons.”<sup>45</sup>

## 6 PHASING OUT THE CANE AMIDST ONGOING CALLS FOR ITS REINTRODUCTION

The initial reaction of teachers’ organizations and local authorities to the Commons vote was favourable. Representatives of the National Union of Teachers and the National Association of Head Teachers, characterized the vote respectively as “a milestone” and “a victory for common sense”.<sup>46</sup> Even the director of education of Mid-Glamorgan (which had been accused by STOPP of being the “beating capital of Britain”, with an alleged 5,251 beatings of pupils between 1979 and 1980) declared that he welcomed the decision.<sup>47</sup>

A Department of Education circular sent out in March 1987 stipulated that 15 August 1987 was to be the final date by which corporal punishment would have to be phased out.<sup>48</sup> As the cut off date approached, certain of the teachers’ organizations began to express the concerns of teachers that violence by pupils was increasing, at the very time that corporal punishment was being phased out.<sup>49</sup> On the day before corporal punishment in British

<sup>41</sup> *Today* 23 July 1986.

<sup>42</sup> *The Times* 23 July 1986.

<sup>43</sup> *The Guardian* 24 July 1986.

<sup>44</sup> *The Economist* 26 July 1986.

<sup>45</sup> *The Guardian* 24 July 1986.

<sup>46</sup> *The Times* 24 July 1986.

<sup>47</sup> *Ibid.*

<sup>48</sup> *The Guardian* 14 March 1987.

<sup>49</sup> *The Times* 31 July 1987.

state schools was finally abolished, the National Association of Schoolmasters/Union of Women Teachers warned that indiscipline would rise as a result of the ban. The organization called on the government to employ an additional 30,000 teachers to cope with the expected increase in disciplinary problems.<sup>50</sup> Despite these fears, the ban came into effect on 15 August 1987 as planned.

Concern over the perceived increase in the level of violence in British schools continued to grow. Of the approximately 1,500 teachers who responded to a survey carried out by the Professional Association of Teachers towards the end of 1987, approximately 86 per cent stated that classroom violence was increasing.<sup>51</sup> A group of Conservative Party backbenchers believed that this problem could be alleviated by the reintroduction of the cane. In December 1987 they tabled an amendment to the Education Reform Bill, to allow head teachers and their deputies to cane pupils for "gross indiscipline".<sup>52</sup> The chairman of the Conservative Party Backbench Education Committee stated that the aim of the clause was "to restore a proven and effective sanction and then leave it up to parents to decide if their children would have fewer learning difficulties if they knew corporal punishment was available as a weapon of last resort."<sup>53</sup> This attempt to restore the cane to British schools was finally defeated, but public and Parliamentary pressure prompted the government to appoint a committee under the chairmanship of Lord Elton, to investigate violence and indiscipline in British schools.<sup>54</sup>

The absence of effective alternatives to corporal punishment was a major concern of delegates at the annual conference of the National Association of Schoolmasters/Union of Women Teachers held in April 1988. The conference called for an inquiry to be conducted world wide into the question of alternative methods of classroom discipline.<sup>55</sup> In May 1988 the results were made known of a survey of violence in schools in Scotland, Wales, Ireland and eleven English regions, conducted by correspondents of the Press Association. The survey revealed growing concern among ordinary teachers over violence in schools, and the abolition of corporal punishment was seen as a possible cause of the perceived decline in standards of discipline.<sup>56</sup> In June 1988 the National Association of Head Teachers published the results of a survey of 15 local education authorities in England and Wales. The head teachers of 1,630 schools replied to the survey which reached the following conclusion:

"In every type of school, the abolition of corporal punishment is seen as one of the major causes for the increase in disruption and violence, although it is its loss as a deterrent rather than a weapon which is mourned, particularly since

<sup>50</sup> *The Times* 15 August 1987.

<sup>51</sup> *The Times* 2 January 1988.

<sup>52</sup> *The Guardian* 11 December 1987.

<sup>53</sup> *The Times* 2 January 1988.

<sup>54</sup> *The Times* 11 March 1988; and Harris "Discipline in Schools – The Elton Report" 1991 91(2) *Journal of Social Welfare and Family Law* 111.

<sup>55</sup> *The Daily Telegraph* 9 April 1988.

<sup>56</sup> *The Guardian* 12 May 1988.

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there appears to be little or nothing to offer as an alternative in the eyes of pupils.”<sup>57</sup>

The report of the Elton Committee was finally published in 1989. The Report ruled out any possible return to corporal punishment, however, and instead made recommendations regarding other forms of school discipline such as detention and exclusion. If the Elton Report could be said to represent the opinions of informed educationists, then it was clear that corporal punishment was no longer considered a viable disciplinary option for British schools.<sup>58</sup>

Not all opinion had turned against corporal punishment, however, and in June 1990 a group of 55 Conservative Party Members of Parliament attempted to have the ban on corporal punishment in state schools lifted. A motion was drafted calling on the House of Commons to lift the ban, and was carefully worded so as to appeal to as wide a spectrum of Conservative Party opinion as possible.<sup>59</sup> One of those who spoke in favour of the motion characterized the withdrawal of corporal punishment as “a major disaster for discipline” and complained of “massive juvenile crime” and “football hooliganism”.<sup>60</sup> The motion was finally defeated, but it illustrated the fact that many Parliamentarians still supported the return of the cane to British state schools.

In January 1997 a further attempt was made to restore corporal punishment to British state schools. James Pawsey, a right-wing Tory MP, proposed an amendment during the report stage of the *Education Bill*, aimed at reintroducing corporal punishment in schools with parental consent. It was rejected by 376 votes to 101, but *The Times* reported that more than 90 Tory MPs had defied the government line to vote in favour of the restoration of corporal punishment.<sup>61</sup> According to *The Times*: “The size of the vote, which was much bigger than party business managers had anticipated, underlined the scale of the divisions in the Tory party on the issue.”<sup>62</sup>

## 7 THE STRUGGLE TO ABOLISH CORPORAL PUNISHMENT IN BRITISH PRIVATE SCHOOLS

Even after the abolition of corporal punishment in British state schools, the practice retained a stubborn, albeit tenuous, foothold within the British private school system. The history of corporal punishment and school discipline in Britain is inextricably linked to the rise of the great “public schools” such as Eton, Rugby and Harrow. Such schools are “public” in name only, and are in fact exclusive private schools, which have historically exerted much influence over the rest of the educational system. Until fairly

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<sup>57</sup> *The Times* 17 June 1988.

<sup>58</sup> Harris 1991 91(2) *Journal of Social Welfare and Family Law* 111.

<sup>59</sup> *Today* 8 June 1990.

<sup>60</sup> *The Daily Telegraph* 8 June 1990.

<sup>61</sup> *The Times, London* 29 January 1997.

<sup>62</sup> *Ibid.*

recently, corporal punishment formed part of the hallowed tradition of most “public schools”, and gave the practice a prestige it did not deserve.

The link between “public school” tradition and corporal punishment caused the practice to be widely imitated by other schools in Britain and throughout her empire. The force of this tradition may account for the remarkable resilience of the practice, and its resistance to change, even in the latter half of the twentieth century. Indeed, the power of the tradition was noted as long ago as 1867, in a report by two French academics on the British education system:

“The whip... is one of those ancient English traditions which continue because they have continued ... A foreigner finds it difficult to conceive of the perseverance with which English teachers cling to this old and degrading custom.”<sup>63</sup>

The frequency and severity with which generations of British “public” schoolboys were beaten by “flogging headmasters” such as Dr Keate of Eton and Dr Busby of Westminster has been well documented.<sup>64</sup> Some of England’s most famous sons were profoundly affected by the beatings they received while part of the “public school” system. George Orwell was beaten with a riding crop by the headmaster of St Cyprian’s school for wetting his bed, and Winston Churchill was subjected to severe beatings at St George’s preparatory school.<sup>65</sup>

The publication of the Newsom Report in 1968 was one of the first indications that corporal punishment was beginning to loosen its hold over the British “public school” system. The report noted that corporal punishment had been used frequently in British public schools in the past, often for trivial offences, but added that there was “good evidence that a marked change has taken place in the last decade, and beating is on the decline.”<sup>66</sup> Despite this optimistic observation, corporal punishment was still in evidence almost twenty years later when the practice was legally abolished in British state schools.

The legal ban on corporal punishment in state schools placed those “public schools” which still used the cane in a difficult position, since the ban also applied to state-assisted pupils at those schools. If they wished to continue using corporal punishment, they would have to differentiate between pupils who could and could not be legally beaten.<sup>67</sup> In May 1988 an attempt was made in the House of Lords to remedy this anomaly. Lord Henderson proposed that the ban on corporal punishment be extended to all schools, and tabled an amendment to the Education Reform Bill to this effect.<sup>68</sup> Baroness David argued in favour of the amendment that the law as it stood amounted to “discrimination against the wealthy”. The amendment

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<sup>63</sup> Gibson 66.

<sup>64</sup> Gibson 64-79.

<sup>65</sup> Gibson 68.

<sup>66</sup> Gibson 93.

<sup>67</sup> *The Times* 25 February 1987.

<sup>68</sup> *The Times*, 29 April 1988.

was opposed on the grounds that it amounted to an attack on the independence of independent schools, and was an invasion of the parents' charter. The latter arguments prevailed and the amendment was defeated by 139 votes to 105.<sup>69</sup>

Anti-caning groups such as STOPP (Society of Teachers Opposed to Physical Punishment) remained committed to having the ban on corporal punishment extended to the "public schools", and were determined to apply pressure at the international as well as the national level. Various applications were made to the European Commission of Human Rights, concerning beatings administered at British "public" schools.<sup>70</sup>

While these various legal cases continued to make slow progress through the European court system, certain British "public schools" continued to practise corporal punishment. Estimates as to how many "public schools" still used the cane differed over time. According to *The Schools Book*, a guide to independent education, 27 "public schools" still permitted the use of corporal punishment in 1988.<sup>71</sup> In December 1990 the pressure group EPOCH (End Physical Punishment of Children) estimated that more than fifty schools still used the cane or some other form of corporal punishment.<sup>72</sup> In January 1991 a report in *The Guardian* stated that about fifteen independent schools still advertised that they used the cane.<sup>73</sup> On 5 April 1992 *The Sunday Times* reported that according to "official guides" only six of "Britain's 600 leading independent schools" still used the cane, but it was estimated that corporal punishment was employed by "as many as 100 minor schools".<sup>74</sup>

By April 1992 those opposed to corporal punishment had still not managed to secure a decisive victory in the European Court on the question of caning in "public schools". Hopes were pinned on two further test cases which were being brought before the European Court of Human Rights.<sup>75</sup> In November 1992 the hopes of the anti-caning groups were partly dashed, when it was announced that one of the test cases would not proceed, since the British government had decided to settle the case out of court. The applicant concerned, a certain Matthew Prince, who had received four cuts with the cane in 1983, was to be paid an amount of eight thousand pounds in damages plus twelve thousand pounds legal costs. In 1989 it was estimated that the total cost of settling such claims over the years probably amounted to over four million pounds.<sup>76</sup>

On 25 March 1993, the remaining hopes of the abolitionists for a decisive legal victory in the European Court were dashed, when the court handed down its judgment in the second of the two test cases mentioned above. The applicant in this case was a certain Jeremy Costello-Roberts who had been

<sup>69</sup> *The Daily Telegraph* 17 May 1988.

<sup>70</sup> See, eg, *The Times* 26 August 1986.

<sup>71</sup> *The Daily Telegraph* 29 November 1988; and *The Times* 29 November 1988.

<sup>72</sup> *The Times* 31 December 1990.

<sup>73</sup> *The Guardian* 25 January 1991.

<sup>74</sup> *The Sunday Times* 5 April 1992.

<sup>75</sup> *Ibid.*

<sup>76</sup> Newell (1989) 117.

hit three times on the bottom with a rubber-soled gym shoe by the headmaster of a private school he was attending. The incident took place in October 1985 when Costello-Roberts was seven years old.<sup>77</sup> The application alleged *inter alia* that the punishment was a breach of Articles 3 and 8 of the European Convention on Human Rights, in that it was degrading (Article 3) and amounted to interference by a public authority in the applicant's private and family life (Article 8). The court held, by five votes to four in respect of Article 3 and unanimously in respect of Article 8, that neither Article had been breached in this case. The majority of the court felt that the punishment meted out did not reach the minimum level of severity for it to constitute "degrading" treatment. Further, the punishment did not interfere with the applicant's private life, since sending a child to school necessarily involved some degree of interference with his or her private life.<sup>78</sup>

Following the disappointing decision of the European Court in the Costello-Roberts case, the issue of corporal punishment in schools was once again taken up in Parliament.<sup>79</sup> An amendment was proposed in the House of Lords to the Education Bill of 1993, to abolish the use of physical punishment in independent schools. Following a debate in the House on 10 May 1993, the proposed amendment was defeated by 128 votes to 121. According to *The Times* of 11 May 1993, corporal punishment was still thought to be used in approximately thirty independent schools in Britain.<sup>80</sup>

It was to take a further five years before the British House of Commons finally voted in March 1998 to abolish corporal punishment in independent schools in England and Wales.<sup>81</sup> According to *The Daily Telegraph*, the Tories forced an all-night debate on the Bill which finally brought about the ban, noting wryly that: "It meant that the much-anticipated ban on corporal punishment did not happen until after 5.30 am – just in time for a cold bath before breakfast."<sup>82</sup> Britain was the last country in the European Union to abolish corporal punishment in all of its schools.<sup>83</sup>

## 8 CORPORAL PUNISHMENT IN THE AFRICAN CONTEXT

Turning to a discussion of corporal punishment within the South African educational system, it is useful to begin by referring briefly to the role of this

<sup>77</sup> *The Times* 14 November 1992; and *The Herald* 14 November 1992.

<sup>78</sup> *The Guardian* 26 March 1993 8; *The Daily Mail* 26 March 1993 17; *The Daily Express* 26 March 1993 21; *The Times* 26 March 1993 17; *The Independent* 26 March 1993; and *The Times* 13 April 1993.

<sup>79</sup> *The Times* 2 April 1993.

<sup>80</sup> *The Times* 11 May 1993; and *The Daily Telegraph* 11 May 1993.

<sup>81</sup> See s 131 of the School Standards and Framework Act (1998), which amended s 548 of the Education Act (1996). See also *The Independent* 25 March 1998. It was to take even longer to secure the complete abolition of corporal punishment in all Scottish and Northern Irish independent schools. It was abolished in Scottish schools in 2000 (see s 16 of the Standards in Scotland's Schools etc Act 2000) and in Northern Irish schools in 2003 (see *Belfast Telegraph* 27 June 2003).

<sup>82</sup> *Daily Telegraph* 28 March 1998.

<sup>83</sup> *Daily Telegraph* 11 March 1998.

general form of punishment within the African context as a whole, starting with the colonial period. This may in part explain the tenacious hold which this form of punishment seems to maintain over the South African psyche.

Much has been written about the role played by corporal punishment in the expansion, entrenchment and maintenance of colonialism in Africa. For example, David Killingray has pointed to the extensive use made of this brutal form of punishment in British Colonial Africa.<sup>84</sup> In relation to the Belgian Congo, Bernault writes that “the famous *chicotte* – whipping administered by agents of the Force Publique – became so widespread that it later remained as an icon of colonial punishment in the memories of contemporary Zairians”.<sup>85</sup> In relation to German East Africa, James Read describes the “widespread and frequent use of corporal punishment as a summary punishment”.<sup>86</sup> In colonial Natal, the infamous cat-o-nine-tails was so widely used within the penal system of the colony that the Prison Reform Commission of 1906 described it as the “cult of the Cat”.<sup>87</sup> In Namibia, when judicial corporal punishment was finally abolished in that country, the Chief Justice wrote as follows in a judgment of the Namibian High Court:

“[The] infliction of corporal punishment by judicial and quasi-judicial organs in accordance with South African legislation introduced into the country during the colonial rule, and even more so by the arbitrary extra-judicial infliction of corporal injuries as a result of physical treatment meted out by the officials of the ruling administrative power and which were in many cases of an extreme nature, such as torture, inhuman and excessive beatings, left an indelible impression on the people of Namibia. It is not surprising that a deep revulsion in respect of such treatment, including corporal punishment, has developed.”<sup>88</sup>

Corporal punishment constituted a powerful weapon of domination and repression in the hands of the colonists. A central purpose of punishment in the colonies was to assert the sovereignty and authority of the colonial state, which often took precedence over the rehabilitation of the offender. The roots of corporal punishment lay in pre-modern times, when kings ruled by divine right, and the absolute power of the king was reflected in a range of brutal sanguinary punishments, which inflicted infinite pain on the bodies of those who dared to challenge that power. Corporal punishment was the antithesis of more modern forms of correction such as imprisonment, which sought to reform and rehabilitate offenders, so that they could be reintegrated into a “civilised society” comprised, in theory, of equal citizens responsible for shaping the social contract upon which the modern nation

<sup>84</sup> Killingray “Punishment to Fit the Crime? Penal Policy and Practice in British Colonial Africa” in Bernault (ed) *A History of Prison and Confinement in Africa* (2003) 97 106-110.

<sup>85</sup> Bernault, “The Politics of Enclosure in Colonial and Post-Colonial Africa” in Bernault (ed) *A History of Prison and Confinement in Africa* (2003) 1 15.

<sup>86</sup> Read “Kenya, Tanzania and Uganda” in Alan Milner (ed) *African Penal Systems* (1969) 91 109. No fewer than 5,944 official floggings were administered in the colony during the period 1911 to 1912.

<sup>87</sup> Peté “Punishment and Race: The Emergence of Racially Defined Punishment in Colonial Natal” 1986 1 *Natal University Law and Society Review* 99 102. See also Peté and Devenish “Flogging, Fear and Food: Punishment and Race in Colonial Natal” March 2005 31(1) *Journal of Southern African Studies* 3-21.

<sup>88</sup> Per Berker CJ in *Ex Parte Attorney General, Namibia: In Re Corporal Punishment by Organs of the State* 1991 3 SA 76 (Nm) 94G-H.

state was said to be based. To the colonists, who perceived themselves to be surrounded on all sides by “savage natives”, corporal punishment seemed an eminently suitable method of dealing with those who resisted colonial rule.<sup>89</sup> As Bernault states:

“[C]ontrary to the ideal of prison reform in Europe, the colonial penitentiary did not prevent colonizers from using archaic forms of punishment, such as corporal sentences, flogging, and public exhibition. In Africa, the prison did not replace but rather supplemented public violence ... [T]he principle of amending ... criminals was considerably altered in the colonies, and largely submerged by a coercive doctrine of domination over Africans, seen as a fundamentally delinquent race.”<sup>90</sup>

Apart from its role in buttressing colonial power and authority, thereby allaying the fears of the white colonists, there is another important reason why corporal punishment was regarded as indispensable by the colonial authorities, particularly when it came to punishing black offenders. This reason is connected to the peculiar ideology of racist paternalism which underpinned colonialism. The colonists regarded the indigenous inhabitants of Africa not only as brutal savages, but also as simple, childlike creatures, who needed to be guided along the path to civilization by the superior white race. What better way to mould the “childlike Native” than by the application of corporal punishment, which was regarded as particularly suitable for punishing juveniles. More modern forms of punishment, such as imprisonment, implied that the offender was a citizen who had gone astray and needed to be rehabilitated in order to enable him to resume his rightful place in society. In contrast, the whipping or beating of an offender implied a bond between the punisher and the punished, which was both intimate as well as hierarchical. This was the bond between an owner and his slave, a master and his servant, a patriarch and his wife or child. Ironically, therefore, while corporal punishment was regarded as a powerful weapon to be deployed against the “brutal savage”, at the same time it was regarded as an intimate form of punishment to be used in a loving but firm way to admonish and correct those for whose spiritual and moral guidance the patriarch was responsible.<sup>91</sup> The two conflicting poles of the colonial psyche, fear on the one hand and racist paternalism on the other, each reinforced the belief of

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<sup>89</sup> For a more detailed discussion on the role of corporal punishment in the enforcement of colonial power and authority see: Peté “Spare the Rod and Spoil the Nation?: Trends in Corporal Punishment Abroad and Its Place in the New South Africa” 1994 7 *South African Journal of Criminal Justice* 295 301-303.

<sup>90</sup> Bernault 3. One of the current authors, Peté, makes a similar point in certain of his own previous work. In commenting on the differences between prisons in Europe and Africa during the colonial period, in particular prisons in England as compared to those in the Colony of Natal, Peté points out that: “[I]n Natal there was no need for the rigid discipline and clockwork regularity of an institution such as England’s Pentonville prison, since the colony possessed no large scale capitalist industry requiring a well disciplined work force. The black farm labourers of Natal had a far simpler lesson to learn than that taught by such a finely tuned institution as Pentonville. That lesson was that the white man’s word was law, since it was he who held the whip in his hand.” See Peté 1986 1 *Natal University Law and Society Review* 101-102.

<sup>91</sup> Seen from this perspective, an added dimension is afforded to the meaning of the following phrase which is traditionally uttered by a father about to administer a hiding to his child: “This is going to hurt me more than it is going to hurt you.”



the white colonists that corporal punishment was the most suitable method of punishing, particularly African, offenders.

The end of the colonial era in South Africa did not bring an end to the popularity of corporal punishment. In 1945 the Lansdowne Commission recommended that judicial corporal punishment be retained in South Africa, even though it had been abolished in most western countries.<sup>92</sup> Corporal punishment was used extensively as a means of repression during the apartheid era, and constituted an important weapon in the hands of the apartheid state. During the 1950s, for example, the apartheid state passed legislation which made whipping compulsory for certain offences.<sup>93</sup> During the early 1990s, just before the advent of democracy, around 30 000 offenders, mainly juveniles, were being subjected to judicial corporal punishment each year in South Africa.<sup>94</sup>

The practice of corporal punishment is thus deeply entrenched in the history of Africa in general and South Africa in particular. It is in this broad context that the deployment of this form of punishment within the educational system needs to be understood.

## 9 CORPORAL PUNISHMENT IN SOUTH AFRICAN SCHOOLS

Corporal punishment formed an integral part of the South African educational system from colonial times. This was true both for schools serving mainly white pupils as well as those catering predominantly for black pupils. For example, writing of the white boys' schools which shaped settler masculinities in colonial Natal, Morrell points out that they were regarded as places where boys were toughened into men. This was in line with changing definitions of masculinity during the late Victorian period, which began to stress Spartan toughness.<sup>95</sup> In keeping with an ethos of "muscular Christianity" teachers believed that boys needed to be toughened and to this end consciously inserted hardships into the system. Corporal punishment was considered normal and, within reason, essential. Most boys accepted and even preferred this form of punishment to other non-physical forms not just because the system required it, but because it was considered macho to be beaten, and proved their masculinity. Often boys would "race" each other to see who could accumulate the most beatings over a certain time period.<sup>96</sup>

<sup>92</sup> Midgley "Corporal Punishment and Penal Policy – Notes on the Continued Use of Corporal Punishment with Reference to South Africa" 1982 73 *Journal of Criminal Law and Criminology* 395.

<sup>93</sup> These provisions were relaxed only in 1965. See Sloth-Nielsen "Corporal Punishment – Acceptable State Violence?" in Hanssen and Van Zyl Smit (eds) *Towards Justice? Crime and State Control in South Africa* (1990) 201-202

<sup>94</sup> Peté 1994 7 *South African Journal of Criminal Justice* 303.

<sup>95</sup> Morrell *From Boys to Gentlemen: Settler Masculinity in Colonial Natal 1880-1920* (2001) 52.

<sup>96</sup> Morrell 59-61.

During the apartheid period, corporal punishment formed an important part of the South African educational system. Porteus, Vally and Ruth comment as follows:

“During the apartheid years, ‘Christian National Education’ and the educational philosophies that guided it encouraged educators to believe that corporal punishment was the ‘scientifically irrefutable’ way to educate children. During these years, corporal punishment was sanctioned by law, and encouraged by teacher training institutions ... Over time, many educators and parents have come to believe deeply in the effectiveness of corporal punishment. Along the way, the practice of corporal punishment became deeply woven into the fabric of our society ...”<sup>97</sup>

## 10 THE ABOLITION OF CORPORAL PUNISHMENT IN SOUTH AFRICAN SCHOOLS

With the demise of apartheid and the first democratic election in South Africa in 1994, the tide began to turn against corporal punishment. In 1995 judicial corporal punishment of juveniles was abolished following the Constitutional Court case of *S v Williams*.<sup>98</sup> The court in that case stated that “at this time, so close to the dawn of the 21st century, juvenile whipping is cruel, it is inhuman and it is degrading.”<sup>99</sup> Following that case, it was only a matter of time before corporal punishment in South African schools would be abolished as well. This was brought about in 1996 following the promulgation of two Acts of Parliament, the National Education Policy Act of 1996 and the South African Schools Act 84 of 1996, which effectively outlawed corporal punishment of learners in all South African schools, both public and private.<sup>100</sup> Thus at the stroke of a pen, a practice which had been deeply entrenched in the South African educational system for many years was, rather abruptly, outlawed. To educators, the immediate problem was how to fill the void left by the banning of corporal punishment. Morell comments that:

“At the policy level, government attempted to fill the vacuum left by the banning of corporal punishment in two ways. It introduced school-level codes of conduct and gave parents an unprecedented involvement in school affairs. Both were in line with consensual democratic ideas about school governance. The new approach involved a different philosophy towards punishment – one

<sup>97</sup> Porteus, Vally and Ruth *Alternatives to Corporal Punishment: Growing Discipline and Respect in Our Classrooms* (2001) 5-6. (In collaboration with the South African Human Rights Commission and the British Council.)

<sup>98</sup> 1995 3 SA 632. The court was deciding on an issue of a sentence of judicial juvenile whipping, which was to be meted out in accordance with the provisions of s 294 of the Criminal Procedure Act 51 of 1977.

<sup>99</sup> *S v Williams supra* 658E par 91. De Kock “Constitutionality of the Sentence of Corporal Punishment” June 1996 2(2) *Nexus* 18.

<sup>100</sup> Ss 3(4)(g) and (h) of the National Education Policy Act of 1996 states that “no person shall administer corporal punishment, or subject a student to psychological or physical abuse at any educational institution”. S 10 of the South African Schools Act 84 of 1996 states that: “(1) No person may administer corporal punishment at a school to a learner. (2) Any person who contravenes subsection (1) is guilty of an offence and liable on conviction to a sentence which could be imposed for assault.”

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that stressed consensus, non-violence, negotiation and the development of school communities.”<sup>101</sup>

Despite the noble intentions of the legislature, however, it was clear that many South African educators were opposed to the banning of corporal punishment, which they regarded as a necessary classroom tool.<sup>102</sup> The continued use of corporal punishment in South African schools, even after it was legally abolished in 1996 will be examined in detail in Part Two of this article.

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<sup>101</sup> Morrell “Corporal Punishment in South African Schools: A Neglected Explanation for Its Persistence” 2001 21(4) *South African Journal of Education* 292.

<sup>102</sup> Perhaps, as Porteus, Vally and Ruth argue, this was because many South African educators had “not had the opportunity to consider the growing body of literature on the long-term social impact of corporal punishment”. See Porteus, Vally and Ruth 5-6.