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# XI. Banning Corporal Punishment: International Human Rights Law and US Constitutional Standards

Corporal punishment violates internationally recognized human rights to freedom from cruel, inhuman, and degrading treatment or punishment, and freedom from physical violence. In many instances, it violates the prohibition on discrimination and impinges on children's right to education. Corporal punishment is also contrary to respect for human dignity, a deep-seated guiding principle of international human rights law enshrined in the Universal Declaration of Human Rights.

Numerous international and regional human rights institutions, including the United Nations Committee on the Rights of the Child, the UN Human Rights Committee, and the UN Committee against Torture, have spoken out against corporal punishment in schools.<sup>461</sup> 106 countries and 29 US states have outlawed the practice.

## International Human Rights Law

With a handful of exceptions, children have the same human rights as adults. For example, they should never be subjected to torture or ill-treatment, and if charged with a crime, they have the right to a fair trial. Children also have certain rights not afforded to adults. Even before the drafting of major human rights treaties, governments acknowledged these special rights of children that reflect their unique needs and vulnerabilities, and the responsibility of governments and governmental institutions such as schools to protect them.

In November 1959 the United Nations General Assembly adopted the Declaration on the Rights of the Child, which recognized that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.”<sup>462</sup> The United States was one of the then 78 members of the UN General Assembly, which voted unanimously to adopt the declaration.<sup>463</sup> Since that time, nearly all governments, including the United States, have further elaborated the specific rights of children, including in educational settings.

## Freedom from Cruel, Inhuman, or Degrading Treatment or Punishment

The United States has signed and ratified the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (Convention against Torture) and the International Covenant on Civil and Political Rights (ICCPR). Each of these treaties prohibits the use of cruel, inhuman, or degrading treatment or punishment.<sup>464</sup> International human rights bodies have repeatedly emphasized that corporal punishment is incompatible with these provisions.

Article 7 of the ICCPR states that “[n]o one shall be subjected to ... cruel, inhuman or degrading treatment or punishment.”<sup>465</sup> The Human Rights Committee (HRC), which offers the authoritative interpretation of the ICCPR in addition to its role as the body charged with overseeing governmental implementation of the treaty, issued a General Comment on the scope of obligations under article 7, concluding that this “prohibition must extend to corporal punishment, including excessive chastisement ordered ... as an educative or disciplinary

measure.”<sup>466</sup> The HRC emphasizes, “Article 7 protects, in particular, children, pupils and patients in teaching and medical institutions.”<sup>467</sup> In its concluding observations (which the HRC issues after it has examined a government’s record under the treaty), it repeatedly has stated that governments should abolish corporal punishment in schools.<sup>468</sup>

Corporal punishment may also violate US obligations under the Convention against Torture. Article 16 of the convention obliges the US government to undertake to prevent acts of cruel, inhuman or degrading treatment or punishment.<sup>469</sup> The Committee against Torture, the body charged with overseeing state compliance with the Convention against Torture, declared that the “continuing application” of corporal punishment “could constitute in itself a violation of the Convention.”<sup>470</sup>

## The Right to Freedom from Physical Violence

Various international instruments protect the child’s right to be free from any form of physical violence. For instance, article 9 of the ICCPR states that “[e]veryone has the right to liberty and security of person,”<sup>471</sup> while article 5(b) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), to which the US is also party, provides for non-discrimination in the enjoyment of “the right to security of person and protection by the State against violence or bodily harm.”<sup>472</sup>

The Convention on the Rights of the Child (CRC), the world’s most universally ratified human rights treaty, includes the fundamental recognition of a child’s right to be free from any form of physical or mental violence, and the special capacity of children to learn from their mistakes and rehabilitate themselves. While the United States is one of only two countries not to have ratified the treaty, it is a signatory and the treaty’s provisions should be treated as authoritative guidance (as discussed below). Article 19 states:

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.<sup>473</sup>

In 2006 the Committee on the Rights of the Child, the international body charged with monitoring compliance with the CRC, issued General Comment 8, discussing the right of the child to protection from corporal punishment. General Comments are considered authoritative interpretations of the treaty. The committee found that article 19 “does not leave room for any level of legalized violence against children” and that “[c]orporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.”<sup>474</sup>

## The Inherent Dignity of the Child and the Right to Education

Protecting the dignity of each and every individual is the fundamental guiding principle of international human rights law. Corporal punishment violates children’s right to human dignity, found in the preamble to the Universal Declaration of Human Rights and in many other legal documents to which the US is party, including the ICCPR.<sup>475</sup>

Both the Committee on the Rights of the Child and the Committee on Economic, Social, and Cultural Rights have expressly stated that corporal punishment is inconsistent with the fundamental right to human dignity, and further asserted that the child’s human dignity must be upheld in school discipline policies. Article 28 of the CRC discusses the right to education, and states that “States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity[.]” In General Comment 8, the Committee on the Rights of the Child comments on this article, noting that corporal punishment

“directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity.”<sup>476</sup> Likewise, the Committee on Economic, Social and Cultural Rights, the body charged with overseeing the International Covenant on Economic, Social and Cultural Rights (ICESCR), states in General Comment 13 (on the right to education):

In the Committee’s view, corporal punishment is inconsistent with the fundamental guiding principle of international human rights law enshrined in the Preambles to the Universal Declaration and both Covenants: the dignity of the individual.<sup>477</sup>

In addition, “[t]he Committee welcomes initiatives taken by some States parties which actively encourage the schools to introduce ‘positive,’ non-violent approaches to school discipline.”<sup>478</sup>

The Committee on the Rights of the Child defines corporal punishment broadly. Corporal punishment is “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light.”<sup>479</sup> This encompasses all forms of corporal punishment currently used in the US, including but not limited to paddling.

## **Non-discrimination and Equality**

The use of corporal punishment in US public schools can also violate children’s rights to non-discrimination, a fundamental principle of human rights law. As a consequence of seeking public education, minority children, specifically African-American children, find their rights to security of person violated at disproportionate rates.

Article 5(b) of the International Convention on the Elimination of All Forms of Racial Discrimination requires the US to protect “the right of everyone, without distinction ... to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution.” Likewise, article 5(e)(v) of the ICERD requires non-discrimination in access to education and training. When compared to relevant percentages of both nationwide and statewide student populations, African-American students are significantly more likely to be punished than their white counterparts. The racially disparate use of corporal punishment in US public schools subjects students to violations of their rights to be free from physical violence and to access education. In effect, African-American students have their rights to security of person violated at disproportionate rates merely as a consequence of participating in public education.

Article 24 of the ICCPR provides that “every child shall have, without any discrimination as to race, color, sex ... the right to such measures of protection as are required by his status as a minor”; and article 2 states that the rights in the ICCPR must be recognized “without distinction of any kind.”<sup>480</sup> To the extent that the ICCPR prohibits corporal punishment through articles 7 and 9 (see above), that prohibition must be upheld in a non-discriminatory manner.

Corporal punishment also violates article 26 of the ICCPR, which mandates that “all persons ... are entitled without any discrimination to the equal protection of the law.” Corporal punishment violates the right to equal protection by allowing children to be assaulted in the name of discipline. Criminal laws on assault should, at a minimum, protect children in the same way that they protect adults. In fact, human rights law provides for additional protection for children due to their vulnerability.<sup>481</sup> Yet corporal punishment leaves children deprived of the very protections assured to adults.

## **Parents’ Rights**

Parents have “the prior right to choose the kind of education that shall be given to their children.”<sup>482</sup> Furthermore, as guardians of their children, they must be able to uphold and defend their children’s rights. The

preamble of the Convention on the Rights of the Child affirms that precisely because of their “physical and mental immaturity,” children need “special safeguards and care, including appropriate legal protection.”<sup>483</sup> Children cannot defend their rights on their own; parents have a duty to aid them in exercising those rights.<sup>484</sup>

Parents who try to prevent their children from being subjected to corporal punishment, or who seek redress after their children have been paddled, are very much acting within their rights under international law.<sup>485</sup> Furthermore, the state has both an obligation to respect and ensure children’s rights,<sup>486</sup> and an obligation to respect the responsibilities of parents who are trying to protect their children’s rights.<sup>487</sup> Parents should be given fair hearings and proceedings in order to uphold their children’s right to be free from corporal punishment.

## The United States and International Human Rights Law

The United States is obliged to follow the international norms articulated above. For instance, the United States is party to the ICCPR and the Convention against Torture. However, it attached limiting reservations to these treaties that attempt to restrict both the scope of the treaties and their use in domestic court proceedings.<sup>488</sup> The United States sought to limit the domestic impact of the ICCPR and the Convention against Torture by declaring both treaties to be “non-self-executing,” that is, they cannot be relied upon to enforce rights in US courts without enabling legislation. The United States asserts that existing state and federal laws adequately protect citizens from violations of the treaties; yet in reality, both the ICCPR and the Convention against Torture offer protections broader than those found under US law. The prohibition on corporal punishment is among them.

US constitutional law requires both individual states and the federal government to uphold human rights treaties made under the authority of the United States. The US Constitution states:

[A]ll treaties made, or which shall be made, under the authority of the United States shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Law of any State to the contrary notwithstanding.<sup>489</sup>

Upholding this constitutional principle, the US Supreme Court has stated, “[I]nternational law is part of our law, and must be ascertained and administered by the courts of justice of the appropriate jurisdiction[.]”<sup>490</sup> Treaties of the United States have been held to be binding on states independent of the will and power of state legislatures.<sup>491</sup> Human rights treaties, like other treaty obligations of the US government, are similarly binding on state governments, although this fact is not commonly understood or accepted by states or by the federal government.<sup>492</sup> Apart from the binding nature of treaty obligations, the Supreme Court has often relied upon international human rights standards as “instructive” in interpreting US constitutional obligations.<sup>493</sup> Therefore, not only should state officials adhere to the prohibition on corporal punishment, but the federal government should support those states, including through federal funding, that eliminate the practice in the future.

The United States also sought to circumscribe the domestic impact of the ICCPR and the Convention against Torture by limiting the scope of the rights acknowledged. For instance, the United States considers itself bound by the right to freedom from cruel, inhuman, and degrading treatment only to the extent that cruel and unusual punishment is prohibited by the US Constitution.<sup>494</sup> Yet in 1995, the Human Rights Committee found that the US reservation to article 7 (on cruel, inhuman, and degrading treatment) was incompatible with the object and purpose of the ICCPR, and therefore invalid.<sup>495</sup> US law on corporal punishment falls short of international standards; and, at a minimum, the federal and state governments should prevent and remedy violations of the prohibition on corporal punishment in keeping with their obligations under international law.

As well as upholding its obligations under the ICCPR and the Convention against Torture, the United States must adhere to standards articulated in the Convention on the Rights of the Child. The CRC is nearly universally

accepted: as of 2005, 192 countries were party to it. Singapore is the only party that has issued a declaration on the use of corporal punishment in the context of its obligations under the CRC.<sup>496</sup> The United States and Somalia are the only two countries in the world that have failed to ratify the CRC, although both have signed it.<sup>497</sup> As a signatory to the convention, the United States must not take actions that would defeat the CRC's object and purpose.<sup>498</sup>

In addition to being prohibited from defeating the object and purpose of the CRC as a signatory, the US government has proclaimed its commitment to the CRC's principles on several occasions. The Supreme Court explicitly acknowledged the CRC's authority as an expression of "the overwhelming weight of international opinion" in interpreting domestic legal standards, observing that the "express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom."<sup>499</sup> When Ambassador Madeleine Albright, as the US permanent representative to the UN, signed the CRC on behalf of the United States, she declared, "The Convention is a comprehensive statement of international concern about the importance of improving the lives of the most vulnerable among us, our children.... United States participation in the Convention reflects the deep and long-standing commitment of the American people."<sup>500</sup> The United States has reaffirmed this commitment on subsequent occasions. For example, in 1999 Ambassador Betty King, US representative to the UN Economic and Social Council, stated:

Although the United States has not ratified the Convention on the Rights of the Child, our actions to protect and defend children both at home and abroad clearly demonstrate our commitment to the welfare of children. The international community can remain assured that we, as a nation, stand ready to assist in any way we can to enhance and protect the human rights of children wherever they may be.<sup>501</sup>

In sharp contrast to its expressed desire to protect the human rights of children, however, certain individual states in the US have taken no steps to reduce or eliminate the use of corporal punishment. In addition, while the United States is a federal system in which considerable power over education rests with state and local officials, the federal government has obligations and authority to secure compliance with human rights laws among its constituent states.<sup>502</sup>

## US Law Permitting Corporal Punishment

Despite the federal government's obligations to secure compliance with binding human rights norms among the states, federal law fails to live up to the international standards protecting children from corporal punishment. Corporal punishment has been permitted under US common law for centuries.<sup>503</sup> In 1977 the Supreme Court ruled that routine corporal punishment is not considered cruel and unusual punishment, and does not per se violate procedural due process.<sup>504</sup> Since then, however, a majority of the states have enacted legislation outlawing the use of corporal punishment in public schools.<sup>505</sup> The federal standards that continue to permit corporal punishment were established decades ago; it is incumbent on the US government to bring its law into line with international commitments.

### Cruel and Unusual Punishment

In the 1977 decision *Ingraham v. Wright*, the US Supreme Court held that the cruel and unusual punishments clause of the Eighth Amendment to the US Constitution does not apply to disciplinary corporal punishment in public schools.<sup>506</sup> The majority argued that the history of the Eighth Amendment and prior decisions of the Supreme Court indicate that the prohibition on cruel and unusual punishments was designed to protect those convicted of a crime,<sup>507</sup> and it declined to extend the prohibition to school disciplinary practices.<sup>508</sup> The majority further argued that the openness of the public school and its supervision by the community offers

safeguards against the kinds of abuses to which convicted criminals may be subjected.<sup>509</sup> This argument stands in opposition to international jurisprudence, as discussed above.

The ruling in *Ingraham* was supported by only a narrow majority of the Court.<sup>510</sup> The dissenting opinion points out some flaws in the majority's argument, noting that "the constitutional provision is against cruel and unusual punishments; nowhere is that prohibition limited or modified by the language of the Constitution.... No one can deny that spanking of schoolchildren is 'punishment' under any reasonable reading of the word."<sup>511</sup> The dissent goes on to argue that "[i]f there are some punishments that are so barbaric that they may not be imposed for the commission of crimes ... then, a fortiori, similar punishments may not be imposed on persons for less culpable acts, such as breaches of school discipline."<sup>512</sup>

The US has attempted to argue that the domestic interpretation of the cruel and unusual punishments clause of the Eighth Amendment governs the scope of US obligations to uphold the international prohibition on cruel, inhuman, and degrading treatment.<sup>513</sup> As discussed above, the Human Rights Committee rejects this argument. In the case of corporal punishment, US standards fall far short of the protections offered to children under international law.

## Due Process

Federal law acknowledges that children have the right to personal security which is jeopardized when corporal punishment is administered.<sup>514</sup> The Supreme Court noted in *Ingraham* that the child "has a strong interest in procedural safeguards that minimize the risk of wrongful punishment."<sup>515</sup> Nonetheless, the Supreme Court held that imposing additional safeguards—such as prior notice and a hearing before corporal punishment is administered—would be costly and would intrude on the decision-making of the public school authorities.<sup>516</sup> Other federal courts have ruled that adequate common law remedies exist for excessive corporal punishment.<sup>517</sup> Yet, as demonstrated above, these remedies are often illusory.

In other words, federal law asserts that while children's rights exist, corporal punishment does not necessarily violate those rights and the government is not obliged to prevent abuses before they happen. The dissent in *Ingraham* argues that this is problematic: "even if the student could sue for good faith error in the infliction of punishment, the lawsuit occurs after the punishment has been finally imposed. The infliction of physical pain is final and irreparable; it cannot be undone[.]"<sup>518</sup> Indeed, as our research demonstrates, the legal procedures available in the US for redressing instances of corporal punishment are severely inadequate.

The Supreme Court has not yet ruled on whether a student has a constitutional right to be free from excessive corporal punishment.<sup>519</sup> Lower federal courts appear to recognize such a right, though they are split as to the underlying reasons.<sup>520</sup> Some courts argue that students have the right to be free from corporal punishment that is so brutal and disproportionate to the misconduct that it "shocks the conscience,"<sup>521</sup> while others argue students have a right to be free from forms of corporal punishment that are "arbitrary, capricious, or wholly unrelated to the legitimate state goal of maintaining an atmosphere conducive to learning."<sup>522</sup> Federal courts should bring this jurisprudence into line with international standards and protect children from all forms of corporal punishment.

## Trends to Abolish Corporal Punishment

Governments worldwide and the majority of US states have now prohibited corporal punishment in schools, providing a clear measure of accelerating global adherence to the prohibition. By early 2008, 106 countries had prohibited corporal punishment in schools.<sup>523</sup> For instance, the European Court of Human Rights has considered

a series of cases on corporal punishment<sup>524</sup> that have resulted in the abolition of corporal punishment in all schools in the United Kingdom and in other European states.<sup>525</sup>

In keeping with transnational trends, school districts and states throughout the US are upholding the rights of children by rejecting corporal punishment at an accelerating rate. Twenty-nine states and the District of Columbia have passed bans on corporal punishment in public schools.<sup>526</sup> Of the remaining 21 states, only eight of them paddle more than one percent of school children, according to the US Department of Education.<sup>527</sup> Ninety-five of the 100 largest school districts in the US have prohibited corporal punishment in their public schools, including major school districts in Texas such as Houston, Dallas, Fort Worth, Austin, and El Paso.<sup>528</sup> Jackson, the largest school district in Mississippi, has also banned paddling. Mississippi, Texas, and other states that still use paddling must join this accelerating trend.

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<sup>461</sup> UN Committee on the Rights of the Child, General Comment 8, The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment, UN Doc. CRC/C/GC/8 (2006), para. 18; UN Human Rights Committee, General Comment 20, Article 7, Replaces General Comment 7 Concerning Prohibition of Torture and Cruel Treatment or Punishment, UN Doc. CCPR/C/GC/20\* (1992), para. 5; Report of the Committee against Torture, UN GAOR, UN Doc. A/50/44 (1995), para. 169.

<sup>462</sup> UN General Assembly, Resolution 1386 (XIV), November 20, 1959. Similarly, article 19 of the American Convention on Human Rights states that “[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.” American Convention on Human Rights (“Pact of San José, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), art. 19.

<sup>463</sup> While United Nations General Assembly resolutions do not in and of themselves constitute binding international law, passage of resolutions by unanimous consent is strong authority for asserting their status as customary international law. Schwebel, “The Effect of Resolutions of the U.N. General Assembly on Customary International Law,” *American Society of International Law Proceedings*, vol. 73 (1979), p. 301.

<sup>464</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States June 8, 1992, art. 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 UN GAOR Supp. (No. 51) at 197, UN Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United States October 21, 1994, art. 16.

<sup>465</sup> ICCPR, art. 7.

<sup>466</sup> UN Human Rights Committee, General Comment 20, para. 5.

<sup>467</sup> *Ibid.*

<sup>468</sup> UN Human Rights Committee, “Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations by the Human Rights Committee: United Kingdom of Great Britain and Northern Ireland,” UN Doc. CCPR/C/79/Add.55 (1995), paras. 4 and 5; UN Human Rights Committee,

“Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations by the Human Rights Committee: Tanzania,” UN Doc. CCPR/C/79/Add.79 (1998), para. 16; UN Human Rights Committee, “Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Concluding Observations by the Human Rights Committee: Greece,” UN Doc. CCPR/CO/83/GRC (2005), para. 16.

[469](#) Convention against Torture, art. 16.

[470](#) Report of the Committee against Torture, UN GAOR, UN Doc. A/50/44 (50th Sess., 1995), para. 169.

[471](#) ICCPR, art. 9.

[472](#) International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 UN GAOR Supp. (No. 14) at 47, UN Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by the United States October 21, 1994, art. 5(b).

[473](#) Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 UN GAOR Supp. (No. 49) at 167, UN Doc. A/44/49 (1989), entered into force September 2, 1990, signed by the United States February 16, 1995, art. 19 (emphasis added).

[474](#) UN Committee on the Rights of the Child, General Comment 8, para. 18.

[475](#) Universal Declaration of Human Rights (UDHR), adopted December 10, 1948, G.A. Res. 217A(III), UN Doc. A/810 at 71 (1948), preamble (“Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”).

[476](#) UN Committee on the Rights of the Child, General Comment 8, para. 21.

[477](#) UN Committee on Economic, Social and Cultural Rights, General Comment 13, Article 13, The Right to Education, UN Doc. E/C.12/1999/10 (1999), para. 41.

[478](#) Ibid.

[479](#) UN Committee on the Rights of the Child, General Comment 8, para. 11.

[480](#) ICCPR, arts. 2 and 24.

[481](#) CRC, preamble (“as indicated in the Declaration of the Rights of the Child, ‘the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection.’”).

[482](#) UDHR, art. 26(3).

[483](#) CRC, preamble.

[484](#) CRC, art. 5 (“States Parties shall respect the responsibilities, rights, and duties of parents ... to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”).

[485](#) The Committee on the Rights of the Child notes that “interpretation of a child’s best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence and



the requirement to give due weight to the child's views; it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity." UN Committee on the Rights of the Child, General Comment 8, para. 26.

<sup>486</sup> CRC, art. 2.

<sup>487</sup> CRC, art. 5 .

<sup>488</sup> The US government attached three reservations, five understandings, and two declarations to its ratification of the Convention against Torture. Five reservations, five understandings, and four declarations accompanied the ICCPR. The United States has not ratified the First Optional Protocol to the ICCPR and did not declare itself bound by article 22 of the Convention against Torture. The First Optional Protocol and article 22 allow the committees responsible for monitoring compliance with the treaties to receive complaints from individuals and organizations, in addition to complaints from other governments. The effect of the US positions, combined with inadequate enforcement at the state level of prohibitions on torture and cruel, inhuman, and degrading treatment, is to deny US citizens and others who allege violations of such treaties any forum in which their grievances can be heard or resolved.

<sup>489</sup> US Constitution, art. VI, clause 2.

<sup>490</sup> *The Paquete-Habana*, 175 U.S. 677, 700 (1900). See also *Murray v. The Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804) (statutes "can never be construed to violate ... rights ... further than is warranted by the law of nations"); Harold Hongju Koh, "Is International Law Really State Law?," *Harvard Law Review*, vol. 111 (1998), p. 1824 (noting that customary international law is federal common law and preempts inconsistent state practices).

<sup>491</sup> *Asakura v. City of Seattle*, 265 U.S. 332 (1924) (holding that a treaty made under the authority of the United States stands on the same footing of supremacy as do the provisions of the Constitution and laws of the United States and "operate[s] of itself without the aid of any legislation, state or national; and it will be applied and given authoritative effect by the courts"). See also *Maiorano v. Baltimore & Ohio R. R. Co.*, 213 U.S. 268, 272 (1888); *Baldwin v. Franks*, 120 U.S. 678 (1887); *Head Money Cases*, 112 U.S. 580, 598 (1884); *Chew Heong v. United States*, 112 U.S. 536, 540 (1884); *Foster v. Neilson*, 2 Pet. 253, 314 (1829).

<sup>492</sup> Jordan J. Paust, "Self-Executing Treaties," *American Journal of International Law*, vol. 82 (1988), p. 760 (explaining that when John Jay was secretary of foreign affairs of the Confederation in 1787, he reported to Congress that a treaty "made, ratified and published by Congress, ... immediately [became] binding on the whole nation, and superadded to the laws of the land"). See also *Asakura v. City of Seattle* 265 U.S. 332, 341 (1924) ("The rule of equality established by [the treaty] cannot be rendered nugatory in any part of the United States by municipal ordinances or state laws. It stands on the same footing of supremacy as do the provisions of the Constitution and laws of the United States. It operates of itself without the aid of any legislation, state or national; and it will be applied and given authoritative effect by the courts."); ICCPR, art. 50, (providing that the provisions of the covenant "shall exten[d] to all parts of federal States without any limitations or exceptions."). The UN Human Rights Committee states in its General Comment 31, "The obligations of the Covenant in general and article 2 in particular are binding on every State Party as a whole. All branches of government (executive, legislative and judicial), and other public or governmental authorities, at whatever level—national, regional or local—are in a position to engage the responsibility of the State Party. The executive branch that usually represents the State Party internationally, including before the Committee, may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State Party from responsibility for the action and consequent incompatibility. This understanding flows directly from the principle contained in article 27 of the Vienna Convention on the Law of Treaties, according to which a State Party 'may not invoke the provisions of its internal law as

justification for its failure to perform a treaty.’ ... In this respect, the Committee reminds States Parties with a federal structure of the terms of article 50, according to which the Covenant’s provisions ‘shall extend to all parts of federal states without any limitations or exceptions.’” UN Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, UN Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 4.

<sup>493</sup> *Roper v. Simmons*, 543 U.S. 551, 574 (2005) (“Yet at least from the time of the Court’s decision in *Trop* [1958], the Court has referred to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment ... [of the US Constitution].”).

<sup>494</sup> United Nations Treaty Collection, ICCPR, “United States of America: Reservations,” para. 5; Committee against Torture, “Status of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and Reservations, Declarations and Objections under the Convention,” <http://www2.ohchr.org/english/bodies/ratification/9.htm> (accessed August 8, 2008).

<sup>495</sup> UN Human Rights Committee, “Concluding Observations of the Human Rights Committee: United States of America,” UN Doc. CCPR/C/79/Add 50 (1995), <http://www1.umn.edu/humanrts/hrcommittee/US-ADD1.htm> (accessed August 8, 2008); UN Human Rights Committee, “Concluding Observations of the Human Rights Committee on the Second and Third US Reports to the Committee (2006),” UN Doc. CCPR/C/SR.2395 (2006), <http://www1.umn.edu/humanrts/usdocs/hruscomments2.html> (accessed August 8, 2008) (discussing in detail US failure to comply with article 7 of the Covenant).

<sup>496</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR), “Convention on the Rights of the Child,” <http://www2.ohchr.org/english/bodies/ratification/11.htm> (accessed August 8, 2008) Singapore’s declaration reads: “The Republic of Singapore considers that articles 19 and 37 of the Convention do not prohibit—(a) the application of any prevailing measures prescribed by law for maintaining law and order in the Republic of Singapore; (b) measures and restrictions which are prescribed by law and which are necessary in the interests of national security, public safety, public order, the protection of public health or the protection of the rights and freedom of others; or (c) the judicious application of corporal punishment in the best interest of the child.” A number of states have interpreted Singapore’s declaration as a reservation and objected to it as contrary to the object and purpose of the Convention. “UN Treaty Collection Database,” (Germany: September 4, 1996; Belgium: September 26, 1996; Italy: October 4, 1996; The Netherlands: November 6, 1996; Norway: November 29, 1996; Finland: November 25, 1996; Portugal: December 3, 1996).

<sup>497</sup> The United States signed the CRC on February 16, 1995 and Somalia signed on May 2, 2002.

<sup>498</sup> See Vienna Convention on the Law of Treaties, concluded May 23, 1969, 1155 U.N.T.S. 331, entered into force January 27, 1980, art. 18. Although the United States has signed but not ratified the Vienna Convention on the Law of Treaties, it regards this convention as “the authoritative guide to current treaty law and practice.” S. Exec. Doc. L., 92d Cong., 1st sess. (1971), p. 1; Theodor Meron, “The Meaning and Reach of the International Convention on the Elimination of All Forms of Racial Discrimination,” *American Journal of International Law*, vol. 79 (1985), p. 283. The US government has also accepted that it is bound by customary international law not to defeat a treaty’s object and purpose. “Albright Says U.S. Bound by Nuke Pact; Sends Letters to Nations Despite Senate Vote,” *Washington Times*, November 2, 1999 (describing the Clinton administration’s acceptance of obligations under the Comprehensive Test Ban Treaty despite the Senate’s failure to ratify).

<sup>499</sup> *Roper v. Simmons*, 543 U.S. 551, 578 (2005).

<sup>500</sup> “Remarks by Ambassador Madeleine K. Albright, United States Permanent Representative to the United Nations on the Occasion of the Signing of the U.N. Convention on the Rights of the Child,” White House Press Release, February 16, 1995.

501 “Statement by Ambassador Betty King, United States Representative on the Economic and Social Council, to the Plenary of the 54th Session of the General Assembly on the Tenth Anniversary of the Convention on the Rights of the Child,” November 11, 1999.

502 ICCPR, art. 50.

503 *Ingraham v. Wright*, 430 U.S. 651, 660 (1977) (stating that corporal punishment “has survived the transformation of primary and secondary education from the colonials’ reliance on optional private arrangements to our present system of compulsory education and dependence on public schools”).

504 *Ingraham v. Wright*, 430 U.S. 651 (1977). At the circuit court level, corporal punishment has also been considered under the US Constitution’s substantive due process clause (*Hall v. Tawney*, 621 F.2d 607, 611 (4th Cir. 1980), *Garcia v. Miera*, 817 F.2d 650, 656 (10th Cir. 1987), *Saylor v. Board of Education of Harlan County*, 118 F.3d 507, 514-515 (6th Cir. 1997)), as well as the equal protection clause (*Cunningham v. Beavers*, 858 F.2d 269, 273 (5th Cir. 1988) (holding that intermediate scrutiny under equal protection jurisprudence does not apply to corporal punishment cases because children are not viewed as a “suspect class.”)).

505 Global Initiative to End All Corporal Punishment of Children, “North America: Summary of legal status of corporal punishment of children,” June 2007, <http://www.endcorporalpunishment.org/pages/pdfs/charts/Chart-NorthAmerica.pdf> (accessed August 8, 2008). Compare to *Ingraham v. Wright*, 430 U.S. 651, 660-661 (1977) (the majority, writing in 1977, observed that corporal punishment “continues to play a role in the public education of school children in most parts of the country.... We can discern no trend toward its elimination.”).

506 *Ingraham v. Wright*, 430 U.S. 651, 664-670 (1977).

507 *Ingraham v. Wright*, 430 U.S. 651, 664 (1977).

508 *Ingraham v. Wright*, 430 U.S. 651, 669 (1977).

509 *Ingraham v. Wright*, 430 U.S. 651, 670 (1977).

510 The nine-member court divided, with five members in the majority and four dissenting.

511 *Ingraham v. Wright*, 430 U.S. 651, 685 (1977) (White, J., dissenting).

512 *Ingraham v. Wright*, 430 U.S. 651, 684 (1977) (White, J., dissenting).

513 OHCHR, “International Covenant on Civil and Political Rights: Declarations and Reservations made upon ratification, accession or succession,” United States of America, <http://www2.ohchr.org/english/bodies/ratification/docs/DeclarationsReservationsICCPR.pdf> (accessed August 8, 2008), reservation 3 (“That the United States considers itself bound by article 7 to the extent that ‘cruel, inhuman or degrading treatment or punishment’ means the cruel and unusual treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States.”).

514 *Ingraham v. Wright*, 430 U.S. 651, 673-674 (1977) (noting that the liberty interest in personal security is implicated where public school authorities, acting under color of state law, deliberately punish a child for misconduct by restraint and infliction of appreciable pain).

515 *Ingraham v. Wright*, 430 U.S. 651, 676 (1977).

516 *Ingraham v. Wright*, 430 U.S. 651, 682 (1977).

[517](#) *Cunningham v. Beavers*, 858 F.2d 269, 272 (5th Cir. 1988) (citing to Tex. Penal Code Ann. § 9.62 (Vernon 1986), Texas Educ. Code Ann. § 21.912 (Vernon 1986), among others, to support the contention that common law remedies exist); *Woodward v. Los Fresnos*, 732 F.2d 1243, 1245 (5th Cir. 1984) (citing to older cases).

[518](#) *Ingraham v. Wright*, 430 U.S. 651, 693 (1977) (White, J., dissenting).

[519](#) *Ingraham v. Wright*, 430 U.S. 651, 676 (1977) (noting that routine corporal punishment does not violate substantive due process: “There can be no deprivation of substantive rights as long as disciplinary corporal punishment is within the limits of the common-law privilege”). But see *Garcia v. Miera*, 817 F.2d 650, 653 (10th Cir. 1987) (“[W]e believe that *Ingraham* requires us to hold that, at some point, excessive [corporal punishment] violates the pupil’s substantive due process rights.”).

[520](#) *Saylor v. Board of Education of Harlan County*, 118 F.3d 507, 513 (6th Cir. 1997) (“The courts of appeals are not of one mind on the substantive due process question.”).

[521](#) *Garcia v. Miera*, 817 F.2d 650, 653 (10th Cir. 1987); *Hall v. Tawney*, 621 F.2d 607 (4th Cir. 1980).

[522](#) *Woodward v. Los Fresnos*, 732 F.2d 1243, 1245 (5th Cir. 1984).

[523](#) Global Initiative to End All Corporal Punishment of Children, “Countdown to universal prohibition: Summary of legality of corporal punishment of children worldwide,” April 2008, <http://www.endcorporalpunishment.org/pages/progress/countdown.html> (accessed August 8, 2008).

[524](#) *Campbell and Cosans v. UK*, European Court of Human Rights (ECHR), (Application No. 7511/76; 7743/76), February 25, 1982 (holding that by failing to respect the parents’ philosophical objections against corporal punishment, United Kingdom schools had violated the children’s rights to education); *Costello-Roberts v. UK*, ECHR, (Application No. 13134/87), March 25, 1993 (finding that corporal punishment in schools can reach the level of severity as to violate Article 3 of the European Convention (“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”)); *A v. UK*, ECHR, (Application No. 25599/94), September 23, 1998 (holding that parental corporal punishment can violate article 3 of the European Convention); *Tyrer v. UK*, ECHR, (Application No. 5856/72), April 25, 1978 (barring corporal punishment of juveniles in custody).

[525](#) Section 548 of the Education Act (1996) (United Kingdom) as amended by section 131 of the School Standards and Framework Act (1998) (clarifying that there is no right for a member of an educational staff to administer corporal punishment to a child in any location).

[526](#) The Center for Effective Discipline, “U.S.: Corporal Punishment and Paddling Statistics by State and Race, States Banning Corporal Punishment,” 2008, <http://www.stophitting.com/disatschool/statesBanning.php> (accessed August 8, 2008).

[527](#) OCR, “Civil Rights Data Collection 2006.”

[528](#) The Center for Effective Discipline, “Discipline at School,” <http://www.stophitting.com/disatschool/100largest.php> (accessed August 8, 2008).