

Igor Andrejew, *Oceny prawne karcenia nieletnich* [The Legal View of the Corporal Punishment of Juveniles], Warszawa 1964, PWN, 130 pages.

I have read Andrejew's book with interest, and share his view that corporal punishment, although an important social problem, is usually one that is neglected both in criminal law and family law literature in the socialist countries.

Despite the social importance of the problem this neglect is due, says Andrejew, to the difficulty of pinpointing the problem, to its prickliness, and to the absence of legal regulations in socialist legislation which "a voids all legal regulation of the problem of corporal punishment; which neither permits it nor expressly forbids it." The situation is different in some capitalist countries.

Andrejew examines art. 239 of the Criminal Code, which says that anyone who strikes another or invades his privacy in any other way should be punished. The question raised in his book is: are parents and other people in charge of children forbidden by this regulation to use corporal punishment? Can corporal punishment be regarded as a method for the upbringing of children, can it be regarded as a parent's right and duty, and if so, within what limits? And if so, when does it not come under the heading of the offence mentioned in art. 239 of the Criminal Code? The author does not confine himself to the attitude of the Criminal Code, but goes on to investigate the point of view of the Family Code as well

Before replying his question, the author defines corporal punishment as "chastisement aimed at persuading another person of the wrongness of his behaviour and at thereby influencing that person's behaviour in the future." He rightly points out that obedience to the punisher considered as legal duty is an essential premise of punishment. This duty might be derived from a parent/child, or employer (employer, or teacher) pupil relationship, or it may have arisen out of some concrete situation. At any rate the punisher acts in the conviction that because of his position or his personal qualities he is entitled to express his disapprobation. In the present book the problem is confined to the corporal punishment of juveniles.

In discussing the legal aspects of corporal punishment, Andrejew also had to take the psychological aspects of the problem into account, which make it much more complicated. As he says, surely no-one today can speak of any obligation to inflict corporal punishment in the training of young people. The most to be expected is that tolerance may be shown towards adults who resort to punishment of this kind, although such tolerance is certainly not to be recommended, and should be extirpated. But, says the author, whereas the use of corporal punishment is not to be tolerated in the teacher, it should (be tolerated in the parent. "Unfortunately, skill in the upbringing of children is not a condition which must be fulfilled before people are allowed to have children; it is only when glaring shortcomings are apparent in this field that the authorities have ground for interfering. Their ingérence is cautious, since it marks an interference

with the life of the family, a social unit which has a certain amount of autonomy. From time to time there are situations where the evil to be combated lies not in the infliction of corporal punishment alone, but in the factors that led to it.”

Coming finally to the answering of his question, the author could not of course pass over the state of the law, such as doctrinal views, legislation, and actual practice, in some of the capitalist countries — for example, Britain, West Germany, and France. He also describes the situation in the Soviet Union, but unfortunately does not mention the legal position in the other socialist countries, although of course an account is given of the situation both in pre-war and in post-war Poland. I must point out that the following passage in the author’s description of the legislation in People’s Poland is incomprehensible to me “the general ban on corporal punishment, which is formally part of the Family Code of 1946 (although it does not apply to parents) remains in force, except that it is not clearly backed by statute” (p. 66). How can there be a legal prohibition that is not backed by statute? The prohibition of corporal punishment recommended by the educationists, and which is quite apart from changes in the law, is a different thing altogether.

The author has done an important service in writing this monograph on a problem of undoubted social significance. The controversial aspect of corporal punishment from the point of view of the law will undoubtedly cause resounding echoes among the jurists.

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