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## Bring back the cane: revisiting patriarchy

The head of the government's curriculum review, Kevin Donnelly, said yesterday [that corporal punishment](#) in schools was an effective way of disciplining children. The conversation continued, leading to the implication that Donnelly is not averse to reintroducing corporal punishment into Australian schools.

Australia is a signatory to the [Convention on the Rights of the Child](#). Australia therefore has obligations to protect children from violence or abuse, by their parents or anyone caring for them (article 19); and discipline in schools should respect children's human dignity (article 28). There is no overarching statute however that implements the provisions of this Convention and regulation of schools and criminal laws that may apply, are left to the states.

A number of news outlets have conveniently summarised the legal framework on corporal punishment in schools - see eg [Crikey's explainer](#). There [seem to be examples](#) in both West Australia and Queensland where corporal punishment is integral to some schools' program - including in one reported case, the requirement for parents to accept corrective punishment as a condition of enrolling their child.

For a government appointee ostensibly holding expertise in education and charged with advising government on matters of education, these comments and their implication are concerning. This is so despite Minister Pyne's rejection of the idea. What these views really tell us about the state of play in Australia at the moment is the resurgence of patriarchal views and patriarchal control. These views are apparent, for example, in the government's discourse around '[lifting and leaning](#)'. Donnelly's views play into this discourse.

I'm interested in this post to explore the way in which this patriarchal attitude underpins support for corporal punishment in schools, and the lack of logic in Donnelly's ideas.

### Parents' consent to assault

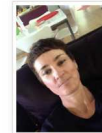
Corporal punishment of any person would normally be an assault either in criminal or civil terms. Some assaults are however not offences. For example, some states exempt schools engaging in corrective punishment of children.

In one school, parents reportedly actively consent to 'corrective punishment' of their child. They sign a contract with the school agreeing to its policy on corrective punishment. This is effectively signing away the child's autonomy and bodily integrity, without the child's acquiescence. It permits the school (or its teachers) to assault the child, ostensibly denying the child recourse to the law (civil or criminal). I wonder if it is permissible for a parent to sign away a child's right to bodily integrity in this way.

Contrast the example of a parent consenting to medical treatment. Medical treatment is also an assault and so requires consent of the patient to be lawful. Children - especially young children - are deemed not to have full legal capacity to consent and so their parents give consent in their stead. However medical treatment is life preserving, carried out within professional ethical guidelines and based on evidence. Corporal punishment is not.

Likewise, children as they mature are entitled to hold their own views and to become

### About Me



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I lecture in land law at James Cook University and I write and think about the nature of property and its representations in the law; about issues affecting women; about justice generally; and about legal education

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responsible for their bodily integrity. Children aged (say) 16-18 (or perhaps even younger for mature children) are very likely to have sufficient capacity to make decisions about their bodily integrity in terms of corporal punishment at school. It simply does not seem right that their parent is empowered to sign this right away.

I would also be interested to know the practicalities of implementing Donnelly's idea on corporal punishment. In my day (primary school in the 1970s) it was boys who were caned. Girls were largely spared - because they were girls. I did know of a couple of girls who were smacked across the hand with a ruler but this was an exception. I wonder therefore if Donnelly's system would maintain the gender disparity in corporal punishment, or whether the system would get with the times to become an equal opportunity affair.

### Children as chattels

The kind of thinking that supports Donnelly's views lies, in my opinion, of the outdated and patriarchal view of children as chattels under the authority of the father. This would account for a lack of concern about niceties such as whether parents have authority to give away their child's bodily integrity. Under this mode of thinking, authority is absolute in the household, and extends to others who stand in loco parentis.

We see this kind of thinking about women. Women's bodies and their sexuality is under the control of the law and public opinion. Many do not believe in a woman's right to control her fertility, and many more pillory or seek to punish the 'single mother' as a drain on society. Both of these positions are an expression of patriarchal control. There are those who would stop a woman from terminating a pregnancy and remove the mother's economic support. Under corporal punishment, such children could then be physically punished at school.

Like their mothers, these children are simply chattels to be disciplined with no standing as people in their own right. Their person, their bodily integrity, is to be given away to those prepared to breach it. Their autonomy and their dignity is at the mercy of the state and its collaborating institutions.

### Double standard

What message does this send our children? Even if corporal punishment is not reintroduced, Donnelly's comment is made as the government that employed him is spending millions of dollars on a Royal Commission into institutional abuse of children. How can we possibly even entertain such a double standard of *finally* grappling with long-standing institutional violence against children while promoting the reintroduction of institutional violence?

It remains the case that those who perpetrate violence against children are for the most part, people who are known to the children. We are educating our children to speak up, to take responsibility for their person. Corporal punishment on the other hand teaches helplessness and hopelessness. Schools, teachers and parents who accept this are all implicated in institutionalised violence that contradicts what we now say we want for our children, including dignity and autonomy.

Posted by [Kate Galloway](#) at [16:28](#)

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