

VISITING SCHOLAR TALKS

POLICING CHILD DISCIPLINE

How should law regulate the physical discipline of children? For many children's rights advocates, the answer lies with the criminal law. In Canada, opponents of section 43 of the Criminal Code, which provides a defense for the "reasonable correction" of a child, have pursued its repeal for over two decades and have challenged its constitutionality. Critics argue that the defense reflects outdated notions of children as property. Recently, the Truth and Reconciliation Commission of Canada (TRC) added its voice to these calls, concluding that corporal punishment has no place in Canadian society today and urging Parliament to repeal section 43. Yet for all its careful work establishing a historical record of violence and abuse in residential schools, the TRC largely rubberstamped the prevailing repeal position without fully weighing its potential consequences. In this paper, I offer a genealogy of the reasonable correction defense that challenges these contemporary accounts and the reform agendas to which they give rise. Contrary to the views of today's critics, the reasonable correction defense, as incorporated into Canada's first Criminal Code in 1892, did not presume or create a property relation in children. Moreover, the legal architecture that facilitated and sustained physical abuse in residential schools was not built on the reasonable correction defense. Rather, as the TRC itself notes, residential school officials tasked with "civilizing" Aboriginal children operated largely outside the most basic administrative, let alone criminal, oversight. This history does not necessarily dictate the repeal of section 43 today. I argue that repeal of the reasonable correction defense will not resolve the core question of how we should distribute the responsibilities and risks of childrearing in Canadian society. Instead, it raises a strong potential for arbitrary exercises of state power. Poor, immigrant, single parent, and Aboriginal homes are the most likely to attract social welfare and police surveillance. If the history of residential schools and of the destruction of Aboriginal families teaches us anything, it should be that any proposals to expand state penal power over childrearing be subjected to close scrutiny.

This event qualifies for 1 CPD credit.

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Lisa M. Kelly is a Postdoctoral Fellow at Columbia Law School and the Center of Reproductive Rights in New York City. Lisa recently completed her doctorate in law at Harvard Law School where she was a Trudeau Scholar, a Doctoral Fellow of the Social Sciences and Humanities Research Council of Canada, and a Frank Knox Memorial Fellow. Her doctoral dissertation – *Governing the Child:*

Parental Authority, State Power, and the School in North America – analyzed a century of legal struggles over race, corporal punishment, and the disciplinary reach of school authorities. Lisa has published in the areas of family law and reproductive justice, including a recent book chapter, "Reckoning with Narratives of Innocent Suffering in Transnational Abortion Litigation," in *Abortion Law in Transnational Perspective: Cases and Controversies* (Cook, Erdman & Dickens, eds., UPenn Press). Lisa holds a J.D. from the University of Toronto, Faculty of Law and a B.A. in History and Political Science from the University of British Columbia. After law school, she articulated with the Department of Justice in Ottawa and later served as a Law Clerk to Justice Marshall Rothstein of the Supreme Court of Canada. As a CRR-CLS Fellow, Lisa is pursuing a new project that interrogates the law and politics of abortion travel.

NOVEMBER

24

TUESDAY

12:30PM

FASKEN MARTINEAU
CLASSROOM
(ROOM 122)



ALLARD
SCHOOL OF LAW

