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SPECIAL ISSUE ARTICLE

Exorcism and children: balancing protection and autonomy in the legal framework

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Abstract

This paper examines the current legal framework in relation to minors who are the recipients of exorcism. Such individuals are ordinarily doubly marginalised, by virtue of their membership of a minority religious or cultural community and their disempowered position as children. This piece aims to assess whether the current arrangements strike an appropriate balance between respecting personal and collective autonomy, as well as protecting vulnerable young people, paying particular attention to the impact of their intersectional position and multiple marginalising factors at play. It seeks to define exorcism and emphasise the very diverse settings in which it arises within twenty-first-century England and Wales. It examines proposals being made for a blanket prohibition in relation to children, considering both the desirability and viability of a ban. It also highlights that exorcism is not the only context in which religious minors will find themselves in a position of multiple marginalisation, and explores what debates in this area might reveal about the wider operation of Article 9 and the ECHR.

Keywords: exorcism; children's rights; religion; safeguarding; minorities

1 Introduction

It is hard to conceive of a person more marginalised than a child identified by their community as needing some form of exorcism. Already disempowered by their age and the physical, emotional and economic dependency that this brings, they are also members of a minority religious community and now labelled as on the edge of that group. In some belief systems, they may even be in a liminal place between the human and the spiritual realm. These factors mean that they are marginalised within their faith community, but their religious and cultural identity also means that they are part of a vulnerable minority within wider society.

In late 2019, the press reported on research carried out by the Local Government Association highlighting that child protection cases related to religion or belief had risen by one-third (Eichler, 2019). This quite general finding was translated in media coverage into lurid headlines about 'witchcraft and black magic', revealing the fascination with this topic in contemporary British society (Booth, 2019; Binding, 2019). Ever since the distressing revelations around the torture and death of Victoria Climbié came to light in the early twenty-first century, child abuse linked to possession and exorcism has been high in the public consciousness (HM Government, 2003). The curiosity that the subject of exorcism in general provokes, attested by a constant stream of successful documentaries and books (Bray, 2021), fuels discussion and speculation whenever the topic arises, even tangentially.

It is vital, however, not to allow the pop culture obsession with demons and the paranormal to cloud the seriousness of the real-world context. The grim reality of the murder and maltreatment of children in circumstances connected to beliefs in hostile spiritual forces must be stressed from the outset, as individuals continue to fall through the cracks when public authorities identify and intervene in abusive situations. Whilst the groundswell of indignation over the suffering and death

of Victoria Climbié did provoke changes to policing and government child protection strategies (Lord Laming, 2003), this did not prevent either Khyra Ishaq (Birmingham Safeguarding Children Partnership, 2010) or Kristy Bamu (Campbell *et al*., 2020, p. 110) from suffering a similar fate.

The disturbing nature of this is accentuated by the fact that each one of these victims was systemically disempowered and occupied a position of multiple marginalisation. They were all children, all members of ethnic minority groups, all associated with spiritual minorities and two out of three were female. It is beyond doubt that each one of these young lives deserved a degree of care and protection from wider society that they did not receive, and their multilayered marginalisation was a contributory factor in this failure. Does this mean that the time is overdue for legal reform to tackle the issue of the exorcism of minors, in the form of either prohibition or more robust regulation? This is the core question that this paper is seeking to answer.

Fostering a nuanced debate in this arena is challenging, given the plethora of contrasting perspectives and experiences within contemporary society, alongside the constant and morbid fascination of the press. In some respects, there are parallels to be found in relation to ongoing controversies over the optimal legal and social policies to tackle female genital mutilation (Green and Lim, 1998; Gerry *et al*., 2020) and forced marriage (Gaffney, 2015). All of these areas involve navigating treacherous moral straits in terms of introducing legal sanctions that *may* disproportionately affect minority communities and imposing majority norms into the private sphere, in addition to raising practical questions as to whether the weight and stigma of hard law are counter-productive when it comes to enabling victims to seek help and protection. Furthermore, where criminal provisions are proposed, there are also links with wider controversies around the impact of criminalisation, as the work of authors such as Lacey (2020) has revealed.

Nevertheless, in light of the considerations explored further below, I would contend that there are good reasons to place the exorcism of minors at the centre of an academic study in its own right. There are elements of this phenomenon that are distinct from other paradigms and merit independent attention. First, the scope and nature of practices included within this category of human activity are of greater range and diversity than is the case with forced marriage or female genital mutilation (which is certainly not to imply a simple or monochrome picture for either). The various motivational factors driving the actions involved are different, as are the identifiable harms and proposed benefits. Furthermore, and of fundamental importance, is the consideration that the range of social and cultural groups involved in child exorcism is far greater in England and Wales. Whilst more work needs to be done, as I shall discuss below, there is already ample evidence that exorcism is practised, widely, across religious and ethnic boundaries.

Yet, having acknowledged its prevalence, it is also true that for many citizens, the word exorcism has associations with a world far removed from their personal experience. For those whose exposure to exorcism is limited to horror films, there may be an instinct to dismiss concepts of possession and evil entities as belonging to a less scientific past, whilst others may take for granted an unseen reality surrounding them and regard spirits as being as real and threatening as microbes. Unquestionably, weighing up potential harms and benefits is especially difficult where a number of competing worldviews are involved.

It is a thorny issue even to find effective words to use when conducting these conversations. As Stobart noted in a 2006 report focusing on child abuse linked to accusations of possession and witchcraft carried out for the Department of Education and Skills, '*there is no common language*' for the concepts being discussed, nor the beliefs that might contribute to this form of abuse (Stobart, 2006, p. 5). The exact same terms can convey very different meanings, depending on the perspective and experience of the audience, which makes it a challenge for academics in this area to establish a neutral lexicon (Booth, 2019; Swerling, 2019).

In some respects, the current legal arrangements render the collision of conflicting terminology and belief systems more a problem for sociologists and anthropologists than lawyers, at least on a day-to-day basis, given that the regime is one of general application. When the treatment of a child meets the threshold for state intervention (significant harm or likely risk thereof) (Children Act,

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1989), the motivation driving that treatment is immaterial and the only question is whether or not the significant-harm test has been met on the facts.[1] Clearly, the necessity, or purported necessity, for fulfilling a religious or cultural requirement would not be a defence to any criminal charges flowing from the injury or neglect of a child (Edge, 2018).[2]

Nevertheless, there are those arguing that these general provisions are not working to adequately protect vulnerable young people and there are calls by some voluntary-sector groups to introduce new and targeted offences. For example, Africans Unite Against Child Abuse[3] (AFRUCA, 2021) continues to advocate that it should be made a crime to accuse a child of being possessed (AFRUCA, 2017) whilst, in the wake of the Victoria Climbié tragedy, the Exorcism of Children (Prohibition) Bill was introduced into parliament.[4]

If the case made by such groups is found to be persuasive, tailored legal instruments are needed. This paper begins at a stage before this, however, and asks whether a sufficiently convincing argument for targeted legislation has been made in the first place with regard to abuses associated with child exorcism. In exploring this, I shall begin by defining exorcism, for my purposes. I shall then consider the case for and against specific criminal prohibition of the exorcism of minors, followed by an analysis of the autonomy of children and the protection provided by Article 9 of the European Convention. This will be followed by a reflection on children and religious practice and qualifying beliefs, and my reasons for rejecting the prohibition of the exorcism of minors pathway and proposing a response rooted in a holistic consideration of the legal framework in respect of young people, their beliefs, identity and spirituality.

2 Adopting and defining the term exorcism

There is no consistently accepted or wholly unproblematic terminology available within this field (Stobart, 2006) and I have opted to use the term 'exorcism' to denote '*any rite or practice intended to free a person, place or object from a negative, external spiritual influence*' (García Oliva and Hall, 2019, pp. 1–10).

Exorcism is acknowledged to be a feature of many religions and spiritual traditions, and it is not strongly tied to one particular worldview or culture (McCraw and Arp, 2017). Whilst it is true that tropes about Christian, and specifically Roman Catholic, exorcism are particularly prominent in the Western popular imagination (Olson and Reinhard, 2016), there is widespread awareness of other forms of exorcism amongst both the general public and academic discussion.[5] This formulation also draws together a common element in practices that are shared by people with widely divergent belief systems (in short, that there is some external, spiritual force causing harm and requiring removal) but at the same time avoids equating or converging very different actions and doctrines. There is huge diversity in relation to understandings of the nature of the harmful external force, the appropriate means to expel it and the implications for the person, place or object feeling its effects. Being in need of exorcism may be a sign of transgressive behaviour or some inherent weakness; it may be a socially and morally neutral misfortune; or it may be a sign of virtue, innocence or enhanced status (the logic being that malevolent forces would want to attack the most desirable community members) (Hussein, 2019). Obviously, all of these variables are going to make a vast difference for the perception and treatment of any individual (child or adult) in receipt of exorcism.

[1] *Re B (Care Proceedings)* [2015] EWFC 3.

[2] Religious beliefs in some circumstances can provide a general defence for criminal actions. *R. v. Brown* [1994] 1 A.C. 212 – operative consent may be given for ABH in relation to certain religious practices when it would not provide a defence for similar injuries inflicted for sexual gratification.

[3] AFRUCA is a non-governmental organisation working in Black and ethnic minority communities in the UK to protect and safeguard children, founded in 2001 by civil servant Debbie Ariyo following the deaths of several newly arrived immigrant children, including Victoria Climbié, Damilola Taylor and Jude Akapa.

[4] Exorcism of Children (Prohibition) Bill 2001. It was presented by Harry Cohen MP – *Hansard*, HC Deb. vol. 361 col. 653 (22 January 2001) but was ultimately unable to garner sufficient support *Hansard*, HC Deb. vol. 366 col. 677 (6 April 2001).

[5] E.g. newspaper reports adopt the word exorcism for rites in an Islamic setting (Burgess, 2018). Imam filmed banishing evil spirits with exorcism (BBC, 2020).

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It would be crucial to highlight that I have consciously steered away from the word 'possession', as this has a very specific meaning within some faith traditions (Perry, 1996) and for many people is interpreted to mean the complete subjugation of a person's will by an external, sentient entity. I have also rejected the language of witches and witchcraft because understandings of these terms are so widely variable (Hutton, 2017).

I have adopted the label exorcism because it is widely understood and applied cross-culturally to describe practices within different traditions and belief systems. It makes no claim about the nature of the practices, the doctrines driving them or the social context in which they sit, as in this regard there is immense diversity. In order to understand the factors at play for a particular child who may experience exorcism and the considerations to weigh up when it comes to the involvement of state law and public authorities, it is imperative to avoid generalisations and false equivalence. It also cannot be overstressed that in a democratic society, the preferences of third parties cannot be a ground for restricting religious freedom. The right to manifest a religious belief can only be limited in accordance with Article 9(2) and the mere fact that some observers might consider a practice strange is not a reason to restrict it[6] (although it is clear and uncontroversial that the rights of individual children to dignity, safety and bodily integrity will be sufficient reason to restrain parental religious freedoms, as the leading case of *Williamson* demonstrates).[7]

Furthermore, much of the discussion around children and exorcism, including calls for legal prohibition, has surfaced because of tragedies arising in communities of the African diaspora (La Fontaine, 2016). Although I shall shortly turn to these debates, it is my contention that trying to differentiate exorcism in this setting from the countless other contexts in which it takes place is problematic practically and legally.

That being said, the imperative to protect children within the African diaspora communities from exorcism-related abuse is undeniable and the case for specific legislation has been persuasively made by those living and working within this context. For this reason, careful consideration must be given to the arguments in favour of introducing a new law and the reasons for rejecting them must be cogently explained.

3 The creation of a specific offence relating to the exorcism of minors

The two most developed proposals for new legislation in this arena come from the Private Members Bill introduced into parliament in the wake of the death of Victoria Climbié and the current position statement of AFRUCA. Each one takes a different approach to law reform but both arguably fall at the same hurdle, namely constructing an appropriate filter that would (1) criminalise harmful practices in a non-discriminatory way; and (2) avoid catching legitimate rituals and unduly curtailing religious freedom.

The wording of the bill was extremely succinct: it criminalised the performance of an exorcism on any person below the age of sixteen[8] and defined an 'exorcism' as 'any rite or ceremony, the purpose of which is, or purports to be, to rid an individual or a menacing or oppressive condition or thing'.[9]

The inherent flaw in this approach is that the net is cast so widely that, if interpreted literally, it would outlaw a plethora of customs and ceremonies, including the baptism of infants in the Church of England.

One response to this might be to suggest that a judge interpreting this hypothetical piece of legislation could apply a different mode of statutory interpretation, such as the golden rule, to avert an absurd application of the law and the unintentional criminalisation of manifestly harmless practices.[10]

[6]*Campbell and Cosans v. United Kingdom* [1982] E.C.H.R. 1, (1982) 4 E.H.R.R. 293.
[7]*R. (Williamson) v. Secretary of State for Education* [2005] UKHL 15, [2005] 2 A.C. 246.
[8]Exorcism of Children (Prohibition) Bill 2001, c. 1(1).
[9]*Ibid*., c. 2.
[10]*River Wear Commissioners v. Adamson* (1876–77) L.R. 2 App Cas 743.

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However, this is a dangerous route to tread, given that the boundaries of harm are open to debate and, as Jivraj and Herman (2009) argue, there is an inevitable risk of minority ethnic, religious or cultural communities being treated differently because their contexts are less well understood by the judiciary. Imposing a general ban on exorcism, whilst effectively requiring judges and other decision-makers in criminal justice to selectively disapply it, would lead to discrimination and inconsistency.

In light of this, a blanket prohibition of the kind envisaged by the 2001 bill would not be appropriate. It must be acknowledged, nonetheless, that at least at one level, the legislative action proposed by AFRUCA is more sophisticated in its construction. Instead of focusing on the act of exorcism, the approach here centres on accusing a child of being possessed and is prefaced with an explanation as to why the organisation deems all such statements to be abusive:

> 'An accusation means a child learns from people the child trusts and respects that: – he or she has been taken over by an alien spirit or powers, – these spirits or powers are evil, – the child is responsible for bad things happening, – he or she is feared and hated by everyone in their family and community – he or she is no longer fully human.' (AFRUCA, 2017, p. 1)

The policy document observes that as an abusive act, an allegation of possession is already a criminal offence in some circumstances by virtue of the Children and Young Persons Act 1933 (CYPA), as amended by the Serious Crimes Act 2015. This statute makes it explicit that it is an offence for someone with responsibility for a child to cause them unnecessary psychological suffering or injury.[11] Nevertheless, it is frequently the case that suggestions of possession are initiated by third parties who do not have any responsibility for the child in question, such as family friends, lodgers, religious ministers or other members of the faith community, and in these cases, the accuser will not be caught by the legislation. AFRUCA, therefore, suggest that an amendment to widen the scope of the offence would be beneficial.

A second reason for their advocacy for change is that '[t]here is no common understanding or agreement in the UK that a possession accusation is psychological abuse' (AFRUCA, 2017, p. 1).

Their contention is that there needs to be legal clarity that labelling a child is beyond acceptable bounds of behaviour and not simply an expression of personal belief or spirituality. They propose the following two changes to the Act:

> '(1) Removing the requirement for offenders to have responsibility for the child who is their victim, meaning that anyone aged 16 or over could be found liable for an offence against a child under CYPA s1;
>
> '(2) Specifying that "ill treats" for the purposes of this section includes "the communication by word or by action a belief that the child is possessed by evil spirits or has supernatural harmful powers – (i) to the child concerned, or (ii) to anyone connected to that child".' (AFRUCA, 2017, p. 6)

AFRUCA maintains that this would fill a gap in the existing law, rejecting government's arguments put forward in 2014 before the Upper House at the Report Stage of the Serious Crimes Bill that existing statutes (specifically the Public Order Act 1986, the Protection from Harassment Act 1997 and the Serious Crimes Act 2007) provide an adequate response where abusive possession accusations are made by third parties.[12] AFRUCA counters that there is no evidence of any of this legislation ever having been applied to such a case and that it is difficult to imagine authorities pursuing such a speculative prosecution, especially given that human rights arguments in respect of religious freedom would undoubtedly be raised by the defence. Furthermore, AFRUCA's primary objective in advocating for

[11]Children and Young Persons Act 1933, s. 1.

[12]Bill Documents, Serious Crimes Act, 2015 (HMSO: London).

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change is to *prevent* child abuse, and possible sanctions for offenders (even if successfully applied) would not further this goal (AFRUCA, 2017).

All of these arguments are powerfully persuasive. Furthermore, AFRUCA is an organisation with intimate knowledge of the context being discussed and is an expression of activism from *within* a minority community, as opposed to the commentary of an external agency or observer.

However, even allowing for this, it remains the case that, as Briggs and Whittaker argue, there are sensitive and complex issues around the proactive involvement of public authorities in what many community members perceive to be internal affairs (Briggs and Whittaker, 2018). The truth is that the AFRUCA proposal does account for this, giving the stress laid on the importance of respectful and collaborative working in the implementation and interpretation of the law (AFRUCA, 2017). Yet, whatever the initial impetus for legislative action, the end result would be more explicit state regulation of the life of the community and the possibility of a backlash is, without a doubt, a huge risk.

It is beyond question that Articles 3[13] and 8[14] of the ECHR are applied equally to all children, and the community in which they are born does not alter the duty on the part of the state to protect them from harm. Furthermore, the courts have consistently, and correctly, made clear that the standards set by CYPA section 1 are objective, as well as not being modified by cultural setting or heritage,[15] and minority communities cannot be allowed to manage their own affairs to the extent of harming vulnerable groups within their midst (García Oliva and Hall, 2018). Yet, having acknowledged this point, it is still necessary to consider what strategies are likely to be most effective, which counter-productive measures should be avoided and, as Williams argues, we already have a backdrop in which discussions around African spirituality in the professional formation of those working within child protection tend to focus on its negative aspects and arguably give undue weight to the benefits that many individuals experience (Williams, 2013). A legal reform to proscribe certain expressions of belief could widen the gulf in understanding on both sides, making it harder for social workers, teachers or police officers to gain a nuanced insight, and also leave members of the community more reticent in disclosing information about children in jeopardy. If a policy inadvertently accentuates one marginalising dynamic (e.g. distrust of state authorities amongst many Black British communities), this will exacerbate the jeopardy posed by other risk factors for abuse, such as the disempowerment faced by a child in relation to adults.

It is not the purpose of this paper to determine whether attaining the goal of outlawing witchcraft labelling in England and Wales would be the optimal direction to take from a child protection perspective, but to assess from a legal standpoint the desirability and workability of the concrete legislative reforms that have been put forward.

As previously indicated, the difficulty that I perceive with the statutory proposals drafted by AFRUCA is that they effectively amount to another *general* ban on child exorcism. Whilst AFRUCA set out arguments that cogently explain why such assertions are extremely harmful, where they amount to witchcraft labelling in the context of African diaspora communities, the proposed wording would catch many other forms of belief relating to external supernatural forces. Such a blanket measure would inevitably curtail religious freedom to an unjustifiable degree, not only for faith groups, but also for individual young people. Whilst the Strasbourg jurisprudence does undoubtedly permit general prohibitions, even where this comes with an inevitable restriction of rights, this is only acceptable when there has been a robust consideration into the range of options available and the measure is demonstrably proportionate.[16] In this context, there is simply insufficient

[13]For the right to freedom from inhuman and degrading treatment in the context of children and the boundaries of parental discretion, see *A v. UK* [1998] 2 FLR 959.

[14]Right to respect for private and family life, home and correspondence. This includes the right to physical and moral integrity. *X & Y v. The Netherlands* (Application no. 8978/80), 1985.

[15]*Bristol City Council v. M* [2014] 9 WLUK 194.

[16]See e.g. *Pretty v. United Kingdom* (Application no. 2346/02) [2002] E.C.H.R. 423; *Animal Defenders International v. UK* (2013) E.C.H.R. 362.

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evidence that a general proscription of child exorcism is a necessary and proportionate means to tackle a social problem, or even that it would be an effective means of doing so.

The high-profile tragedies all concerned situations in which the child victims had no agency and derived only suffering from the practices being inflicted upon them. Fortunately, this is not the typical way in which young people interact with their faith and cultural context. Many children gain immediate enjoyment and comfort from their spiritual environment, and later embrace their religious upbringing as adults. Sometimes a spiritual environment will include beliefs relevant to exorcism, which raises the religious autonomy of minors – an area to which we now turn.

4 Exorcism and the religious autonomy of children

To illustrate why a blanket ban on the exorcism of minors is so problematic from the perspective of individual autonomy, and indeed Article 9 of the ECHR, I will set out a hypothetical example. The actions of the adults involved would be criminalised by the proposed wording of the 2001 bill and the changes to the CYPA advocated for by AFRUCA.

Amina is a fourteen-year-old Muslim of Pakistani heritage. Last year, she began suffering panic attacks at school, her parents took her to the GP and she is now receiving help and support via Child and Adolescent Mental Health Services (CAMHS). Amina's grandmother believes that a jinn (evil spirit) may be part of the problem and has encouraged her to recite prayers to combat this (Rassool, 2019).[17] As Amina adores her grandmother, she has taken this on board and her parents are happy as long as their daughter continues to engage with the support offered by CAMHS. Amina is intelligent for her age, and finds comfort in her faith and the idea of doing something proactive. Moreover, she is positive about the National Health Service therapy that she is receiving and is making good progress (Sheikh and Gatrad, 2000).[18]

Here, it can be seen that a young person who might be the subject of an exorcism is not necessarily without agency, nor is it invariably the case that the suggestion of some external, spiritual force causing their problems is terrifying – an indication that they are in some way a threat to others or even dehumanised.

For many communities, beliefs around spirits are part of everyday life and children are going to encounter these ideas and incorporate them into their analysis of the world around them (Bane, 2012, pp. 5–8). Criminalising a suggestion that a child might be subject to the same spiritual misfortunes as older community members or proscribing any attempt to address such a perceived occurrence would have far-reaching implications for the practice of religion and the transmission of culture. Moreover, it would be extremely difficult to imagine how a total ban in all circumstances could avoid falling foul of either Article 9 or Article 8 with regard to the assessment of the necessity and proportionality.

Additionally, a universal prohibition takes no account of the capacity of children to exercise agency nor to realise their own Article 9 rights. This wider consideration is critical, as it opens up a much larger problem in respect of the interpretation and protection of human rights. The truth is that addressing exorcism is problematic, particularly when we take into account the capacity of children to make independent choices, because the entire legal framework is deficient in this regard. The instrument at the heart of human rights in respect of religion and belief is Article 9 of the ECHR and, for the reasons that we are about to explore, is sorely lacking when applied to children.

5 Children and Article 9

The work of Langlaude (2007) has been valuable in highlighting the adult-centred nature of Article 9 and the failure of courts to make headway in acknowledging or addressing this issue. This instrument

[17]For a nuanced discussion that engages with both the theological and clinical contexts of beliefs around evil spirits and mental health in contemporary British Islam, see Rassool (2019).

[18]As is the case with many faith groups, an understanding of a mutually reinforcing relationship between spiritual and medical intervention is common within Islamic contexts; see Sheikh and Gatrad (2000, pp. 7–45).

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protects the practice of faith, but does so within a framework that conceives freedom of religion as the right *to hold and manifest a belief*. In other words, its core concern is the externalisation of an inner conviction.[19] In a UK paradigm, the House of Lords affirmed that whilst spiritual beliefs, by their very nature, need not be amenable to logical argument or empirical demonstration, to qualify for protection, a doctrine must be reasonably coherent and capable of articulation in some form.[20]

This formulation reflects the context in which it arose, moulded by the European Reformations and Enlightenment (Rakove, 2020). The prototypical model is that of an adult, generally a male adult, with social, economic and educational capital, whose conscience dictates a particular course of action (Stanford, 2017).[21] A text that is rooted in an understanding of faith as the expression of an intellectual idea inevitably favours spiritualities centred on orthodoxy as opposed to orthopraxy (Guhin, 2020).

In simple terms, if an action is not linked to an identifiable belief, it is likely to fall outside of the scope of the Convention protection, even if it is part of a pattern of cultural norms and rituals. For example, in *Jones v. UK*, a family's deeply held desire for a particular form of memorial for their son was interpreted as being outside the scope of Article 9,[22] even though their chosen expression was squarely within the norms of mourning rituals for the community.

In addition, because Christianity, and in particular Western Protestant Christianity,[23] is a prime exemplar of a religious tradition fixed in orthodoxy, this privileging of creed over practice arguably bolsters wider systemic bias in favour of the historically dominant faith (Jolly, 2016;[24] Kahn, 2018). These are entirely legitimate concerns and worthy of academic attention, but my prime focus for present purposes is the specific disadvantages for children[25] of the doctrinally based character of Article 9, in respect of both managing exorcism and more widely.

This prejudicial effect is twofold: (1) it sets up a conception of religious practice that tends to exclude or marginalise elements involving children, increasing the risk of these being misinterpreted or overlooked; and (2) it is inevitably disadvantageous to those whose capacity to formulate and articulate an independent belief is still inchoate.

This is, undoubtedly, a cause for concern and takes us, naturally, to a discussion of children and their religious practice.

6 Children and religious practice

An understanding of religion that emphasises doctrine, such as that set out in Article 9, tends to focus on the aspects of faith and practice that are grounded in sacred texts, community buildings and formal power structures. As previously stated, unquestionably, these elements of faith concentrate on adults, and frequently adult male actors.

It is common for children to participate primarily in spiritual activities in the private domestic setting and if these aspects of practice are misinterpreted as auxiliary rather than essential, there is greater likelihood of them being dismissed. This is particularly detrimental in relation to assessing practices such as exorcism, because it runs the risk of undervaluing the significance of experiences that are of

[19]*Kokkinakis v. Greece* [1993] E.C.H.R. 20.

[20]*R. v. (Williamson and Others) v. Secretary of State for Education and Employment* [2005] UKHL 15, at [23] (Lord Nicholls).

[21]The model is encapsulated well by the words attributed to Martin Luther's Diet of Worms speech: 'Here I stand: I can do no other'; see Stanford (2017).

[22]*Jones v. UK* (Application nos. 34356/06 and 40528/06), 2014.

[23]As opposed to traditions like Roman Catholicism or Orthodox Christianity, which arguably give more space for ritual and praxis.

[24]Even though this discussion is rooted in EU equality law as opposed to human rights jurisprudence, the treatment of the wider system issues is helpful in respect of the present discussion.

[25]I would acknowledge that the foregoing discussion reveals that there are real questions about the suitability of Art. 9 as currently drafted in respect of protecting the rights of other groups within European society, and that the problems identified are not confined to children and young people. Nevertheless, minors are the focus of this particular paper, so I have concentrated my analysis on their position.

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subjective value to the young person concerned whilst at the same time opening the door to trivialising activities or statements, thereby underestimating the potential danger that they might pose. There is jeopardy of this being fuelled by other systemic societal prejudices such as misogyny or ageism; for example, harmful statements may be downplayed on the basis of 'that's just what grannies say' or 'that is just an old wives' tale' (McNamara, 2019, p. 22).

A good illustrative example can be found in the following article from a mainstream liberal-leaning British newspaper:

> 'Superstitious thinking can also be seen as a mild form of neurosis. Children often try to control anxiety and fears by thinking up rituals which will ward off bad thoughts or events. Perhaps because they feel less in control, girls tend to hang on to these longer, taking good luck tokens and charms into exams, or, like Cherie Blair, wearing crystals to turn away "negative energies".' (Coward, 2001)

This commentary succinctly combines gender stereotypes, the infantilisation of women and dismissal of spiritual practices of females and young people as at best irrational and at worst pathological.

The very drafting of Article 9 emerged from the same cultural milieu in which perceptions like this still flourish and encourages a distorted approach to concrete problems. This is severely problematic, in and of itself, but there is the additional, perhaps even greater difficulty of applying the requirement of a 'qualifying belief' to a minor.

7 Children and qualifying beliefs

Another consequence of making a qualifying belief a *sine qua non* for accessing protection under Article 9 is to entirely exclude babies and very young children from its ambit, at least in terms of direct claims on their own behalf.[26] Of course, their parents have Article 9 rights in respect of their upbringing[27] and the infants themselves may seek the shelter of Article 8 with regard to religious and cultural identity. This has been interpreted to include the right to personal development and autonomy,[28] and the Strasbourg Court has expressly acknowledged that, in some circumstances, Article 8 has a role in protecting religious interests.[29] Whilst the desirability of constructing a right to religious freedom in a way that excludes infants is ideologically open to debate, it might be argued that in practical terms, their position is relatively straightforward.

However, the situation of older children is far more complicated as, whilst they have independent opinions and beliefs, their values, identity and personal autonomy remain inchoate and neither domestic courts nor the European Court of Human Rights have been willing to tackle the complexity of this head-on. Thus we have a marginalising legal instrument, enshrined in international and national law, reinforced by a judicial stance that accentuates its impact.

There is no doubt that Article 9 does apply to minors, but judges have made little effort to address how this might work practically. When young people have brought claims in their own name, little enquiry has been made into whether they do in fact possess a qualifying belief.

For example, in *Dogru v. France*,[30] the applicant challenged her expulsion from school for refusing to remove her Islamic head covering during physical education sessions. Neither the French government nor the Strasbourg Court paused to consider whether she was acting of her own volition or with full understanding, even though she was eleven years old at the time. This is troubling because, as noted above, parents have their own Article 8 and 9 rights to raise their children in accordance with their own belief system and, in these sort of cases, also a Protocol 1 Article 2 right in respect

[26] *Forstater v. CGD* [2019] (Case no. 2200909/2019).
[27] *Re S (Specific Issue Order: Religious Circumcision)* [2004] EWHC (Fam) 1282.
[28] *Niemietz v. Germany* (Application no. 13710/88), 1992.
[29] *Folgero and Others v. Norway* (Application no. 15472/02), 2007.
[30] *Dogru v. France* (Application no. 27058/05), [2008] E.C.H.R. 27058/05.

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of their daughter's education.[31] If parents wish to bring an application on their own behalf, that is entirely legitimate, but it is also laudable for adult family members to facilitate a young person in making a legal challenge if they have sufficient maturity to appreciate what this means and assent to it. Nevertheless, parents should *not* be permitted to act vicariously through a minor child lacking such independent conviction.

An eleven-year-old, such as the applicant in *Dogru*, might or might not have sufficient understanding and the matter ought therefore to have been investigated. The judicial tendency to abnegate all responsibility and sidestep the issue is regrettable if our legal framework aspires to take the dignity and human rights of children seriously.

The picture has been no more encouraging at a domestic level; for example, in the case of *R (SB) v. Governors of Denbigh High School*, the House of Lords hinted that the case was being driven by the applicant's family rather than Ms Begum, but did not explore the implications of this.[32] Considering that she was only thirteen years old when the dispute started, this omission is again quite striking.

Neither is the willingness to elide children's rights and parental rights confined to the judicial treatment of these cases. Academic commentary has also tended to skate over the issue of whether the applicant child did, in fact, hold an independent qualifying belief. Authors such as Sandberg, despite his otherwise insightful analysis, omit tackling this issue in discussing the *Begum* case (Sandberg, 2011). This gap in legal debate has rendered the analysis of exorcism even more difficult, in relation to both decision-making in individual cases and policy-making.

The basic principle in English law, as outlined in the iconic *Gillick* case, is that capacity for children is an incremental concept and decision-specific.[33] Once a young person achieves sufficient maturity to adequately understand a given decision and all of its implications, he or she has the right to make that determination independently and parental responsibility[34] ceases for the matter in question (Gilmore and Herring, 2011). This means that a young person will achieve *Gillick* competence gradually and a child will be able to give legally operative consent to a haircut before being in a position to independently choose whether or not to have elective surgery involving a general anaesthetic.

As Adar and Leigh correctly assert, the *Gillick* principle applies to religious matters in the same manner as other spheres (Adar and Leigh, 2005). The difficulty with which we are faced, however, is that there has been little discussion of what it might actually look like in this context, at least where it is divorced from a decision about medical treatment. There has admittedly been extensive judicial and academic debate over the operation of *Gillick* competence in the sphere of the refusal of clinical interventions (Cave and Wallbank, 2012).[35] Nevertheless, I would argue that these discussions are of very limited help and relevance in assessing what a young person would have to understand in order to make a choice about an exorcism.

The debate over *Gillick* has focused on paradigms in which the physical well-being is directly at stake, either directly or indirectly, but this does not assist greatly when translated into a scenario in which the harms and benefits may be psychological and social or cultural in nature. There are two reasons for this contention: first, as noted, the factors being weighed in the balance are radically different and there is a real risk of comparing apples and oranges; second, I would argue that the question of bodily autonomy is the fundamental issue (Ó Neill, 2018) in cases around a teenage Jehovah's Witness[36] who wishes to refuse a blood transfusion or a vegan wishing to decline a vaccine containing animal products,[37] albeit that religious factors may be directing the preference. Although the

[31]This protocol guarantees not only a right to education, but also a right to education in conformity with parental religious and philosophical convictions.

[32]*R. (SB) v. Governors of Denbigh High School* [2007] 1 A.C. 100; see e.g. paras 10 and 11.

[33]*Gillick v. West Norfolk and Wisbeach Area Health Authority* [1985] 3 All E.R. 402.

[34]Children Act 1989, s. 3(1): 'In this Act "parental responsibility" means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.'

[35]*Re R (a minor) (Wardship Consent to Treatment)* (1992) Fam 11.

[36]*Re E (a minor)* [1993] 1 FLR 386.

[37]*F v. F* [2013] EWHC (Fam) 2683.

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motivation for a decision in respect of medical treatment may shed light on understanding or maturity, the core question is whether the young person has capacity to decide, and if a person is deemed competent to make a choice, they can exercise that autonomy on the basis of whatever values or priorities they wish.

Undoubtedly, some practices relating to exorcism can lead to serious injury and even death, but there is no serious suggestion that minors should be in a position to give operative consent in such cases. Therefore, what is the situation where the harm is *not* bodily in nature? How would *Gillick* competence operate in that sphere, and what factors should a court weigh up in permitting or forbidding participation in an exorcism ritual where the child lacked capacity?

For instance, there has recently been understandable controversy around the activities of the Danish religious leader Torben Sondergaard and his assertions that exorcism and baptism can 'cure' autism (Boseley and Lignel, 2015)[38] and homosexuality (Quinn, 2016). Suppose that a child aged thirteen was taken to the meeting of such a group by one of his parents. He and the relevant parent become convinced that an exorcism could 'cure' his autism and believe that this would make his life easier; the other parent is horrified and seeks a prohibited-steps order pursuant to section 8 of the Children Act.[39]

What would the young person have to be able to understand and weigh up in order to give valid consent on his own behalf? If the minor failed to attain *Gillick* competence, how would a court ascertain the relevant factors in making a best-interests determination?[40] It is hard to imagine a court acquiescing to such a plan for the child in the face of parental opposition, given the lack of scientific evidence for any therapeutic benefit, and this would be in keeping with the consistent case-law on ritual male circumcision and non-competent minors.[41]

At present, the approach of the courts remains speculative because, in England and Wales, we regrettably simply do not have sufficient adequate judicial or academic consideration of children's rights in the context of religion and spirituality outside of the highly specific context of faith-based refusals of medical treatment. This systemic legal deficit further marginalises *all* under-eighteens and has an even greater impact on those subject to other marginalising factors (e.g. membership of minority ethnic or cultural groups).

8 Conclusion

My overriding conclusion is that we are, at present, in a poor position to provide a satisfactory and nuanced legal response to the spectrum of issues around children and exorcism because the law on children's rights is underdeveloped in the sphere of faith – a reality that exacerbates the already marginalised position of minors with law and society. This is a marked problem in England and Wales, but the case-law on Article 9 demonstrates that this is a pan-European deficiency. Specifically, I would note:

1 A blanket ban on the exorcism of minors is not appropriate, as it would unduly interfere with the religious freedoms of individual children and their communities.
2 There may be a case for a very narrow, specific offence in relation to witchcraft labelling, but more work needs to be done on the sociological context.

[38]Although it is an area in need of more empirical study, there is certainly evidence that at least some of the children identified as needing exorcism across religious, cultural and ethnic divides are exhibiting behaviours that might lead to a diagnosis of ADD (Attention Deficit Disorder) or ADHD (Attention Deficit Hyperactivity Disorder) in other contexts. There are current socio-medical debates about the benefits and pitfalls around identifying, pathologising and medicating children who are not neurotypical, which, although beyond the scope of this paper and the expertise of legal academics, do raise questions about whether there is a common tendency to problematise and pathologise individual children whose behaviour and experiences are different from the majority of their peers; see e.g. Boseley and Lignel (2015).

[39]Children Act 1989, s. 8(1).

[40]*Ibid*, s. 1(1).

[41]*Re J (Specific Issue Orders: Child's Religious Upbringing and Circumcision)* [2000] 1 FLR 571 (C.A.).

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3 The two proposals for reform amount, in effect, to a blanket ban on child exorcism.
4 The current legal framework does not take account of the unique position of older children in terms of belief. They are treated as completely lacking agency in proposals to prohibit exorcism, yet are regarded as isomorphic to adults as applicants with full agency when making Article 9 claims. Neither position reflects the reality for young people whose values and identity are present but inchoate.
5 The text of Article 9 exacerbates this problem: both of them focus on orthodoxy and the requirement for a qualifying belief operates to marginalise children.
6 Domestic courts have really not assisted. The failure to consider what *Gillick* competence might look like in religious contexts beyond the sphere of medical treatment has led to a dearth of judicial guidance and, consequently, academic debate.
7 This situation needs to be remedied if we are to provide a nuanced response to issues around the exorcism of minors, but also the human rights of children more generally in the religious ambit. This is part of the state's obligation pursuant to the United Nations Convention on the Rights of the Child, and long overdue.

Having just outlined the problem, it is incumbent upon me to at least point in the direction of possible solutions. I would stress that there is a need for more empirical work on this area, to better understand the context from an anthropological and sociological perspective. Yet, with that caveat in mind, my suggestion would be that aside from investigating the merits of a narrow offence relating to witchcraft labelling (see Point (2) above), the focus should be not on creating new criminal offences, but on concentrating our collective efforts on children's welfare and rights. Without a more nuanced understanding of the experiences that young people have of exorcism, it is almost impossible for those tasked as judges, lawyers, social workers or police officers with interpreting the existing legal provisions on child protection and current criminal legislation, to provide an adequate response. Stereotypical perceptions about exorcism-related abuse only arising in certain communities and confusion about differentiating benign and harmful practices are inevitably going to impede our goal of ensuring that all young people enjoy a safe and healthy childhood.

In contrast, I would advocate addressing the text of Article 9 and considering whether an alternative, additional provision is needed to adequately bring children within the fold of human rights protection where freedom of religion is concerned. An instrument that is exclusionary in nature, through its failure to fully acknowledge the position of a class of marginalised citizens, increases their vulnerability to harm and injustice. In addition, when marginalising factors experienced by individuals are multiplied (e.g. through membership of minority communities), the already unacceptable risks increase still further.

Conflicts of Interest. None

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