Constructing normative ethics for Child Protection and Children’s Rights in a multicultural but largely secular society: a defence of children’s graced autonomy.

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Chapter One: Introduction

This thesis explores and develops the possibility of ethical and legal norms for child protection, safeguarding and children’s rights which have not only cross-cultural application but acceptance particularly in relation to religiously-motivated worldviews. The history of multiculturalism and its impact on children illustrates varied concerns and widely differing responses ranging from religious groups who mistrust secular authority\(^1\) to humanists like Richard Dawkins who argue that religion is itself abusive.\(^2\)

In 1995 Carolyn Hamilton argued, concerning restricted religious education and religiously-based refusal of medical treatment,\(^3\) that children should not be ‘sacrificed on the altar of religious freedom.’ Nonetheless OFSTED reports and interventions from 1991 to 2008\(^4\) show continued concerns about education in separatist religious communities. Court proceedings about blood transfusions for Jehovah’s Witnesses also continue.

In 2001 Victoria Climbie’s death exposed failures to protect children in Christian communities practising exorcism. The Laming report into Victoria’s death\(^5\) stated that cultural difference should never again lead to failures of child protection. Tragically soon afterwards Child B was killed by her aunt, also through exorcism.\(^6\) In 2008 Rashana, a young South Asian Muslim woman received compensation from Oldham Council for their failure to protect her from sexual, physical and emotional abuse by her family.\(^7\) The failure was attributed to the Council’s reluctance to intervene in a South Asian Muslim family because of perceptions that abuse did not happen in religious communities and that intervention might be seen as racist. Harmful practices

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\(^3\)C Hamilton Family, law and religion (London: Sweet & Maxwell 1995) pp.140-342


\(^6\)N Woolcock “Girl, 8 was tortured for being a witch” www.timesonline.co.uk/tol/news/uk/10.05.2005; www.bbc.co.uk/radio4/today/angola/08.07.2005 (accessed 09.12.2009)

with religious or cultural origins like cliterodectomy and forced marriage took decades to be recognised and the extent of their incidence remains unclear.

Yet some writers express concerns about over-hasty intervention in religious families and communities arguing that, whilst religion is a factor in child protection and family matters, it is not a concern. By contrast government-sponsored research concluded that religious difference was unimportant in establishing significant harm in child protection cases. This illustrates the initial contested question namely whether religious difference is even a factor let alone a problem in child protection, safeguarding and rights. However, if religious difference is a factor questions arise about the extent, nature, cause and implications of such difference and whether it constitutes a child protection concern. This in turn requires interrogation of what is harmful or constitutes a child protection concern. This thesis argues that religion is a factor in child protection and that engagement with religious worldviews is needed to assess the implications of religious difference for protecting children. Confining the enquiry to cases in which the threshold of significant harm has been crossed fails to address situations of concern outside court-based child protection.

For example Dr Brophy’s research overlooks children like Rashana and Climbie whose cases did not reach the child protection courts because proceedings were never issued. Religious difference in education also rarely receives court attention, yet the 2008 OFSTED report identified a lack of safeguarding policies and monitoring in independent religious schools. Home-schooling and after-school religious teaching are uninspected. Faith communities themselves are increasingly aware that they need to address child protection and safeguarding in relation to corporal punishment, forced

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8 Female Genital Mutilation or female circumcision; cliterodectomy is used as more neutral
9 Forced Marriage Unit says 250-300 forced marriages/year
www.justice.gov.uk/news/newsrelease260707 but SOAS estimates 1,000
marriage\textsuperscript{13} and exorcism.\textsuperscript{14} These cases and research findings that variable attention is paid to cultural difference in childcare proceedings suggest that religious differences and their implications remain obscured. A study\textsuperscript{15} of parents from ethnic minorities involved in care proceedings also suggests under-estimation of the significance of religious faith. Information about the ethnicity and religion of children subject to fostering or child protection plans is limited. Numbers of South Asian children in care, of whom some are likely to be Muslim, have increased since 2005\textsuperscript{16} possibly suggesting increased intervention; figures for other religious communities are unavailable. Both cases and research therefore illustrate the need to engage further with cultural and religious difference to achieve Laming’s goal of cross-cultural norms for child protection.

Obstacles to tackling such concerns can be divided into problems of conceptualising, recognising and defining harmful practices particularly where activities do not fall within existing legal paradigms and harm is contested. Multiple factors impede investigation and consequently children’s protection. These include, as in Rashana’s case, limited recognition of concerns because religion is perceived as benign,\textsuperscript{17} fears of damaging communities’ reputation, community cohesion or allegations of racism colluding with communities’ self-preservation. The thesis therefore begins by exploring areas where religious and secular or liberal and traditional presumptions differ in order to identify the impact of such differences on children. This enables consideration of possibilities for universal and cross-culturally valid protection of children. The factual background to the thesis potentially engages debates about multiculturalism, legal and ethical norms, religion in the public square, human and children’s rights, safeguarding and child protection assessments. It is impossible to cover all such debates adequately in one thesis. The focus of this analysis is to identify ethical and legal norms sufficiently consistent with major religious traditions to ensure

\textsuperscript{13} Dr G Siddiqui “Law to protect the young must cover madrassas as well” Commentary The Times 10.12.08 www.muslimparliament.org.uk/Media/childprotectionreport/pdf, www.ccpas.org.uk (accessed 28.04.2011)
\textsuperscript{14} K Barling “Still learning after Victoria Climbie” www.bbclondon/communityrelations/August2006 (accessed 29.11.2010); E Stobart Safeguarding children from abuse linked to belief in spirit possession (London, HM Government 2007 www.direct.gov.uk/DCFS)
\textsuperscript{15} J Brophy, J Jhutti Johal & E McDonald Minority ethnic parents, their solicitors and child protection litigation (London DCA 2004)
\textsuperscript{16} Table A1 Children in Care at March 31\textsuperscript{15,17} & Table 4D Referrals & Assessment of Children & Young People subject to Child Protection Plan 1st Release March 2008-2009 & Table 4D www.education.gov.uk/childrenincareandchildinneedstatistics (accessed 28.04.2011)
\textsuperscript{17} Lord Laming The Victoria Climbie Enquiry Report (London: The Stationary Office 2003)
acceptance and so enhance children’s safeguarding. The hope is that common understanding about what constitutes harm, protection and rights can reduce the need for intervention by child protection agencies and reduce the risks of concerns being overlooked because of cultural difference.

**Why these questions?**

The research was prompted by the plea of the Laming report into Victoria Climbie’s death that no child should lack protection because of religious or cultural difference. Personal experience of legal practice in child protection for a local authority with a significant South Asian Muslim population featured forced marriage and ‘honour’ crime. Later practice as a barrister involved cases of medical neglect in separatist Christian and Jewish families and severe corporal punishment in both Christian and Muslim communities. These anecdotal examples illustrated conflict between religious and secular perspectives and reflected media concern about the deaths of Child B and Climbie, judicial comment on forced marriage and ‘honour’ and OFSTED concerns about isolationist education. Increases in forced marriage cases and reports to the Forced Marriage Unit indicated a wider incidence than originally appreciated. Debates and cases about adoption, faith schools and religious dress in school also raised questions about the role and impact of religion on children’s upbringing and rights.

Such evidence seemed to suggest that Dr Brophy’s research was too limited, discounting religious issues too early; focussing on cases in child protection courts under-estimated the extent of religious difference with significance for children’s protection and the 2004 test of safeguarding.\(^{18}\) The process of developing legislative responses to forced marriage also revealed greater complexities in religious difference than appreciated in initial responses through criminal law and categorisation as human rights abuses. Difficulties in ensuring effective responses to forced marriage indicated the need for sympathetic engagement with religious perspectives and development of common understanding across communities, not just legislative changes. The diversity of issues in which cross-cultural religious difference affects children and their upbringing highlights the range of legal engagement with religion that is needed.

\(^{18}\) s.10 Children Act 2004
Theoretical perspectives and framework papers:

Although some commentators have considered the cross-cultural application of children’s rights, particularly in relation to the United Nations Convention on the Rights of the Child, there has been little exploration of specifically religious worldviews. The focus of the thesis on religious rather than cultural difference is chosen because of the specific protection for freedom of religion in international and domestic human rights instruments. Protection of conscience and belief is a key human rights goal and safeguard against state oppression; it places freedom of religion and conscience at the core of human ontology and autonomy. This makes curtailing religious freedom more sensitive than simply restricting cultural practices. Yet freedom of religion is one of the most-disputed UNCRC provisions. Distinguishing culture and sometimes race from religion can be difficult, as illustrated by examples considered below. The thesis adopts the position of English law that the distinguishing factor is the belief of the individual, even if misguided. Multicultural difference is therefore discussed from the perspective of different religious beliefs as they affect children, their rights and safeguarding. This contrasts with adult perspectives on multiculturalism which often focus on community preservation, cohesion or countercultural rebellion against either dominant society or the religious community.

Besides tending to ignore specifically religious difference earlier attempts to find cross-cultural consensus about rights and protection also assumed universal consensus about children, often defining objective norms by reference to the dominant societal status quo. The weaknesses of such assumptions are identified through analysing differences between traditional religious and liberal secular perspectives and practices in the field of children’s rights. Major areas of conflict between religious and secular perspectives arise about what constitutes welfare, harm, dignity or needs, an example being diametrically opposed views of ‘spare the rod, spoil the child’. The issue is not whether child protection is needed but from what children need protection where concepts of harm are contested across and within cultures. The thesis therefore focuses


on contested understandings of harm and protection rather than commonly recognised abuse perpetrated within religious organisations which is religious only by connection with the institution involved. Similarly McFadyen’s theology of abuse as sin is a different field to the quest for normative understandings of what constitutes abuse or harm.

Yet theology is relevant. The thesis proceeds from the basis that, to quote Archbishop Rowan Williams, ‘if universal law and universal right are a way of recognising what is least fathomable and controllable in the human subject - theology still waits for us round the corner of these debates.’ The essence of the Archbishop’s assertion is that developing universal norms for diverse communities requires consideration of what and who human beings are including both children and the adults they are to become. Such ontological questions engage theology and philosophy like McFadyen’s work on the ‘Call to personhood’ as well as functional questions of medical and social science, in both defining and implementing ethical norms. Engagement is needed with the religious and theological premises underlying differences between religious and secular worldviews. Engagement with theology also aims to correct polarised perceptions of religion as extreme, irrational and non-negotiable or benignly beyond suspicion or question.

Perceptions of extremism are based on fears of Islamic terrorism, refusal of blood transfusion, puritanical separatism or Opus Dei’s mortification. Depicting young people as ‘victims of religion,’ for example through forced marriage, exorcism, cliterodectomy or religious dress also shows religion, particularly non-western religion, as irrational and fit for dismissal not engagement. Yet more benign

22 A.I. McFadyen’s Bound to sin: abuse, holocaust and the Christian doctrine of sin (Cambridge: CUP 2000)
24 A.I. McFadyen Call to personhood (Cambridge: CUP 1990)
26 Re R (Minor: Medical Treatment)[1993] 2 FLR 757; Re O (Medical Treatment)[1993] 2 FLR 179; Re S (A Minor: Consent to Medical Treatment) [1994] 2FLR 1065
27 A Hannaford “Inside Britain’s Strictest Sect” (30.03.08) www.telegraph.co.uk (accessed 28.04.2011)
perceptions of religion found in social policy circles which respect cultural difference can lack the critical faculty and understanding of religious belief to question their impact on children. Greater theological literacy can enable genuine engagement with religious communities’ perspectives and reduce fear of hostility or allegations of racism which cause reluctance to intervene. Theological literacy and engagement may also challenge communities’ fears about assimilation and consequent misreading of situations.

Young people are most at risk of traditional communities’ anxieties about assimilation. Yet young people, particularly from minority religious communities, are more likely to encounter difference than many of their elders and need to make sense of the multicultural realities of their lives.29 The fact that many young people particularly Muslims identify themselves by religion before nationality or race, 30 asserting rights to manifest faith through challenging school dress codes, 31 makes religious diversity a key issue for many in that generation. Yet discourse about multicultural policy is often framed in terms of threats to community cohesion and fear of alienated young people with insufficient language or skills to obtain employment and at risk of involvement in extremist causes. This demonises young people and obscures the actual implications of religious upbringing for children, adolescents and adults. The thesis also aims to correct that perspective by enhancing theological literacy and understandings of difference on all sides of the debates.

**Legal evidence and method:**

The legal context of the enquiry is set out through examination of case-law, statute and the premises underlying their interpretation. Whilst reported cases represent only a fraction of the cases covered by the courts they constitute legal precedent and are therefore those of most legal and social significance. The secular law considered is limited to UK and more particularly English law. Although not directly enforceable in the UK, the United Nations Convention on the Rights of the Child is considered as a

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31 R (ex p Begum) v Denbigh High School [2006]UKHL 15; R (X by her father) v Y School [2007] EWHC 298;[2008] 1 All ER 249
benchmark against which to consider UK law and the purported international standard for protecting children. Whilst the underlying assumption of the thesis is that the public square for considering law and policy is the UK, the multicultural and global nature of society means that awareness of child law outside the UK is also relevant, particularly to families and communities of non-UK origin. When referring to the applicable law the phrase English law will largely be used to distinguish it for example from the Children Act (Scotland)\footnote{Children (Scotland) Act 1995} which has some different provisions. The UK is used in referring to international treaties as the UK government is the relevant signatory. Analysis of English legislation\footnote{Also covers Wales, with parallels in Scotland and Northern Ireland} is limited to the Children\footnote{Children Acts 1989, 2004 & 2006} and Adoption Acts\footnote{Adoption and Children Act 2002; Adoption Act 1976} and education law\footnote{Education Acts 1996, 2002; Schools Standards and Framework Act 1998} as the main legal instruments for judicial consideration of religion and culture in children’s upbringing.\footnote{Young people in the criminal justice system fall outside this thesis but see P Lewis op cit pp.33-59} Child-specific legislation is also considered within the framework of the Human Rights Act 1998,\footnote{Incorporating the European Convention on Human Rights into English law} equalities legislation\footnote{Equality Acts 2006 & 2010 and sex and racial discrimination legislation; full texts cited at Appendix A.} and principles of English legal interpretation particularly concerning approaches to religion.

Religious divergence from legal and rights-based norms is explored through foundational scriptural and theological sources and varying approaches to interpretation. Conflicts between universal and minority religious rights are placed in context to illustrate the obstacles to normative application of the UNCRC and English law. This requires engagement with specific parenting practices, philosophies and theologies underlying contested views of children’s best interests. The impact on other rights of freedom of religion, conscience\footnote{Article 14} and minority cultural education\footnote{Articles 29 & 30} requires assessment both of whether a particular practice breaches rights and what criteria make that breach problematic. This helps to identify core differences to be negotiated in seeking to achieve common understandings for defining and applying rights. Core legal assumptions explored are definitions and understandings of harm and the relationship between harm, consent and autonomy. The illustrative legal contexts of sexuality and relationships, discipline, education and adoption are considered in the
context of both the UNCRC and English law, along with exemptions from legal norms for religious beliefs.

Consideration of legal issues also entails engagement with other disciplines that impact on and ground legal decisions like philosophy, sociology and other social research. This follows Luhmann’s autopoietic model of law as adopted by Michael King in ‘How the law thinks about children.’\(^\text{42}\) Several discourses are explored as tools to find resolutions to conflicts between universal and particular laws and worldviews. Discussions within law and social work\(^\text{43}\) consider possible criteria for normative understandings of children comparing basic needs, rights and interests. Religious perspectives with a similar focus are also considered.\(^\text{44}\) The impact of modern scientific method is contrasted with theological constructions and provides a further key to considering differences of religious and secular authority. In some instances scientific or sociological research is cited as evidence of children’s capacity, for example for decision-making in medical situations. In other cases research is cited as evidence of methodology, authority and worldview. Similarly some religious sources are cited as evidence of a particular belief, in other instances as examples of hermeneutic understanding or process.

**Religious evidence and theological method:**

The religious analysis focuses on communities within the Abrahamic traditions namely Christianity, Judaism and Islam. These religions are chosen as they feature most in English law, are numerically greatest in the UK and best-documented in terms of identifiable beliefs, laws and practices. Although locally-based these religious communities also have national structures and fora\(^\text{45}\) engaged in public life and well-placed to illustrate a variety of perspectives. Debates about child protection are

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\(^{42}\) Professor M King & C Piper *How the law thinks about children* (Surrey: Ashgate 1995)


\(^{44}\) J Finnis *Natural Law and Natural Rights* (Oxford: Clarendon 1979)

\(^{45}\) E.g. The Muslim Council of Great Britain and the Muslim Parliament; the Office of the Chief Rabbi and the Beth Din in Judaism and Bishops, Synods and conferences in different Christian denominations
relevant to all communities even those least willing to engage in dialogue and contact with dominant society as was shown by the scandal of child abuse in the Roman Catholic church. However, such engagement is needed not only to protect children within religious communities but also to contribute to discussion of safeguarding; those who do not accept rights still have views about children’s welfare and what is harmful.

The variety of practice and belief in religious communities renders any statement about them open to challenge. The thesis’ analysis of religious and secular differences of worldview concentrates on approaches to heteronomy versus autonomy, modernism and the relationship with science and other forms of moral and epistemological authority. This in turn relates to differential stances to dominant society, culture and law. Analyses of religious standpoints by Niebuhr, Ward, Ramadan, Roald and Freud-Kandel illustrate that within each tradition there is a variety of perspectives from liberal to the traditional in ways that reflect secular versus religious divides. Evidence is cited from a range of standpoints when considering illustrative issues so as to contextualise the different perspectives. The terminology used contrasts traditional and religious perspectives with secular and liberal viewpoints. In most instances attention is given to each faith tradition in relation to issues under discussion. However, the high profile of Islam particularly in relation to gender, young people and community cohesion means that there is more material about Islam in the public domain. Some issues are identified with a specific faith for example forced marriage with Islam, exorcism with Christianity, community membership with Judaism. These factors affect the balance of material presented in some instances.

The theological method used is a liberationist hermeneutic which observes and analyses society, particularly as revealed through the experience of the poor and voiceless, from the perspective of faith. It ‘begins in an analysis of the social context

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48 T Ramadan (2004) op cit pp.24-30
of the believer from diverse disciplinary perspectives which is subjected to theological reflection through the scripture and tradition which provide faith communities with their ethical authority, guidance and understandings. Through engaging with social contexts and secular epistemologies theological reflection enables dialogue both within and outside particular religious communities and can engage those who do not accept God-talk. Engaging with social contexts and societal development, rather than imposing essentialist history or tradition on a changing world, allows theological analysis of contemporary issues rather than countercultural isolation from wider society. Such reflexive dialogue can accommodate new understandings and circumstances and inform future practice. Legal and policy debates in the public forum concerning adoption, forced marriage, exorcism, discipline, faith schools and religious dress illustrate tensions between religious and secular ideas about children and childcare; these are the ‘social context’ grounding the theological reflection of the thesis.

Liberation theology began in Latin-American Catholic Christianity but is also found in Islam and Judaism. Criticisms include charges of being over-political, too focussed on the material and prone to relativism because of the particularity of contextual analysis. Yet as a process engaged with concrete social and political realities liberationist hermeneutic is suited to theology in the public arena. As its title indicates liberation theology is concerned with freedom and fullness of life in this world as well as the next. It recognises that human systems including politics, law and religion are value-laden and preserve the status quo unless critically engaged with imbalances of power that limit human freedom. The liberationist bias views power structures from the perspective of those who are poor or voiceless. Theologically and politically children are poor, hidden in society by family privacy they have no vote and little voice in public debate or court proceedings. Such exclusion is exemplified by arguments that being incapable of responsibility children cannot have rights. Privatised religion means that children from religious communities, particularly in

independent schools and restricted social networks are doubly hidden. This is even more so in communities where engagement with dominant society is via adult male community leaders with different concerns from younger generations. Liberation theology is therefore an appropriate lens through which to critique constructs of children as passive, voiceless recipients of education or socialisation and to examine children’s safeguarding and rights.

Feminist theology used the hermeneutic of liberation theology to challenge received wisdom about women both in the religious and wider world, revealing God’s purposes through women’s marginalised voices. Child theology operates from the same presumption and has several proponents who argue that viewing the world through children’s eyes is revelatory for adults. Yet much child theology simply posits children’s vulnerability or mystery as revelatory without addressing their need for protection in the light of that vulnerability and mystery. The thesis aims to provide greater substance to existing theology about children and what they reveal to the adult world and dominant society through considering their protection and rights. Given the potential impact of religious difference on parenting, understandings of children and human ontology the thesis argues that theology can add to discourse about cross-cultural consensus over children’s rights and safeguarding. Theological understandings consistent with various religious worldviews can ground respect for the autonomy, rights and protection of each human being as a uniquely created gift of God.

A number of theologians have considered the ontological, scriptural and spiritual significance of childhood both from theoretical perspectives and through empirical research into children’s spirituality. However, they have engaged less with issues concerning children and their rights. Miller and Pais consider harmful parenting

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56 The Church of England & Roman Catholics have only male Bishops, imams are male, Orthodox Jewry has only male rabbis.
styles influenced by religious thinking and Couture\textsuperscript{61} approaches children’s rights from a socio-political perspective through liberation theology. Multicultural differences as they affect children and their rights have been considered from a range of legal and sociological perspectives\textsuperscript{62} but there is little engagement in such writings with religious difference and its theological basis. Exceptionally the human rights lawyer An-Na’im\textsuperscript{63} considers rights from a Muslim perspective and Marshall and Parvis from Catholic Christianity. Both support children’s rights as compatible with religion but differ over their application. An-Na’im proposes inculturating rights within religious communities’ own conceptual frameworks. Marshall and Parvis\textsuperscript{64} argue uncritically for the implementation of human rights as they stand with distinctions drawn between protecting religious but not ‘merely’ cultural practices. This thesis therefore hopes to promote more concrete engagement of rights and theology with the substance of child protection and safeguarding by application of theological insights to that field.

The social context:

The illustrative issues addressed by the thesis begin with the most extreme examples of religious or cultural difference that raise headline concerns such as forced marriage, cliterodectomy, religious dress, ‘honour’ and other codes of sexual behaviour that determine predominantly female sexuality. Although most notoriously associated in the media with Muslim communities, codes of sexual behaviour and role are found in all monotheistic religions. The enforcement of such codes and other aspects of religious morality are also examined, particularly in relation to corporal punishment and proceedings defending its use in schools as a manifestation of Christian belief. Exorcism is examined as a further religious construct surrounding treatment for bad behaviour also associated predominantly with Christianity. Underlying children and communities’ understanding and enforcement of morality is education with concerns


\textsuperscript{64} K Marshall & P Parvis (2004) op cit pp.219-221
identified by Caroline Hamilton\textsuperscript{65} about indoctrination and transfusions for adolescent Jehovah’s Witnesses.\textsuperscript{66} This raises concerns about the role and freedom of faith schools particularly those in the independent sector. Education is largely dictated by the community and culture of one’s family which also profoundly affects identity, formation of conscience and communal allegiance. Constraint of identity through communal exclusion on genetic grounds or through illegitimacy also raises concerns about religious difference and harm, illustrated in differing approaches to adoption. Each issue arises for discussion because of its incidence in case-law, the media and children’s lives even if outside the child protection courts.

**The extent of religious and secular difference:**

There are several difficulties in assessing the extent, nature and cause of religious and secular difference over parenting. Family privacy and the autonomy afforded to parents by high thresholds for child protection intervention hides much that happens in children’s lives. As noted above children in religious families are doubly hidden by protection of religious autonomy and education particularly in separatist communities. The lack of homogeneity in any religious tradition or indeed secular society and the single-family focus of court proceedings make it difficult to detect and evaluate practices of concern for children in a whole community. The illustrative examples cited above and used as case material affect only some religious communities. They need to be addressed on their merits recognising the widely variable engagement of religious communities with wider society, stances on assimilation of religion to dominant culture and approaches to religious and secular paradigms. Religious and secular differences operate both on specific concerns like forced marriage and the underlying worldviews that make negotiating common standards problematic. The aim is to examine each issue and their underlying assumptions and premises from the particular religious perspective concerned and the secular perspective generally adopted by the law. This enables comparison of different worldviews and evaluation of criteria about what is harmful to children. It is only once such criteria and assumptions

\textsuperscript{65} C Hamilton op cit pp.140-342

\textsuperscript{66} Re E (Wardship: Consent to medical treatment) [1993] 1 FLR 386; Re S (A Minor: Consent to Medical Treatment) [1994] 2 FLR 1065; Re L (Medical Treatment: Gillick Competency) [1999] 2 FCR 524; J Fortin op cit pp.152-158
are transparent that judgements can be made about which is preferable and how to bridge differences of understanding so as to seek consensus about protecting children.

Underlying conceptual differences identified include constructions of the purposes of education, attitudes towards dominant culture and information, aims in life and sources of authority, meaning and value. This in turn affects understandings of human ontology as natural or constructed, inherited or nurtured and perceptions of biological difference like race and sexuality and consequent roles, relationships, right and wrong behaviour, moral autonomy and identity. Within these differences there are broad divisions of understanding about authority and identity as autonomously or heteronomously formed. These differences have significant implications for education, formation of conscience and the shaping of children’s capacity for autonomy and discernment during childhood and into adult life. Upbringing in religious communities can provide clear moral frameworks, a positive sense of identity and belonging, family support and protective nurture. However, rigid or isolationist religious upbringing can also have more negative consequences from the perspective of dominant culture. These include lack of information, scope or capacity to make decisions that do not accord with the religious codes learnt or even to discern between different applications of those codes in situations of conflict. This has consequences for long-term decision-making and negotiating difference between the religious community and wider society but also for self-protection from immediate harm and access to services outside the community. The question is whether such constrained choices and limitation of capacity for self-protection, discernment and negotiating wider society is a matter of safeguarding and child protection concern.

The thesis argues that limitations which constrain capacity for life decisions, exercise of talents and opportunities are a matter of safeguarding concern. They restrict the scope for education, training, recreation, community contribution and future social and economic wellbeing contrary to the safeguarding criteria of the 2004 Children Act and infringe wellbeing and integrity. Restrictions created by essentialist understandings of sexual, racial or religious difference can lead to exclusion, stigma and in the worst cases to enforcement of codes through physical force. Whilst the law generally deals robustly with enforcement that causes physical harm there is less

\[\text{67 s.10}\]
recognition of concerns that fall short of easily evidenced physical consequences. It is normative ethical agreement about those aspects of children’s safeguarding, protection and rights which the thesis seeks to address. From a liberal secular perspective such constraints contravene western norms for autonomy and individual freedom, breaching rights to voice, education, information, association and non-discrimination under both the UNCRC and ECHR. Insofar as force is used whether through actual or threatened physical violence there are breaches of rights to physical safety and freedom from abusive or degrading treatment. Some secularists would go so far as to argue that all religious instruction is harmful in that it promotes doctrines that are superstitious and untrue. However, the dominant liberal view seen in law and policy is that religion has its place and is generally benign save for instances where it causes obvious harm. This again points to the core question of what constitutes harm and the need to define cross-culturally acceptable criteria for harm particularly when engaging with those whose premises derive from religious worldviews at odds with secular liberalism. In a multicultural society common understandings of what is harmful cannot be assumed as illustrated even when considering ostensibly harmful practices like cliterodectomy.

**Transcending religious differences to reach consensus:**

The UNCRC is the most notable example of international attempts to reach cross-cultural consensus about protecting children in the same way that the United Nations Declaration on Human Rights sought international consensus about protecting all human beings. These conventions are weakened by reservations and interpretative differences as is explored through the illustrative cases considered in the thesis. However, their international acceptance makes rights the best starting point for seeking enhanced consensus over child protection. The difficulty posed by this proposition is that for some religions and religious commentators, rights and particularly children’s rights are perceived as anti-religious. Therefore in seeking norms that can transcend religious difference the arguments of those opposed to rights are addressed before considering differences about specific concerns. The main arguments considered are those of Christian theologian Stanley Hauerwas who bases his critique on the

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68 *Education white paper* [www.humanism.org.uk/home/news/24.11.10&25.11.10](http://www.humanism.org.uk/home/news/24.11.10&25.11.10)
eudamonist ethics of Alistair MacIntyre. Hauerwas’ critique is chosen because it falls into several parts each of which raises pertinent questions from the perspective of this thesis. These include whether rights and the autonomy they assume are compatible with religious worldviews and ethics, whether universal norms are possible and whether children can have rights particularly if, as Hauerwas assumes, they lack autonomy.

The entry into the public square of religious communities which do not separate public from private, religious from secular and hold trans-national religious allegiances challenges a number of assumptions about modern states and human rights. These include the identification of religion as a matter of private conscience and the exemption of traditional religious worldviews from equality laws prohibiting discrimination based on gender, race, sexual orientation. Faced with such conflicts of values and epistemology communitarian philosophers like MacIntyre and theologians like Hauerwas argue that universal rights and consensus over values are impossible as communities’ premises and communal narratives are so different. MacIntyre defends communities’ ethical processes of reasoned tradition and virtue by contrast with perceived deontological principles involved in a world based on rights. To the extent that ethics and rights need to be contextualised the critique of deontological rights is accepted. Yet as explored later contextualised, or in Christian theological terms incarnated, interpretations of rights are possible. Rights are defended through an expanded contextual understanding of autonomy as graced and grounded in relationship but not communitarian heteronomy. The risks of communitarian and eudamonist heteronomy are assessed through the illustrative child protection concerns and contrasted with the understanding of rights as protecting graced autonomy.

The main argument of the thesis is that concepts of autonomy and rights are applicable to children but that what constitutes autonomy needs to be re-evaluated. Children’s vulnerability, immaturity, dependence and perceived lack of what is traditionally classed as autonomy makes them and children’s rights appropriate subjects for reconsideration of what is ‘most human.’ The thesis is assessed by reference to its grounding in and compatibility with religious and theological premises including the work of both child theologians and research into children’s spirituality. One of the few

71 A. MacIntyre *After virtue* (London: Duckworths 1985)
The concept of graced autonomy is grounded theologically by reference to Barth’s specific writings on parents and children set in the context of his theological anthropology, approach to divine and human autonomy and the implications of his theology of grace and Trinity for politics and creation. McFadyen’s exploration of personhood is also engaged. The premise that rights are compatible with religion and remain valid ways to develop ethical norms and universal standards is explored through Wolterstorff’s defence of rights. Wolterstorff is considered for his critique of eudemonism contrasted with rights but his thesis is also critiqued insofar as it provides little indication of content for rights. Nor does Wolterstorff address children’s rights at any depth. The relationship of rights with equality is considered primarily through the work of Duncan Forrester but equality as a premise for rights is rejected as being too open to differential interpretation and problematic in the context of children’s rights and vulnerability. However a relationship between equality and rights is recognised as equal entitlement to human protection.

The thesis is also assessed for its compatibility with and relation to the premises and theological arguments of non-Christian religious communities namely Islam and Judaism. The aim is to consider the position of each religion from a range of perspectives. This includes liberal academics like Tariq Ramadan in Islam and David Novak in Judaism, jurists like An-Na’im and the comparative approaches of writers on Judaism and Islam found in Abraham's Children and Modern Judaism. A range of perspectives is also canvassed in each tradition to reflect diverse approaches to women’s rights and autonomy within religious communities. In Islam views range...
from Roald’s\textsuperscript{80} focussed analyses of scripture to more liberal writers like Fatima Mernissi.\textsuperscript{81} Jewish views range from those of Mark Solomon\textsuperscript{82} and Sybil Sheridan\textsuperscript{83} at the liberal end of the spectrum to more Orthodox perspectives. In addition to academic commentary and theological interpretation some survey material is also used reflecting the views of average believers. This includes surveys from \textit{Modern Judaism}\textsuperscript{84} and Esposito and Mogaded’s poll of Muslims worldwide.\textsuperscript{85}

Spokespeople and leaders from each tradition, like the Archbishop of Canterbury, the Papacy, the Chief Rabbi in Judaism and Muslim leaders through the \textit{Contextualising Islam}\textsuperscript{86} report and Muslim Parliament, are cited as illustrative of current official thinking within religious communities. Apologists from within the traditions like Alan Untermann on Judaism\textsuperscript{87} and the Muslim Ruqsiya Maqsood,\textsuperscript{88} are cited for evidence of particular practices and beliefs. Some observational writing by those outside particular traditions is also considered for example Phillip Lewis\textsuperscript{89} on British Islam and Stephanie Levine\textsuperscript{90} on Hassidic Judaism. The range of writing considered illustrates the diversity of opinion and interpretive hermeneutic within religious communities. The theology presented also supports the argument that concepts of graced autonomy in relational frameworks of human rights are compatible with all three Abrahamic traditions and that the thesis has cross-cultural application.

\textbf{The research boundaries:}

The inspiration for the research and its evidential sources are detailed above. The plethora of writing about gender and religion and religion in the public square both at theological, theoretical and sociological levels makes selection of particular evidence difficult. The aim has been to assemble a fair although not strictly representative range

\textsuperscript{80} A.S. Roald \textit{Women in Islam: The western experience} (Sweden, IMER/Malmo: Routledge 2001)
\textsuperscript{81} F Mernissi \textit{The veil and the male elite: A feminist interpretation of women’s rights in Islam} (Reading, Mass: Addison Wesley 1991)
\textsuperscript{82} M Solomon “Sexuality” \textit{Modern Judaism} (2005) op cit pp.401-412
\textsuperscript{83} S Sheridan “Gender from a Jewish perspective” \textit{Abraham’s Children} (2005) op cit pp.216-223
\textsuperscript{84} S Heschel “Gender Issues: Survey” \textit{Modern Judaism} (2005) op cit pp.377-388
\textsuperscript{85} J Esposito & D Mogaded \textit{Who speaks for Islam?} (New York: Gallup Press 2007)
\textsuperscript{86} www.cis.cam.ac.uk/CBIP/October2009
\textsuperscript{87} A Untermann \textit{The Jews} (Brighton: Sussex University Press 1996/9)
\textsuperscript{88} W.R. Maqsood \textit{Islam} (London: Hodder/Teach yourself 1993/2004)
\textsuperscript{89} P Lewis (2007)
\textsuperscript{90} S Levine \textit{Mystics, mavericks and merry makers} (New York: New York University Press 2003)
of sources to illustrate the issues and arguments outlined. Personal anecdotal experience of legal work in this area suggests that more cases illustrating the interface between religious and secular viewpoints are heard in court than those which are reported but time necessitates a focus on reported cases preventing the unearthing of further such material. The wide range of theoretical disciplines that could be applied to this area also means that much practical material in relation to social work assessment of religious and cultural difference, socio-political and discourse theory and related arguments about policy-making has been excluded. It is hoped however that the relatively theoretical focus of the thesis on ethical norms with theological and religious application can provide insights that are of assistance to the more applied areas of child protection law, policy and social work.

The thesis seeks to apply theological paradigms and insights to the context of children’s safeguarding, protection and rights in order to identify an interpretive norm that can be applied cross-culturally. The focus of the norm is to address differential understandings of harm and provide criteria for cross-cultural agreement of harm through what is most human and therefore most to be protected by rights. This addresses gaps in earlier exploration of cross-cultural human rights norms which sought consensus through criteria believed to be objective but defined largely by the status quo of dominant culture. The aim is also to address lack of engagement with the religious and theological worldviews espoused by many communities whose approach to rights apparently differs from dominant society. Finally objections by theologians and others to rights are addressed in the hope of overcoming them by using paradigms compatible with the religious understandings of the communities concerned.

Protecting children and their rights illustrates the difficulties faced by any attempt to balance cultural diversity with universal legal or ethical norms, whether constructed as absolutism versus relativism, universal versus particular or subjective versus objective. In considering resolution of these dilemmas in the sphere of safeguarding children legal, sociological and religious discourses are explored, sometimes in tension. In other instances analysis draws upon common discourses for example between religion and rights. Differences of opinion are explored not only between religious and secular paradigms but also within both religious and secular communities for example secular
opposition of welfare and harm with rights and interests or religious and theological arguments between communitarian ethics and liberal defenders of rights.

The thesis assumes that cross-cultural norms are needed to ensure accountability and common child protection standards for all children and that achieving such norms is not impossible. However, the search for common norms needs to recognise the fact that both the principle and content of rights are contested and that secular assumptions about rights, autonomy and harm are neither self-evident nor accepted by all communities. Accordingly the optimum approach is to recognise diversity in parenting and human ontology and seek consensus about child protection through common understandings of harm from which protection is needed. Besides identifying outstanding gaps in cross-cultural approaches to child protection and rights the research brings together child theology with ethical issues in the substantive area of child protection. Broader application of the thesis and its implications across society are explored more fully in the conclusions. For example, the focus on religious practices like cliterodectomy that raise concerns about harm to bodily integrity also challenge practices acceptable in dominant society such as plastic surgery and boxing.

Structure:

Chapters three and four examine the issues identified as key concerns in the public square relating to children’s rights and protection as illustrative of differences between secular liberal and traditional religious worldviews. The third chapter opens with consideration of the headline issues beginning with sexuality and relationships prompted by forced marriage, cliterodectomy and ‘honour’. Issues of discipline and punishment are considered next as the means of enforcing moral codes followed by education as the method of forming moral conscience and understandings of the world. Finally issues of communal and other aspects of identity foundational to education are considered through the lens of religious and secular differences over adoption. The fourth chapter’s consideration of theological and philosophical paradigms underlying headline differences identifies key differences over autonomy versus heteronomy and naturalist essentialism over social construction. The issues arising from initial consideration of the headline concerns are addressed to overcome the obstacles of
differential worldview to common interpretation and application of rights, with potential hindrance to universal protection of children.

The fifth chapter proposes the paradigm that it is argued can transcend differences of worldview found between religious and secular understandings of children, parents and human ontology. If universal human rights and law are about ‘recognising what is least fathomable and controllable in the human subject’ the purpose of human and children’s rights is to protect the distinct, unfathomable and graced autonomy that God creates in each person. This is a graced autonomy lived with others in a variety of relationships, grounded in relationship with God and developed in ethical terms through rights. This chapter grounds each aspect of the thesis in Christian theology. Chapter six goes on to defend and apply each aspect of the thesis within other worldviews, in particular Islam and Judaism as well as secular understandings. The concluding chapter tests the full implications of applying the thesis and considers its application to humanity in general not just children. Its application cross-culturally including within dominant culture is also tested along with its implications for future practice and research in social work, child protection and rights.

The next chapter however, chapter two, sets out the existing context, critiques of the current situation and the gaps that need filling before analysing the social context and concerns that aim to identify the core differences that need to be addressed. Chapter two is a review and critical analysis of concepts like welfare and rights aimed at universal standards for child protection. Various means of defining human needs or rights and children’s needs and rights in particular are also considered. These include lists of needs or rights based on theological premises such as natural law and those grounded in secular largely scientific premises. They are critiqued in the light of their capacity for cross-cultural application and consistency of interpretation and found wanting. This chapter also considers in more detail than the introductory overview above both the legal and religious context of the thesis. The weakness of the proposals critiqued includes lack of consistent or agreed norms, interests or needs and the failure to address different understandings of harm and human ontology at the core of this lack of agreement.
Chapter 2: Current norms and contexts.

Although Brophy’s research concludes that religion is not a major factor in significant harm\textsuperscript{91} concerns over faith schools, forced marriage, cliterodectomy, exorcism and multiculturalism indicate that religious and cultural difference affects childcare law and children’s rights. Such difference raises challenges to developing normative safeguarding standards applicable across cultural traditions. The search for normative standards has been ongoing in legal discourse at least since Mnookin critiqued the ‘indeterminacy’ of ‘welfare’ in 1975.\textsuperscript{92} Further consideration of cross-cultural norms was prompted by the negotiation and ratification of the 1989 United Nations Convention on the Rights of the Child. This chapter considers critically several proposals for common, cross-cultural protective standards. The analysis sets out the legal context and existing norms which are the setting for the issues of concern and proposals for new norms examined in later chapters.

The religious context is also considered, examining faith communities’ understandings of children and parenting, child theology and differences within religious communities. Such discourse identifies differing foundational premises about human ontology, telos, epistemology and authority often overlooked in applying norms. For example, even within the framework of English law children are constructed both as objects of adult definitions of welfare in the Children Act and as subjects of rights in the UNCRC and Human Rights Act. Although different purposes and premises affect interpretation and construction the legal search for universal norms is unquestioned, the problem being how to achieve universality with consensus. By contrast theologians and philosophers defending virtue ethics and reasoned tradition\textsuperscript{93} are sceptical about universal norms. It is only by examining ways in which traditional religious perspectives differ from dominant liberal norms that obstacles to cross-cultural consensus can be identified. Firstly however, dominant norms and their predominantly secular, liberal premises are assessed in order to identify the baseline from which religious constructions differ.

\textsuperscript{93} E.g. A MacIntyre \textit{After Virtue} (London: Duckworth 1985); S Hauerwas \textit{A Community of Character} (Notre Dame: University of Notre Dame Press 1981)
What norms does UK law actually adopt?

The Human Rights Act 199894 and the Equality Acts 2006 and 2010 now form an overarching framework for English law, seeking to provide rights-based norms to protect all individuals. However, this framework was not in place when the Children Act 1989 became law. The Children Act purports to reflect the United Nations Convention on the Rights of the Child but treating children as objects of welfare not subjects of rights differs significantly from rights-based minimum standards. Human Rights Act provisions are enforceable in UK courts by all citizens including children who are rights-bearing legal subjects, entitled to protection from discrimination. Children’s rights under the HRA include religious claims95 and civil and educational rights similar to the UNCRC. However, the HRA lacks socio-economic and child-focussed provisions. Although applicable to children the Equality Act 2006 contained clauses like ‘nothing shall prevent someone taking into their home a person in need of care’96 apparently conflicting with child protection legislation. The Equalities Acts also exempt religious organisations from provisions prohibiting discrimination, for example concerning gender and sexual orientation, to protect them from Equalities measures that might ‘give offence’.97 This illustrates the complexities of trying to ensure equality and inherent conflicts between universal and particular, resolved in the case of the Equality Acts by protecting conservative religious interpretation over minorities within such communities.

Children Acts:

No single statute sets out the law relating to children, nor parental rights to raise children in accordance with religious beliefs. Broadly speaking legislation concerning children is divided into childcare and education law. The Children Act 1989 defines parents primarily by biology as those who exercise parental responsibility and resolves disputes about upbringing through the concept of children’s welfare. Unlike the Children (Scotland) Act 199598 English law does not specify parental rights and

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94 Incorporating the European Convention on Human Rights
96 s.62 Equality Act 2006
97 Now Schedule 23, Part 2 Equality Act 2010
98 s.1 & 2 specify care, maintaining a relationship and providing guidance
responsibilities. ‘Welfare’ is also undefined but includes children’s wishes, feelings, age and understanding and background characteristics which the court considers relevant including race, sex, religion, language and culture. These characteristics allow for cultural particularity and are largely interpreted as additional to secular assumptions about welfare. However, some cultural and religious differences go to the core of parenting and identity as seen in the contexts discussed later.

Parental rights, responsibilities, autonomy and family privacy are protected from state intervention unless parents seek court assistance in private proceedings or the state acts to protect children at risk of ‘significant harm.’ ‘Significant harm’ is ‘Ill-treatment... impairment of health or development’ defined as physical and mental health, intellectual, emotional, social or behavioural development. Unlike welfare neither cultural nor religious variation is relevant to interpreting the minimal norm of ‘significant harm.’ In practice however ‘harm’ is evaluated by comparison with ‘a similar child’, taking account of age, gender and background along with social work assessment criteria that recognise cultural difference. The Children Act 2004 introduced a statutory multi-agency ‘safeguarding’ duty with criteria for intervention under Child Protection plans based on longer-term outcomes like children’s training, education and contribution to community. Like the safeguarding objectives and Equality Act 2010 the 2006 Children Act seeks to reduce longer-term inequalities of economic and social wellbeing.

It is unclear when safeguarding criteria become ‘significant harm’ which remains the test for court proceedings. However, parenting that merely impairs welfare falling short of ‘significant harm’ gives the state no power to intervene, leaving wide scope for differential parenting. The scope for difference is reinforced by state-endorsed religious exemptions from several mainstream norms. The Adoption and Children

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99 s.1 Children Act 1989
100 S.22(5) Children Act 1989
101 S.31 Children Act 1989
102 J Brophy, J Jhutti Johal & C Owen (2003) op cit p.229 suggests social workers are more aware of cultural factors than other professionals.
103 s.10 Children Act 2004
104 s.1 Equality Act 2010
105 s.1&2
107 s.1 (3) Children Act 1989 & educational exemptions see C Hamilton op cit pp.241-336
Act 2002\textsuperscript{108} expands the timeframe of children’s interests by explicitly considering children’s welfare into adult life but reduces the significance of religious heritage. Rights to decide children’s religion remain an aspect of parental responsibility but in adoption and fostering the right has become relative to other factors.\textsuperscript{109} Respect for children’s cultural and religious heritage remains in the welfare checklist but is now an aspect of the child’s identity rights \textsuperscript{110} and higher priority is given to permanence and attachment through early placement.\textsuperscript{111} This subjects religious identity to secular assumptions about universal psychological needs.

The combined effect of broader, longer-term approaches to the state’s protective duties entrenches secular, material and psychological understandings of children’s welfare. Whilst specific safeguarding provisions are framed in terms of material outcomes the Equality and Human Rights Acts promote equality as non-discrimination. Both approaches contain significant potential for differential value judgements about children’s interests and long-term outcomes calling into question defences of religious upbringing that restrict future opportunities to the religious community.\textsuperscript{112}

Statute is applied through case-law which turns on the particular facts and legal tests applied. Case-law develops principles piecemeal rather than through systematic policy. However some norms emerge from the religious interface with childcare law. Religious beliefs held privately are protected absolutely; practices based on religious beliefs are protected unless they breach public policy or others’ rights.\textsuperscript{113} For example, religious belief cannot override prohibitions in criminal,\textsuperscript{114} childcare\textsuperscript{115} and education law\textsuperscript{116} on corporal punishment. Yet the state may only override parents’ religious beliefs if children are deemed at risk of significant harm, in practice if life or physical safety is at risk. Courts prefer secular epistemology and evidence if they conflict with

\textsuperscript{108} s.1(2) ACA 2002
\textsuperscript{109} Agar Ellis v Lascelles (1878) 10 ChD 49; 24 ChD 317; Re JM Caroll [1931] 1 KB, J v C [1970] AC, Children Act 1989 s.22, s.7 Adoption Act 1976
\textsuperscript{110} s.1(3) Children Act 1989 & s.1(4 & 5) Adoption and Children Act 2002
\textsuperscript{111} Adoption and Children Act 2002 s.1(4); Children Act 1989 s.1(3)
\textsuperscript{113} Use of corporal punishment at school – R v Williamson [2005] UKHL 15
\textsuperscript{114} R v Derrivere (1969) 53 Cr App Rep 637
\textsuperscript{115} Children Act 2004 s.58, Child Protection Registration for chastisement with wooden spoon – R v East Sussex CC ex p R [1991] 2 FLR 358
\textsuperscript{116} R v Williamson [2005] UKHL 15; Education Act 1996 s.548-549
Religious views, for example prioritising secular, psychological understandings over cultural or religious matching in adoption.¹¹⁷

Religions and religious communities tend to be seen as homogenous; disputes about religious upbringing largely concern competing religions rather than differing understandings of the same religion. If courts do adjudicate between understandings of the same faith they are guided by experts¹¹⁸ but only assess whether belief is genuinely held, even if a minority view,¹¹⁹ rather than doctrinal accuracy or the substantive merits of religion.¹²⁰ Courts give preference to the religion in which children are growing up¹²¹ as dramatically illustrated by *Alhaji Mohammed v Knott*¹²² where welfare was interpreted in the context of a couple’s plans to return to Nigeria. The court upheld the Nigerian Muslim marriage of a thirteen year old bride over enforcing the age of marriage without questioning the wife’s capacity or freedom of consent. Twenty six years later *Re K*¹²³ featured similar thinking, despite greater awareness of concerns around forced marriage.¹²⁴ *Knott* and *Re K* demonstrate courts’ reluctance to find anything harmful in religious practice.¹²⁵ Yet in cases of risk to life for example refusing blood transfusions, courts will override religious views even of children found mature enough to make decisions.¹²⁶ In less urgent cases courts may decide that children should make their own decisions when sufficiently mature.¹²⁷

¹¹⁸ R (ex p Begum) v Denbigh High School [2006] UKHL 15
¹¹⁹ Blake v Associated Newspapers [2003] EWHC 1960
¹²⁰ R Ahdar op cit p.177; Blake v Associated Newspapers [2003] EWHC 1960
¹²² [1969] 1 QB 1
¹²³ [2005] EWHC 2956
¹²⁴ Hirani v Hirani [1983] FLR 4 FLR 232; 85% of victims are women, 15% young men often with learning disabilities; 39% are minors - Forced Marriage Unit cited by H Patel, R Langdale QC & AM Hutchison in “Forced Marriage: The concept and the Law” *Family Law* August 2009 pp.726-730
In cases without clear risk of physical harm court intervention is limited. For example, Courts transferred residence in some cases of parental alienation by religious communities but concerns were limited to the children of private applications; no child protection investigations were ordered into the welfare of other children in such communities. Even where children’s lives are at risk through refusing medical treatment courts prefer less interventionist Specific Issue rather than Interim Care Orders. Thus whilst the law applies secular standards in interpreting welfare it protects community and family privacy through, arguably, over-high thresholds for state intervention particularly where religion is concerned. Religion is upheld as a good thing, reflecting the historical position that lack of religious belief was harmful. Legal protection of parenting based on religious beliefs applies even where narrow education or sub-optimal medical treatment, like alternatives to blood products for Jehovah’s Witnesses, are acknowledged to make childhood experience more limited than the norm. Yet as the illustrations and analysis in later chapters demonstrate some religious upbringing has significant implications for children’s safeguarding and rights.

Education:

Both English education law and European human rights protect religious belief not only through non-intervention but positive parental rights to educate children in their own faith. Parental rights include educating children at religious schools, exemption from the national curriculum and support for religious practices concerning dress, diet, fasting and celebrating festivals. This can mark children out from peers

129 Re O (Medical Treatment) [1993] 2 FLR 149
130 J Fortin op cit pp.552-553 re Goldstein, Freud & Solnit & pp.554-555 re Dingwall
131 C Hamilton op cit p.214; Re R (Minor: Medical Treatment)[1993]2 FLR 757
132 Re T (Jehovah’s Witness) [1981] 2 FLR 239 narrow religious upbringing upheld as having advantages because of religious code; Re S (A Minor) 19.10.95 LTL 25.11.1995 & re male circumcision p.392-5
133 Atheists Shelley & Annie Besant, refused access to their children - Shelley v Westbrook (1817) Jac. 266; www.spartacus.schoolnet.co.uk/AnnieBesant (accessed 28.04.2011)
134 Re R (Minor: Medical Treatment)[1993]2 FLR 757; Re O (Medical Treatment) [1993] 2 FLR 149
136 Article 9 ECHR; Article 2, First EU Protocol on Education; For comparison of UK with France see D. Herbert Religion and Civil Society: Rethinking Public Religion in the Contemporary World (Surrey: Ashgate 2003) pp.81-82
137 DFES Circular 3/90 exemption from classes using IT or audio-visual equipment if incompatible with religious beliefs e.g. Exclusive Brethren who have 6 OFSTED approved schools – The Times 21.03.05
in dominant society and has implications for longer-term skills and capacities. The extent of such exemptions is set out in the DFES concession in *Talmud Torah Machzikei Hadass High School*\(^{138}\) that education need only fit children for their religious community not wider society. Yet unlike welfare, education law has no provision for consulting children’s wishes and feelings about religious education.

**The United Nations Convention on the Rights of the Child.**

Although a signatory to the UNCRC the convention is not incorporated into UK law and cannot ground legal action unlike the HRA. In theory the Children Act 1989 implements the UNCRC but, as objects of adult definitions and decisions rather than subjects of rights, children’s welfare even though paramount, is generally contingent on adult interests.\(^{139}\) The Children Act 1989 barely provides for children’s civil, cultural and religious rights and such provision in education law is exercisable only via their parents. The breadth of the Children Act tests for child welfare, significant harm and safeguarding makes achieving cross-cultural protective norms as advocated by Laming\(^{140}\) problematic. The indeterminacy of welfare is exacerbated by decisions protecting parental beliefs and exceptions to education and medical norms which are permitted for religious reasons but not otherwise tolerated.

There is limited scope for children to express views about what they see as harmful or in their interests within their domestic circumstances and little culture of this being encouraged. Although schools’ councils enable consultation within school there remains no provision for children to express views about which school they attend or what religious education they receive. Views expressed about welfare or protection in court proceedings are generally mediated via adult professionals and courts are reluctant about children initiating Children Act proceedings.\(^{141}\) Yet although some older children have brought Human Rights Act proceedings\(^{142}\) or voiced views about

\(^{138}\) (12.04.85) TLR 15th April1985


\(^{141}\) J Fortin (2009) op cit pp.134-137

\(^{142}\) R (Begum) v Denbigh High School [2006] UKHL 15; R (SA Watkins Singh) v Aberdare Girls High School v Rhondda Cynon Taf [2008] EWHC 1865
medical decisions in all cases they echoed parental views raising concerns about independence if not indoctrination. Thus whether the test is welfare or rights the law presumes that religion is beneficial and an additional extra to secular norms. The law also refrains from addressing the incidence and effects of religious practice on children and draws a veil of family privacy and parental religious rights around childcare. This is compounded by community leaders’ and secular agencies’ reluctance to engage with conflicts between parental beliefs and secular understandings of children’s rights. The consequence of privatising religion is lack of recognition that what constitutes harm is contested, leading to the twenty year delay in recognising forced marriage as a child protection concern and failure to prosecute cases of cliterodectomy or address beliefs in child possession.

**Proposals for cross-cultural norms.**

Theories about child protection have been discussed in various forms for over a century since Victorian philanthropists began rescuing children from depravation and deprivation. The focus of contemporary analysis relates to discourse around rights and other possibilities for protecting children through normative tests with cross-cultural application. In practice, as outlined by Luhmann, legal norms are based on epistemologies from other disciplines which law fashions into its own form of objectivity and contextual application. The childcare terms ‘welfare’ and ‘harm’ are defined by reference to social work, paediatrics, psychology, psychiatry and education through evidence from professionals about their application to the particular child before the court. Such evidence is derived from assumptions based on secular, scientific, western norms and values about children, child development and family. If the underlying epistemology is not accepted then legal decisions based on it will either not be accepted or differentially interpreted. An example is blood transfusion for Jehovah’s Witnesses whose religious framing of the world rejects scientific epistemology to the point of accepting death instead of transfusion.

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143 Re L (Medical Treatment: Gillick Competency) [1998] 2 FLR; Re E (A Minor: Consent to Medical Treatment) [1993] 1 FLR 386; Re S (A Minor: Consent to Medical Treatment) [1994] 2 FLR 1065
145 Criminalised by Female Circumcision Act 1985 but unenforced-Female Genital Mutilation Act 2003
147 M King & C Piper How the law thinks about children (Hants: Arena/Ashgate 1995 2nd Ed)
normative agreement therefore issues arise not only about acceptance of legal premises but of scientific and sociological premises used to ground or interpret law.

Legal or moral norms in any tradition are contingent on underlying premises about law, authority and human nature. Therefore differing legal understandings can arise from what are nominally the same norms, such as welfare or harm. This operates at several levels; for example law may be seen as protective, a vindication of pre-existing rights or a positivist mechanism to prevent anarchy. Legal interpretation is also affected by understandings of the law’s subjects. Eekelaar observes ‘Institutional norms have until recently been premised on the instrumental value that children have for parents.’ The development of children’s rights is linked to changes in such understandings of children from paternalism to subjecthood. Holt and Farson’s libertarian defence of adult rights for children, based on Aries’ theory of childhood as middle-class invention, has been displaced by varied sociologies of children and law. Non-foundational, sociological understandings of children contrast with constructions in fixed, essentialist terms from religious, psychological or legal perspectives. Such differences of understanding, epistemology and premises need to be born in mind in evaluating new approaches to children’s rights and protection.

The indeterminacy of the welfare test first highlighted by Mnookin, is a key difficulty in reaching normative agreement about child protection under current UK law. The criticism is that welfare is too vague and broad-ranging to provide consistent norms for decisions about parenting either in state-initiated public proceedings or private law disputes between parents. The critique is voiced by a range of

150 J Eekelaar (2006) op cit p.58
151 J Holt Escape from childhood (London: Dutton 1975)
155 M King & C Piper How the law thinks about children (Surrey: Arena 1995)
commentators from academic\textsuperscript{159} and judicial\textsuperscript{160} perspectives. Sociological research emphasises the diversity of understandings of childhood, who children are and what they need.\textsuperscript{161} English law allows but does not require judges to consider religious or cultural difference in assessing welfare, adding to the indeterminacy of welfare. The more diversity is accommodated, the more uncertainty arises about where children’s welfare lies. As discussed above, English law is generally benevolent towards religious belief illustrated for example by Dworkin’s argument that children should accept parental expectations about marriage.\textsuperscript{162}

Even if welfare is impaired for example through sub-optimal medical treatment, where religious beliefs are invoked the state does not characterise such impairment as significant harm. This understanding of welfare equates children’s interests too automatically with parental interests, suggesting that the threshold of ‘significant harm’ is too high.\textsuperscript{163} The state can only intervene to protect children when the significant harm threshold is met, yet like welfare harm is a contested concept. Both concepts are only adjudicated in court proceedings initiated by the state or litigious parents. Thus high thresholds for intervention allow significant latitude for belief within the range of ‘good enough’ parenting. However, where child protection proceedings have already disrupted parental rights, religious beliefs for example about adoption are rejected\textsuperscript{164} accounting for parental perceptions that belief is not taken seriously.\textsuperscript{165}

The level of the threshold is not the only concern; much academic discussion\textsuperscript{166} assumes that the threshold for harm is universally self-evident. For example, Rex Ahdar argues for toleration of religious practices in children’s upbringing provided that

\textsuperscript{159}M.D.A. Freeman \textit{The Rights and Wrongs of Children} (London: Pinter Press 1983); A Bainham \textit{Children, Parents and the State} (London: Sweet and Maxwell 1988)

\textsuperscript{160}Munby J NYAS lecture \textit{Family Law Journal} (May 2004) Vol. 34 p.338-360


\textsuperscript{162}Cited J Eekelaar (2006) op cit p.74


they do not cause harm.\textsuperscript{167} However, he fails to recognise that some religious worldviews differ from secular presumptions about what constitutes harm. Both harm and welfare depend on value judgements particularly when dealing with neglect or emotional impairment. The situation is further complicated by the broader and longer-term implications for children’s care of state safeguarding duties. John Eekelaar, writing about cultural difference in childcare, recognises that for children in some separatist religious communities ‘the outcomes are not good’ but fails to specify what in those ‘outcomes’ is ‘not good’ or whether they are harmful.\textsuperscript{168} A general illustration of the fact that what constitutes harm is not self-evident is the removal of ‘moral concern’ from statutory definitions of harm\textsuperscript{169} as most religious communities still regard moral protection as important.

At international level reservations to the UNCRC demonstrate different understandings of childhood, groups of children and interpretation of their rights. Reservations by some Islamic States to the right to freedom of thought, conscience and religion\textsuperscript{170} arose from differential interpretation of religious freedom. Religious freedom is respected for those of other faiths but freedom to change religion is unacceptable with apostasy often penalised, for example by exclusion from family and community.\textsuperscript{171} Whilst Muslim states entered reservations and even punish apostasy through sanctions Islam is not the only religion to exclude from the community for rejecting the faith; some Christian communities also shun members.\textsuperscript{172} Apostasy may occur not only through explicit rejection of faith but also through behaviour deemed to breach moral codes for example ‘honour.’ Communities following such traditions can constrain religious practice even within states which advocate religious freedom. Domestically exemptions in UK law to accommodate religious difference, for example in education, may have the effect of reflecting such reservations. This highlights the wide discretion in children’s upbringing afforded by the state with significant protection (extreme physical harm apart) for preferences based on understandings that differ from liberal

\textsuperscript{167} R Ahdar (1996) op cit p.177-204
\textsuperscript{169} 1989 Children Act
\textsuperscript{170} Article 14
\textsuperscript{171} A Wingate Celebrating difference, staying faithful (London: DLT 2005) pp.116-127
\textsuperscript{172} Re R [1993] 2 FCR 52; Re B & G [1985] 1 FLR 134; Hewison v Hewison [1997] Fam 207
secular norms but are justified by religious practice. Views of religion as benign additions to welfare foster perceptions that religious worldviews are consistent with basic child protection norms and dominant cultural values. Examples of the impact of different worldviews on children which undermine these assumptions are explored in later chapters.

Rights not welfare?

In the UK rights are the main normative alternative to ‘welfare’ and ‘harm’ in academic and judicial proposals. As outlined earlier the European Convention on Human Rights is now incorporated into UK law through the Human Rights Act 1998. Rights have advantages of creating citizenship even for children and making holders subjects rather than objects of others’ concern. Although not directly enforceable in the UK the UNCRC also makes children subjects of rights and illustrates how rights-based approaches can provide more specific substantive content than abstract principles like harm and welfare. Although guided by the parents who raise them children’s rights and interests are recognised separately from their parents. Rights to minority culture and freedom of religion are also specifically granted as part of a universal framework rather than background factors for judicial discretion. This allows greater transparency about what is protected and where disagreements or competing interests lie.

Recognising children as subjects of rights makes it more difficult to avoid engaging religious premises than where children’s interests as objects are equated with parental religious decisions. Contrary to common criticism of children’s rights this does not necessarily mean that their rights differ from or undermine parents but does enable closer examination of whose interests are served. However the effect of rights differs

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175 Article 5 & 14
176 Article 7-10 & 18
177 Article 29&30 - education, plus Article 20(3) re adoption
178 Article 14
with interpretation. For example, constructing the UNCRC as a core set of universal rights makes minority rights an additional extra to the basic protective framework. However, minority rights that lead to differential interpretation of core rights raise conflicts that need to be addressed. The international genesis of the UNCRC meant that cultural difference was considered from the earliest discussions. However verbal accommodation of difference is not necessarily substantive agreement, as recognised by commentators.

In ‘The best interests of the child: reconciling culture and human rights’ several possibilities are proposed as means of ensuring greater normative objectivity across cultures. The editor, Phillip Alston, assumes an interpretation in which reservations to essential, core norms are merely ‘deviations’ to accommodate religious difference. This approach to rights assumes a framework of universally accepted norms with variation for religious or cultural particularity as an additional extra. Its weakness is the failure to recognise that core rights may not be capable of agreement. A related approach is seen in Stephen Parker’s proposal which assesses children’s best interests as equating to prevailing, dominant cultural standards and mores. This also fails to account for worldviews in which difference of understanding goes to the core of what is best for children whether grounded in religious belief or based on different family types such as same-sex parenting. Parker’s approach enshrines objectivity about welfare or best interests in measures that vary with cultural and historical contingency, leading to variable standards across states, time and political climate. Such an approach fails to provide objective or universal criteria that can transcend particular cultures, leading to cultural relativism.

Failure to agree within the UNCRC that practices like cliterodectomy and corporal punishment should be prohibited illustrates not only the diversity of practice across cultures but also the weakness of rights negotiated by international compromise. The lack of agreed cross-cultural norms and evaluative criteria for the implementation of rights undermines the enforceability of the UNCRC. Within the UK use of public

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183 C v C (A Minor: Custody) [1991] 1 FLR 223
policy as a means to limit ECHR rights both against the state and between parties adds to the indeterminacy of interpreting rights not just welfare. The UNCRC also has no mechanism for ordering priorities between competing rights unlike the ECHR. However, even the ECHR framework of qualified and absolute rights provides little guidance about priorities where rights conflict. The possibility of rights conflicting is particularly acute in cases of interests held by parties such as parents and children.

In several proposals to transcend the challenges of cultural difference John Eekelaar suggests frameworks for children’s protection based on interests, ‘objectivisation’ and ‘dynamic self-determinism.’ He divides interests into basic, developmental and autonomy interests. Like some other commentators he considers distinctions between moral and legally enforceable rights. Basic interests are defined as essential needs met through enforceable parental duties to nurture the child. ‘Development interests’ involve reaching full potential, seen as achievable in the context of state provision of education and health services. Autonomy interests are interpreted as rights to self-determination, including the right to make mistakes. Eekelaar sees only basic interests as core, legally enforceable rights assuming common ground across cultures. Yet medical evidence establishes that lack of emotional nurture is significant in failure to thrive. This places emotional as well as physical needs within basic interests although they are more difficult to evidence and raise value-based and cultural differences. Eekelaar’s early distinction of development and autonomy interests as moral but not legally enforceable has been superseded by the state enforcing parental duties to educate children and seek appropriate medical treatment and upholding autonomy rights for older children following the Gillick decision. This analysis of interests therefore falls short of the normative criteria of existing law. Each category of interests also raises issues of value judgement requiring further discussion to establish substantive agreement.

184 Except Life – Article 2, freedom from torture – Article 3 & fair trial – Article 6
187 J Fortin op cit pp.12-29
189 S.437 Education Act 1996
190 Re O (Medical Treatment) [1993] 2 FLR 149
191 Gillick v West Norfolk AHA [1986] AC 112
Eekelaar’s later theories of ‘objectivisation’ and ‘dynamic self-determinism’$^{192}$ aimed to develop objective criteria for normative child protection in response to criticisms of ‘welfare’ and ‘best interests’ as too culturally variable. Like Parker’s approach ‘objectivisation’ frames welfare by reference to social norms and assumptions about ‘normal’ families and children’s needs based on dominant social mores and expectations.$^{193}$ However, Eekelaar recognises that this approach on its own renders the status quo normative, preserving existing frameworks, inequalities and conservative interpretations of welfare. Such norms are potentially biased against minorities who do not conform to ‘traditional’ British family types.$^{194}$ Eekelaar therefore rejects simple ‘objective’ mores as prone to ‘crude generalisation.$^{195}$ His solution is to develop ‘objectivisation’ through ‘dynamic self-determinism’ arguing for greater autonomy for children within a framework of optimum choice and adult guidance but not delegating decision-making to children. The theory assumes that children will act within their parents’ guidance and appreciate retrospectively the decisions made for them.

Dynamic self-determinism respects children’s developing autonomy within their upbringing, rather than viewing children’s education as a unilateral process of imparting community mores. The theory also assumes optimum access to information and modern, rationalist approaches to decision-making which prevents foreclosure of options. The longer-term perspective used in ‘dynamic self-determinism’ reflects legislative developments that use life-long rather than childhood-only timeframes for safeguarding. However, the weakness of the theory is that parental guidance and decisions remain bound by parents’ subjective perceptions and experience of parenting, children and the wider world. Assumptions about access to information and choices cannot be made of traditional religious worldviews which reject both modernity and autonomy, particularly autonomy for younger members. It is in such communities that inter-generational differences of understanding and their impact on parenting are greatest. Problems are particularly acute in more isolated communities where parents’ experience of wider society is more limited than their children who negotiate divergent cultural boundaries to a greater extent than adults about them. Thus

$^{192}$ J Eekelaar (1994) op cit pp.1-25
$^{193}$ S Parker op cit pp.26-41
$^{194}$ C v C (A Minor: Custody) [1991] 1 FLR 223 lesbian parent refused custody; contrast Re D [2006] EWHC 2; Re CG v CW [2006] 2FLR 614
$^{195}$ J Eekelaar (1994) op cit p.58
decision-making with long-term retrospective view is no greater guarantor of objective or cross-cultural validity than parental or state decisions based on immediate risks. In a later article Eekelaar nuances the theory of ‘dynamic self-determinism’ warning that adult decisions about learning and culture should not foreclose children’s identity\textsuperscript{196} and warning against adult manipulation of children.\textsuperscript{197} The drawback is that communities which reject or limit access to worldviews and information external to their community inevitably foreclose options as seen in discussing education later.

Rights can be approached from various perspectives for example distinguishing protective from self-determinative rights and analysing holders versus providers of rights.\textsuperscript{198} However, all norms depend on underlying epistemologies which can belie their cross-cultural force. A further approach to cross-cultural agreement about rights and welfare are definitions of core rights by reference to protecting children’s basic needs. Maslow’s hierarchy of needs is a classic definition of human need which has also been applied to childcare. Maslow analyses different types of need from essential, material needs to spiritual needs and aspirations for fulfilment and worthwhile goals. Although a useful analysis of various aspects of human need its cultural variability makes it problematic as a normative approach when considered in detail. The lawyer Michael Freeman proposes a more tightly defined list of children’s needs which he argues provides cross-cultural norms.\textsuperscript{199} His list includes material goods like food and clothing and less tangible concepts like privacy and dignity. From a sociological perspective Woodward argues that Freeman’s list of needs is also too open to cultural variance to provide effective norms cross-culturally.\textsuperscript{200} For example privacy is less feasible in poorer societies with crowded housing and construction of human beings as heteronomous rather than autonomous. Similarly cliterodectomy illustrates the extent of cultural contingency about dignity; to western minds it signifies a profoundly undignified, even barbaric practice but in some societies the practice continues because seen as essential for women’s dignity or \textit{makrama}.\textsuperscript{201}

\begin{thebibliography}{99}
\bibitem{196} J. Eekelaar (2004) op cit pp.178-194
\bibitem{197} J. Eekelaar (2006) op cit pp.74, 89-92 & 97
\bibitem{198} J. Fortin op cit p.17
\bibitem{199} M.D.A. Freeman (2000) op cit pp.11-14
\end{thebibliography}
Other writers suggest lists of criteria derived from various sources as substantive bases for rights or defining what constitutes children’s welfare or good parenting. Polansky’s ‘Childhood level of living scale’ sets out material and cultural needs and aspects of parent/child interaction.\textsuperscript{202} The Children’s Society report ‘A good childhood’ considers children’s views of what they want from parents; parental time and attention feature highest.\textsuperscript{203} Public opinion as reflected in a British Social Attitudes Survey found parenting rated highly for teaching honesty, manners and cleanliness but religion and independence rated low.\textsuperscript{204} Norms used by the statutory and legal sectors to assess children are based on health visitor, medical, psychological and sociological research using scientific epistemology and methodology.\textsuperscript{205} A danger of over-prescriptive lists of needs or rights is that diversity of parenting, including religious and cultural diversity, may be inappropriately restricted. Such lists also fail because no list is exhaustive and without interpretive criteria they lack any mechanism to weigh competing rights which is a weakness of the UNCRC. Additionally whilst scientific reports seek to define norms for children’s basic needs and protective standards, universal agreement of such standards requires acceptance of the research and its analytical premises.

Such agreement cannot be guaranteed where communities hold different understandings of science, for example, placing religious, scriptural and moral authority above secular, scientific values and norms.\textsuperscript{206} Such differing understandings are an obstacle to Freeman’s concept of ‘cultural pluralism’ which presumes common rationale for harms and benefits.\textsuperscript{207} It is the weakness of secular paradigms which assume that religious difference can be accommodated as an additional extra or variation to core scientifically-defined needs.\textsuperscript{208} Cultural variability, particularly if motivated by religio-cultural beliefs needs to be acknowledged and clear criteria developed to justify challenging practices seen as incompatible with secular

\textsuperscript{202} G Douglas & C Barton (1995) op cit pp.129-130
\textsuperscript{203} R Layard & J Dunn A Good Childhood (London: Penguin/The Children’s Society 2009)
\textsuperscript{206} Professor M King Submission to the Anglican Church Listening Exercise on Homosexuality (Royal College of Psychiatrists 2007) contrasted with Issues in human sexuality (London: Church House Publishing 1991)
\textsuperscript{208} S Parker (1994) op cit pp.26-41
understandings of children’s best interests. Neither the simple assertion of rights according to particular paradigms nor uncritical acceptance of widely variable practices is sufficient to protect children according to common norms. Further criteria need to be found which specify what is harmful in terms that transcend cultural difference and can make sense within differing cultural contexts.

A number of writers have addressed rights and their content from religious or non-western cultural perspectives. John Finnis, a Roman Catholic lawyer used natural law theology both to defend ‘natural rights’ and define a list of their content. Natural law posits universal human goods believed to be accessible to all through reason. Finnis’ list includes life, knowledge, marriage, aesthetics, practical reasonableness, friendship and religion, different criteria from Freeman’s list of needs. It is arguable that not all Finnis’ criteria are amenable to legal enforcement, for example aesthetics and friendship and they are all open to differential interpretation. Marshall and Parvis, also writing from a Catholic standpoint, defend children’s rights as consistent with Christian theology of being made in the image of God. As regards content they accept the range of UNCRC rights relatively uncritically and without significant engagement with the implications of differential interpretation. They suggest distinguishing mere cultural practices from religious rights to justify prohibiting cliterodectomy. However, as considered later distinguishing the religiously valid from the ‘merely’ cultural raises significant problems of interpretation and authority, particularly where prohibited practices are supported by religious scriptures.

Tariq Ramadan defends rights from a Muslim perspective and specifies their content according to Muslim principles. By contrast An-Na’im, writing as a Muslim lawyer, argues against rights language as ineffective in cultures that are suspicious of western impositions. He supports inculturation of discourse about best interests within different worldviews, recognising differential understandings and interpretations within the UNCRC. He advises against condemning concepts like ‘honour’ for fear of alienating communities and deterring change. The argument that ‘honour’ should be unchallenged may be questioned given its implication in offences as serious as murder.

211 T Ramadan Western Muslims & the future of Islam (Oxford: OUP 2004) op cit pp.70, 149-154, 164-8
212 A An-Na’im (1994) op cit pp.62-81
and forced marriage. However, the proposal for using religious language as opposed to rights or rather that rights language be translated into religious concepts needs to be investigated if genuine ethical consensus is sought. An-Na’im’s approach provides no substantive norms but suggests processes of negotiation, discourse and translation for agreeing contextualised norms over time.

**Gaps to be explored further...**

Whilst not exhaustive the analysis above illustrates a range of ideas considered as means of reaching greater normative consensus over protecting children and their rights. Yet the search for norms that can provide all children with basic standards of rights and protection is ongoing. Obstacles to agreement inherent in the norms explored include failure to recognise variations in core understandings of children which mean that secular, liberal or scientific assumptions about need and human nature are not universally shared. This divergence is seen in debates not only about the content but also the whole concept of rights, understandings of which range from libertarian protection of property owners\textsuperscript{213} to protecting the most vulnerable in society.\textsuperscript{214} Attempts to reach norms that transcend cultural divisions encounter different sources of legal, moral and epistemological authority illustrated by perceived conflicts of scientific with religious truths. All these differences affect the interpretation and application of rights.

The core limitation in trying to achieve substantive and enforceable consensus about children and their needs is the lack of common understanding of childhood, human nature and needs. Although all states save the US and Somalia have signed the UNCRC, reservations in many instances related to faith-based difference like freedom of religion and sexual equality mean that it is not universally adopted in practice.\textsuperscript{215} Reservations at international level reflect differing understandings amongst UK religious communities. Yet reservations have the advantage of transparency in expressing disagreement. It is differences of understanding and interpretation that are veiled by common forms of words that cause real difficulty because the differences

\textsuperscript{214} N Wolterstorff op cit pp.21-132
\textsuperscript{215} J Fortin op cit pp.43-54 & pp.417-424; K Marshall and P Parvis op cit pp.24-50
remain unrecognised behind misplaced universal assumptions. The inability to reach agreement in the UNCRC about prohibiting cliterodectomy has been highlighted earlier in considering needs. Another example of such disagreement is the contested nature of corporal punishment. Each issue illustrates diametrically opposed views. Cliterodectomy is interpreted as serious physical harm or as ritual, even religious practice considered essential for dignity. Corporal punishment is unwarranted assault or necessary discipline. It is differences of view of this degree, which lie behind signatories to the same treaty that need to be addressed in order to achieve universal protection for children. The difficulty of reaching universally accepted norms, whether addressed through codes of rights, interests or needs is illustrated by these examples of what many secular liberals would see as clear-cut issues.

The issue is not simply what adults deem is good or bad for children and the treatment they receive but what children are raised to believe is good or bad for them and their own understanding shaped by upbringing and education. Yet the fact that within one nation different criteria and outcomes are accepted for what is good for children educationally illustrates the complexities and difficulties of safeguarding children equally. The extent of differential education in England and Wales was established in the case of DFES v Talmud Torah Machzikei Hadass School in which the DFES conceded that education need prepare children only for life within their particular community even if relatively narrow and withdrawn from wider society. This understanding continues in the Badman report on Home Education, in Talmud Torah Yetev Lev Primary School and Salford Senior Boys High School in 2008. Caroline Hamilton’s concerns expressed in 1995 about the impact of religious freedom on children remain relevant in education and also arise in relation to religious practices with more immediately harmful consequences.

None of the solutions proposed above for rights-based criteria either at conceptual or content-based levels is necessarily more effective than welfare or harm as a universal basis for safeguarding children. To the extent that rights are both more systematic and

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216 Article 24 (3) UNCRC–cliterodectomy categorised as ‘harmful practice’ that states are encouraged to abolish
217 (12.04.85) TLR 15.04.1985; J Fortin op cit pp.421-424
218 (June 2009) www.direct.gov.uk/DCFS/publications/2009
219 OFSTED 2001
220 OFSTED 2008
221 C Hamilton op cit pp.140-309
have greater contextual detail than welfare or harm there is more substance to common understandings. However, the substantive content of rights can be differentially interpreted according to different worldviews which undermines norms taken for granted as held in common. Further engagement is needed between varied worldviews, different understandings of children and the application of rights and UK law to ensure that the UNCRC is not merely a form of words and that safeguarding of children is effective across communities. Whilst some inconsistencies of interpretation and treatment of children arise from differences between secular and religious communities it is worth noting that even within UK law there are inconsistencies. For example, the Gillick case\(^\text{222}\) reduced the age of autonomy particularly for medical matters, yet campaigns against teenage pregnancy and lower minimum wages and benefits for those under twenty five have extended immaturity and dependency. By contrast traditional religious communities promote early adulthood through marital responsibility but encourage familial and community dependence in terms of financial support.

Conceptual differences concerning not only children’s upbringing but understandings of who they are must be addressed in protecting children. Whilst the results of differential upbringing become apparent later in life, it is from early childhood that the seeds of difference are sown because expectations and purposes of upbringing are at the core of parenting. Such contrasts affect legal interpretation regardless of whether the law is framed in welfare or rights terms. If secular presumptions are assumed and applied without recognising core differences of understanding and if over-optimistic views of religion are adopted\(^\text{223}\) children can be left unprotected as happened for Victoria Climbie and early responses to forced marriage. Application of the law in culturally different contexts requires understanding of underlying cultural or religious contexts of the family, religious community and their worldviews necessitating negotiation of difference not just accommodation of cultural additional extras.

\(^{222}\) Gillick v West Norfolk AHA [1986] AC 112
Religious context:

Although presented as religious versus secular, Christian versus Muslim, west versus east, most debates where cultures clash are not simply secular society versus religious communities. There is a growing awareness in public policy and legal circles, seen for example in cases concerning Islamic dress,\(^{224}\) that religious communities are not homogenous. This enhances understanding and engagement with religious discourse and enables recognition of debates within religious communities that in many cases mirror debates in secular discourse. For example, secular debates about whether nature is more important than nurture and social parenting are reflected in debates about discipline and education in religious circles\(^{225}\) influencing views on children, their upbringing and protection. Juxtaposition of religious versus secular, traditional versus liberal or Islam versus the West operates through abstracted ideals that emphasise difference through presenting negative extremes or idealised perceptions.\(^{226}\) It is recognised that the lived reality underlying the differences highlighted may be more complex. However, to illustrate the issues that need to be addressed these ideals and extremes need interrogating and some religious groups do identify with and promote idealised values and ideological faith positions.

No religion is uncontested; all religious communities have internal debates about belief and practice. Within each tradition is a range of understandings about the interface between religious and secular worldviews, values and systems from assimilated to isolationist, pro to counter-cultural. Stereotypically the assimilated, established Church of England is contrasted with ‘fundamentalist’ Islam, hostile and counter-cultural to western society. Despite criticisms,\(^{227}\) including risks of stereotyping which are examined further when considering education, H.R Niebuhr’s\(^{228}\) analysis of Christian theological relationship with ‘the world’ is instructive and can be applied in multicultural and interfaith perspectives.\(^{229}\) Niebuhr’s analysis covers five standpoints from wholly assimilationist allying of religion with what is best in a culture to religious

\(^{224}\) R (ex p Begum) v Denbigh High School [2006] UKHL 15
\(^{226}\) A.S. Roald op cit pp.1-22
\(^{227}\) A Menuge Christ and Culture Re-examined Christ and Culture in Dialogue (Concordia 999)
\(^{228}\) H.R. Niebuhr Christ and Culture (London: Harper Collins 1951)
\(^{229}\) K Ward Religion and Community (Oxford: OUP 2000)
traditions wholly oppositional to dominant culture. The three intermediate standpoints are engaged with prevailing culture in a synthesis of religion and culture, juggling the two in paradox or seeking to transform culture via religious values. Niebuhr provides useful analytical tools for faith communities’ relationships with dominant culture but this thesis adds a further category distinguishing countercultural hostility towards mainstream society from countercultural withdrawal.

This additional category reflects analyses in other traditions. Within Islam Ramadan categorises difference through six categories from traditional literalists using scripture and tradition, through scriptural literalists with differing degrees of assimilation to liberal understandings.\textsuperscript{230} Roald’s nine category analysis draws similar distinctions in terms of interpretive authority and relationship with society but is limited to Arab Muslims aligned with particular movements rather than theoretical analysis.\textsuperscript{231} A similar analysis of Judaism is found in Modern Judaism\textsuperscript{232} identifying modern trends to assimilation from liberal to Orthodox and counter-cultural communities such as the haredim. Christians also vary from liberal acceptance of modern thought in parts of the established church, to the puritanical separatism of Brethren and Jehovah’s Witnesses and countercultural engagement of Conservative Christianity\textsuperscript{233} in debates about sex and corporal punishment.\textsuperscript{234}

The different positions are shaped by understandings of revelation which affect the degree to which scripture is foundational, contextually or literally interpreted and whether truth is found only in religious tradition or in the wider world and society. The latter affects acceptance or otherwise of modernity, scientific developments and whether unified\textsuperscript{235} or dualistic\textsuperscript{236} views are adopted towards the secular and sacred. In turn this affects attitudes towards other religions, beliefs, lifestyles, practices and the extent of assimilation to dominant culture. Other relevant factors include language and national background, the extent to which personal as opposed to communitarian experience of revelation is recognised and the extent of patriarchal, interpretive

\textsuperscript{230} T Ramadan (2004) op cit pp.24-30
\textsuperscript{231} A.S. Roald op cit pp.23-57
\textsuperscript{233} R Ahdar Worlds colliding: Conservative Christians and the Law (Dartmouth: Ashgate 2001)
\textsuperscript{234} M Marty op cit pp.30-51; R v Williamson [2005] UKHL 15
\textsuperscript{235} T Ramadan (2004) op cit pp.117-125
\textsuperscript{236} ‘Two kingdoms’ theology, separates sacred from secular H.R. Niebuhr op cit pp.149-189
authority. There seems to have been relatively little consideration of these varying positions and inter-religious debates from the perspective of the welfare and rights of children and young people. The thesis aims to contextualise them through considering safeguarding concerns about particular religious practices and their implications for children’s rights.

**Children in theology....**

Generally speaking discussion of children’s rights has been undertaken by practitioners in various childcare fields including social workers, lawyers, medics and psychologists. With the exception of writers cited above\(^ {237}\) most commentary on children’s rights has excluded discussion of the impact of religious faith on parenting and understandings of children. Despite the Laming enquiry’s urgent recommendation for cross-cultural protection references to culture in social work text books remain limited and references to religion even more rare.\(^ {238}\) From the perspective of religious tradition children have historically featured little in theological or ethical writings\(^ {239}\) despite many religions’ focus on the practicalities of instructing younger generations in the faith. However, recent Christian theology has begun to develop child-focussed theological perspectives through the Child Theology movement.\(^ {240}\) The movement has developed from several perspectives including empirical research into children’s spirituality by Hay and Nye\(^ {241}\) and theological questioning through the ‘Godly Play’ developed by Jerome Berryman.\(^ {242}\) Pam Couture deploys liberation theology to write about children in poverty from a social policy perspective.\(^ {243}\) Joseph Grassi reflects on children in scripture also from the perspective of liberation theology.\(^ {244}\) Marshall and Parvis\(^ {245}\) ground their defence of children’s rights through Biblical scripture and the theology of *imago dei.*

\(^{239}\) Ed. M.J. Bunge *The child in Christian Thought* op cit pp.7-13
\(^{240}\) [www.childtheology.org](http://www.childtheology.org)
\(^{241}\) D Hay & R Nye *The spirit of the child* (London: Jessica Kingsley 2006)
\(^{242}\) J.W. Berryman *Godly Play: An imaginative approach to religious education* (Minneapolis: Augsburg Fortress 1999)
\(^{243}\) P.D Couture *Blessed are the poor? Women’s Poverty, Family Policy and Practical Theology* (Nashville: Abingdon 1991)
\(^{244}\) J Grassi *Children’s liberation: A Biblical perspective* (Minnesota: Liturgical Press 1991)
\(^{245}\) K Marshall & P Parvis op cit pp.267-364
Other contemporary Christian reflection on childhood develops theological paradigms about children as examples of God’s revelation advocating childhood characteristics both as lessons for adult life and with implications for parenting styles. For example, David Jensen considers children’s ‘graced vulnerability’ as an ethic and disposition which reveals God to adults. This is based on similar Biblical texts to those considered by Joseph Grassi. Marty urges parents to consider children’s mystery rather than perceiving them as problems and behaviour to be solved. In a Church of England publication, ‘Through children’s eyes’ several writers consider children’s perspectives on life, God and spirituality. They draw on the work of the children’s spirituality movement, their own empirical research and other proponents of child theology to examine children’s religious experience. They report spontaneity, naturalness, trust, vulnerability and questioning as characterising qualities commended by Jesus. All these writers challenge the tendency of earlier theologians, like Luther, Wesley and Edwards amongst others to demonise children or to romanticise them following Rousseau’s influence, as seen in Schleiermacher’s work.

*The child in Christian Thought* has gathered such Christian theology as there is about children through a range of theological sources, Christian traditions and across history. Theologians considered range historically from Augustine and Chrysostom to Rahner and Barth and in terms of tradition from Catholics Aquinas and Rahner, Reformed theologians like Calvin, Edwards and Barth and the liberal views of Schleiermacher and Franke. Each theologian’s writings about children are considered from the perspective of discipline, punishment and education. These perspectives are shaped by and used as a lens to explore views about children’s nature, original sin, sexuality, moral and social development and their consequences for theologies of baptism, moral accountability and church membership. The discussions arising from particular theological debates about baptism and education have influenced not only thinking and practice within the churches but also thinking about children more widely.

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246 D Jensen *Graced Vulnerability* (Cleveland: Pilgrim Press 2005)
248 M Marty *The mystery of the child* (Grand Rapids/Cambridge Eerdmans 2007)
250 J.E. Strohl “The child in Luther’s Theology” Ed. MJ Bunge (2001) op cit pp.134-159
251 R.P. Heitzenrater “John Wesley and Children” Ed. MJ Bunge (2001) op cit pp.279-299
253 D De Vries “Be converted & become as little children” Ed. MJ Bunge (2001) op cit pp.329-349
in society, particularly societies with a Christian heritage. Marty uses a similar schema for his consideration of children’s mystery which provides a more comprehensive approach to children’s ontology than simple reduction to good or evil with consequences as objects of education and discipline.

John Wall explicitly rejects the traditional dichotomy posed by views of children as original sin to be tamed or innocents to be saved from corruption, recognising that children can be both good and bad. However, in describing children as ‘Fallen angels’ Wall still characterises them as first good then fallen. This retains the axis of children’s nature as linked to behaviour tending to provide a simplistic, reductionist model of children. It reflects the tendency of some theological views of children, indeed writing about children generally, to adopt overly universalistic paradigms and essentialist constructs of the child which are misleading. The danger of such thinking is the potential for rigid approaches to their upbringing as outlined in Alice Miller’s narrative description of a ‘poisonous pedagogy’ driven by religion. Marty’s work seeks to counteract that tendency but like much child theology goes to the opposite extreme because characterising children as ‘mystery’ or ‘vulnerable’ is too vague to provide guidance for protective norms or resolve conflicting views, priorities or interests.

Some writers have considered children’s rights, not just children, from a specifically religious perspective. As mentioned above Marshall and Parvis are liberal, Catholic apologists for the UNCRC, defending both the principle of children’s rights and the content of the UNCRC as consistent with Christian theology and community. They base their apologia on the dignity of the child and human person as made in imago dei adopting particularly St John Chrysostom’s metaphor of parents as their children’s sculptors. Pam Couture defends children’s rights primarily in the context of social justice and redressing poverty and inequality as a core message of Christian liberation theology. A number of commentators from different religions address children’s

256 A Miller For your own good: Hidden cruelty in child-rearing and the roots of violence ( Canada: Harper Collins 1990)
257 K Marshall & P Parvis op cit pp.95-194

51
rights through the lens of the ‘Given Child.’ They recognise, like other child theologians, vulnerability and agency, autonomy and dependency, children’s need for care and respect for who they are, not adult aspirations. One example is a reflection on an autistic child who needs to be addressed through her own communicative medium of drumming.

As discussed above Abdullahi An-Na’im considers specific concerns like forced marriage, ‘honour’ and children’s rights more generally from a Muslim perspective. An-Na’im also documents positions on human rights across the Muslim world detailing which countries have signed rights conventions for children and women. This illustrates the range of interpretations of human rights in Islam. His approach challenges the assumptions of western, liberal norms that he sees in the UNCRC framework. Yet he does not offer alternative norms nor proposals for tackling particular contested practices like cliterodectomy and forced marriage with which he has been empirically involved via SOAS. His only proposal is ongoing discussion of what is best for children in normative ethical and political discourse. A chapter of ‘The given child’ also considers children’s rights from the perspective of Islam, citing Muslim teaching about Abraham as an argument for children’s autonomy within Islamic teaching.

It is notable that those writing from the perspective of child theology, liberation theology, children’s spirituality and religious defences of rights all make similar assumptions to secular writers about universals based on social and scientific epistemology. They reflect current sociological and legal writing in accepting children’s agency and autonomy, with autonomy nuanced by evidenced emphasis on

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260 M.J. Bunge “Beyond children as agents or victims: Re-examining children’s paradoxical strengths and vulnerabilities with resources from Christian Theologies of Childhood and Child Theologies” Eds. T Waller & U.S. Nayar The Given Child (2007) op cit p.27-50
262 A An-Na’im (1994) op cit p.62-81
children’s sense of relationships. This research is influenced by the fact that much empirical research into child theology and children’s spirituality is acknowledged as involving groups of white, assimilated children often with regular church involvement. The interpretation of Abraham’s story grounding children’s autonomy in Islam cited in ‘The Given Child’ is proposed by a western, Christian scholar whose arguments may not be accepted by traditional Muslim communities. Yet even An-Na’im’s approach to children, their rights and needs assumes sufficient autonomy for women and children to engage in the discussion about norms.

**Opposition to ‘liberal, secular’ models**

However other writers from religious perspectives contest assumptions perceived as based on secular premises including assumptions about children’s rights and autonomy. One Christian perspective opposed to rights is that of theologians like Stanley Hauerwas who follow the thinking of Alistair MacIntyre in ‘After Virtue.’ He argues that children should be raised according to the precepts of ‘reasoned tradition’ a model of religion with little reference to authority external to the community’s own narrative. Human ontology is seen as heteronomous rather than autonomous, inherently communitarian rather than individual and praxis-based not abstract. In such a model raising children necessitates training them in conformity with communal mores. Children are socialised into ethical norms developed within the revealed narrative and practice of particular traditions. On this understanding rights for children are meaningless because children are seen as unformed and incapable of the autonomy or independence to exercise rights. At best, according to Milbank, children have rights as correlates of others’ duties but rights are still rejected because autonomy is incompatible with communitarian understandings of religion. Additionally universal rights are rejected as lacking ethical validity and coherence in particular community narratives because different foundational premises mean that universal agreement cannot be reached.

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268 An-Na’im (1994) op cit pp.62-81
269 A MacIntyre *After Virtue* (Duckworths: London 1985)
270 S Hauerwas (1981) op cit pp.9-86
271 S Hauerwas (1986) op cit pp.125-7; J Milbank *Against human rights*
272 J Milbank op cit pp.13-14
273 J Milbank op cit pp.30-44
Another objection from some US Christians is that the UN and UNCRC are secular and therefore incompatible with religious worldviews particularly about issues like corporal punishment and sexuality. The UN’s secular agenda is also seen as undermining religiously ordained parental authority.274 Both sets of opposition argue on religious grounds for the autonomy of family and community from secular UN or state-imposed standards viewed as alien to their tradition. All these perspectives are considered in more detail in later chapters but at this stage serve to illustrate the lack of unanimity about children’s rights amongst Christian communities let alone across all religious communities. The view that normative consensus is impossible is contested by this thesis as a counsel of despair. It is also rejected as providing unwarranted immunity from wider community accountability for particular communities. Events surrounding sexual abuse in the Roman Catholic Church illustrate that religious communities are not immune from child abuse despite their traditions. Indeed aspects of such traditions, like the inviolability of clerical authority, have fostered conditions which allowed abuse to occur.

An-Na’im’s argument for ongoing conversation to develop normative consensus275 is supported in a number of spheres including theology,276 sociological discourse277 and political philosophy.278 This provides hope that processes for negotiating consensus can be achieved. However, ongoing conversation needs to propose normative benchmarks as dialogue progresses because the practical realities of protecting and safeguarding children in a multicultural society continue to present themselves. The thesis argues later that rights are the most effective framework for discussing cross-cultural norms but require common interpretive criteria to guarantee universal application.

Religious support for rights:

As will be discussed in greater detail later many religious writers do assume that universal norms can be achieved despite philosophical differences and argue that such

275 An-Na’im (1994) op cit pp.62-81
276 E.g. A Race Inter-religious Dialogue (London SCM Press 2008)
Universals are compatible with religious perspectives. In several instances religious arguments are used to justify universal human rights as a normative framework. An example is John Finnis’ defence of natural law theology as a basis for universal human rights and criteria for defining their content. Duncan Forrester and Nicholas Wolterstorff also defend universal human rights in principle though without detailing their content. Both base their defences of rights on Christian scripture but Forrester cites principles of equality whilst Wolterstorff relies on the Franciscan canonical tradition and theories of right order. Besides defending universal children’s rights on the basis of Christian theology of *imago dei* Marshall and Parvis assert that near-universal signing of the UNCRC by all but two states demonstrates consensus about children’s rights, despite differing underlying philosophies. However, they fail to recognise the impact of such philosophical difference on interpretation of rights.

Within the Muslim world there is also widespread support for the principle of human rights and even some defences of human rights as Islamically founded. Although he is sceptical about the precise content of the UNCRC as reflecting a liberal, western bias An-Na’im accepts the possibility of negotiating towards universal standards. Universal human rights are also defended by Muslim scholars like Tariq Ramadan, by Muslim leaders in the UK and by the Muslim majority worldwide according to Gallup polling. Signature of conventions and opinion poll evidence may not be the most systematic defence of universalism, particularly given that reservations to the Convention and differential interpretation undermine common normative standards. Nonetheless near-universal adoption of the UNCRC and support for human rights indicates aspirations towards universal standards rather than despair. Even Hauerwas who is sceptical about the concept of rights in general and children’s rights in

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279 J Finnis op cit pp.85-97  
281 N Wolterstorff op cit pp.19-64  
283 K Marshall & P Parvis op cit p.105 citing Jacques Maritain, “yes we agree...on condition no-one asks us why”.  
284 D Herbert *Religion and civil society: Re-thinking public religion in the contemporary world* (Surrey: Ashgate 2003) pp.142-147  
285 An-Na’im (1994) op cit pp.62-81  
287 Y Suleiman & others *Contextualising Islam* www.CIS.cam.ac.uk/CIBP/October2009 pp.45-50  
particular concedes that rights language may be the only framework within which to develop universal standards.289

Conclusions:
Broadly speaking English law protects children through concepts of safeguarding, welfare and harm interpreting such concepts as based on liberal, predominantly secular assumptions and modern scientific epistemology. Where religious premises are encountered they are either overridden by imposing decisions based on secular premises or approved in the belief that core secular norms are protected with religious difference as an additional extra. In instances like sub-optimal medical treatment as alternatives to transfusion for Jehovah’s Witnesses or religious education exempt from dominant cultural epistemology, religious belief is privileged over other understandings of welfare. It is generally parental belief that is privileged particularly in education where there is no provision for children’s wishes and feelings.

Wide-ranging suggestions have been made from various perspectives and disciplines to redress the indeterminacy of concepts like welfare and harm by providing more substantive normative content for core rights with cross-cultural acceptance. Yet most of these either privilege the status quo of dominant norms or fail to engage with the variable interpretation of concepts like needs, interests and rights within different worldviews. All such suggestions, whether deriving from secular disciplines like law or sociology or from theological speculation about children, have also tended to adopt liberal assumptions and epistemologies which do not engage with religious worldviews rather than secular premises or authority. The pessimism of some worldviews about the possibility of universal ethical principles that can transcend particular communities’ ethical frameworks is not accepted. Widespread ratification of rights particularly the UNCRC provides hope that substantive norms can be agreed that avoid over-reductionist approaches towards children and humanity. Developing rights or other normative concepts requires not simply forms of words but norms that engage with particular worldviews and enable common standards whilst allowing diversity and particularity to flourish.

289 S Hauerwas op cit pp.125-9
The next chapters therefore consider a number of specific concerns arising from constructs either associated with religious belief or attributed to religious worldviews about children and what is good for them. In highlighting where the core differences lie and the nature of those differences, the possibility for discussion transcending difference is identified along with the possibilities for developing norms with cross-cultural application. Cases like that of Victoria Climbie, young women forced into marriage and children abused in the Roman Catholic Church all demonstrate that universal normative protection is needed. Refusal to go behind the veil protecting religious difference risks leaving children unprotected. Conversely, by not examining the implications of religious or cultural difference agencies involved with children’s welfare miss strengths of alternative approaches to children at the focus of multicultural change.

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290 N Woolcock ‘Girl, 8 was tortured for being a witch’ www.timesonline.co.uk/tol/news/uk/10.05.05; www.bbc.co.uk/radio4/today/angola/08.07.05; Lord Laming The Victoria Climbie Enquiry Report (January 2003) The Stationary Office www.dh.gov.uk/Home/Publications (accessed 09.12.09)
Chapter 3: Illustrative concerns

Having considered and found wanting several approaches to developing child protection standards this chapter aims to identify key features of difference between religious and secular constructs so as to locate new avenues for exploring potential cross-cultural norms. The method used identifies issues in public arenas of the media, law and policy where safeguarding concerns arise from specifically religious worldviews. This illustrates the range of issues in which traditional religious and liberal secular worldviews have contested understandings of what constitutes harm, welfare or children’s rights. By comparing secular legal understandings of these issues with religious constructions the incidence and scope of difference can be identified.

The analysis begins with forced marriage, cliterodectomy and ‘honour’-related codes which are some of the most acute concerns. These are discussed under the broader heading of sexuality and relationships considering the affective integrity of personhood and concepts of consent. Corporal punishment and discipline have been debated for centuries within Christian writing and more recently in UK law, raising questions of parental authority and control of autonomy expressed in sexuality, conscience and bodily integrity.\(^{291}\) Deaths through exorcism of children believed to be possessed raise additional concerns about religious constructions of discipline and behaviour.

Children’s beliefs about appropriate behaviour relating to sexuality and discipline are learned from family and community. For this reason different worldviews surrounding parenting and education also require investigation. Media controversy over faith schools illustrates concerns about epistemological and ethical differences at the heart of education. Education shapes worldviews, the exercise of key human faculties like conscience, belief and expression and affects access to information, values and attitudes to wider society. In turn education and communal allegiance is affected by which family children belong to, as highlighted through parental relationships with children in different understandings of adoption. In turn adoption raises questions which affect individuals’ self-understanding in relation to wider society through familial and communal identity. In each area of enquiry the nature and extent of religious and secular difference is identified.

Who controls your marriage?

Some of the most public disputes between traditional religion and liberal culture arise over sexuality and gender. Ramadan writes ‘the issue of women is a sensitive one in almost all western Islamic communities…it sometimes appears that the whole question of faithfulness to Islam depends on it’ and it has become a symbolic focus of disagreement with Islam for the west. Cases of forced marriage, cliterodectomy, ‘honour’ killing and religious dress fostered perceptions of sexuality as a symbolic focus of disagreement between Islam and the west. Yet there are arguments about sexuality in most religious communities notably about female roles, leadership and homosexuality in all three Abrahamic traditions. Disputes about such issues are not confined to religious communities but explicit religious codes with human and divine sanctions for breaching sexual mores carry acute implications for children and their upbringing. This analysis considers specific differences of construction involved in religious and secular worldviews surrounding the headline practices identified and their consequences for contested understandings of harm to children.

Forced marriage and cliterodectomy:

Despite greater publicity and increased reporting in response to guidance and legislation it remains difficult to assess the incidence of forced marriage. The Forced Marriage Unit estimates that since 2005 it has dealt annually with 250-300 cases of forced marriage and 100 of forced visa sponsorship compared with An-Na’im’s estimate of 1,000 forced marriages annually in 2000. Growth in case-law and reports of forced marriage indicates increased recognition of the concern both by communities affected and by regulatory authorities. UK law defines forced marriage as marriage in

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294 The clinical term ‘cliterodectomy’ is used as more neutral than Female Genital Mutilation
296 www.justice.gov.uk/news/newsrelease09.05.07
which purported consent is obtained by duress.\textsuperscript{299} Since \textit{Hirani v Hirani}\textsuperscript{300} duress in this context includes threats and emotional pressure as well as physical force. Initial legal responses used criminal sanctions to tackle marriage forced through physical means or kidnapping and civil nullity proceedings to dissolve such marriages. This approach failed to understand the cultural impossibility for young people, usually women, of speaking out against community and parents particularly in criminal proceedings. Twenty years later civil protection orders can be sought\textsuperscript{301} and the phenomenon was nationally recognised as a child protection concern in 2004.\textsuperscript{302}

However, in considering the socio-religious and cultural context in which forced marriage occurs questions arise about whether the test of duress adequately protects ‘free and full consent.’\textsuperscript{303} Forced marriage continues because communities believe that parents have the right and duty to arrange marriages which they believe are in their children’s best interests. ‘Best interests’ include communal reputation, avoiding zina,\textsuperscript{304} material provision and securing carers for offspring with disabilities. Young people who object to such marriages remain vulnerable to exclusion from the community, characterised as disloyal to family, community and their faith. Other young people continue to enter marriages inadequately informed about alternatives or in exploitative circumstances like ignorance of a partner’s learning disability, being used for immigration clearance\textsuperscript{305} and vulnerable to abandonment once the dowry is paid.\textsuperscript{306} Although consent is needed both to the marriage being arranged and to the specific partner, in practice the possibility of withdrawing from an arranged marriage is limited particularly where there is little prior contact. The law protects parties without capacity to consent due to mental illness or learning disability\textsuperscript{307} but parties with capacity can only seek nullity if they can prove duress. Exploitative circumstances, inadequate information or passive acquiescence are insufficient.

\textsuperscript{299} At common law; now through the Forced Marriage (Civil Protection) Act 2007
\textsuperscript{300} [1983] 4 FLR 232
\textsuperscript{301} Forced Marriage (Civil Protection) Act 2007
\textsuperscript{303} Defined by s.63A(4) Family Law Act 1976 added by Forced Marriage (Civil Protection) Act 2007
\textsuperscript{304} Adultery
\textsuperscript{305} See cases below n.307
The problem is illustrated by the contrasting cases of two fifteen year olds. Miss K, an Afghani refugee was rescued by child protection agencies from an abusive, under-age marriage to which she was held to have consented despite her age and inadequate information about the violent husband.\textsuperscript{308} There was no sanction for the under-age marriage, exception being made for the family not knowing British law, thus allowing child protection norms of minimum marital age to be subsumed by cultural ignorance. By contrast Miss AB\textsuperscript{309} had the autonomy and information to seek help in avoiding marriage to an older man believed to be an alcoholic. She was made a ward of court extra-territorially and the British consulate and FMU helped her join relatives in Glasgow. These cases illustrate that there is legal protection for those with sufficient autonomy to seek help but not those like Miss K left in a cultural context where capacity to make decisions independent of family expectation was questionable. The contrast between Miss K’s case and those concerning Gillick competent Jehovah’s Witnesses is also interesting; in the latter the law intervened overturning refusal of blood transfusions on the grounds of inadequately informed consent due to the teenagers’ religious background.\textsuperscript{310} There is no equivalent provision for marriages of dependent teenagers.

Another issue in the public forum is cliterodectomy which, unlike forced marriage, has been criminalised by UK law since 1985.\textsuperscript{311} It is condemned as an abuse of human rights by the WHO and UNICEF and is inhuman and degrading treatment contrary to Article 2 ECHR. Yet cliterodectomy continues because communities which accept the practice see it as religiously required for female purity or makrama.\textsuperscript{312} As with forced marriage young people who object fear rejection by family and community and criminal consequences for the family members responsible. Assessing its incidence is therefore difficult and there have been no prosecutions. The law distinguishes cliterodectomy\textsuperscript{313} from male circumcision largely on the basis of established

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\textsuperscript{308} Re K sub nom LA v N & Others [2005] EWHC 2956
\textsuperscript{309} Re AB [2008] E WHC 1436
\textsuperscript{310} Re E (Wardship: Consent to medical treatment) [1993] 1 FLR 386; Re S (A Minor: Consent to Medical Treatment) [1994] 2 FLR 1065; Re L (Medical Treatment: Gillick Competence) [1999] 2 FCR 524
\textsuperscript{311} Prohibition of Female Circumcision Act 1985; Female Genital Mutilation Act 2003
\textsuperscript{312} Dignity A.S. Roald Women in Islam: The Western Experience (Malmo: Routledge/IMER 2001) p.243
\end{footnotesize}
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Although often associated with Islam both forced marriage and cliterodectomy are found in several cultures. In the UK both are condemned by Muslim leaders; *hadith* referring to cliterodectomy are rejected as unreliable by most western Muslims. Neither Christian nor Jewish scriptures mention cliterodectomy yet the practice continues in cultures with Christian heritage. Despite legal and religious condemnation the perception that such phenomena have religious foundations is reinforced by some scholars as well as community leaders. For example, both cliterodectomy and young women’s passive consent to marriage are defended by some Islamic scholars. Thus communities continue to undertake such practices believing they act under religious authority, undeterred by secular law. UN failure to agree abolition of cliterodectomy or address forced marriage illustrates the gulf between liberal secular understandings and traditional communities which support such practices. Within the UNCRC states only have to ‘take measures with a view to abolishing traditional practices’ harmful to children’s health despite provisions concerning protection from ‘violence, abuse’ or ‘cruel, inhuman or degrading treatment.’ Yet as discussed when considering needs cliterodectomy illustrates the extent to which views of dignity and harm are contested and the need for cross-cultural criteria grounding child protection norms.

318 [WHO reports www.who.int/female_genital_mutilation/factsheets/fs241](http://www.who.int/female_genital_mutilation/factsheets/fs241);
321 Article 24(3)
322 Article 19
323 Article 37
‘Honour’ and shame...

Both cliterodectomy and forced marriage are supported by social and sexual codes of ‘honour,’ the burdens of which fall primarily on young women. Although ‘honour’ has been judicially condemned in the context of ‘honour’ killing it is effectively supported in legally approved practices like arranged marriage. In communities where marriage is the sole context for sexual relationships, marriage and parenthood are essential transitions to adulthood and mixed sex association is restricted, ‘honour’ is protected by arranged marriage. Thus although forced marriage is distinct from arranged marriage it often occurs where sexual codes underlying arranged marriage are breached. Liberal norms construct decisions about intimate partners as personal; family approval is welcome but not essential. Although Christian teaching preserves sexual relationships for marriage, in most Christian communities deciding to marry and choosing marriage partners are personal rather than communal decisions and celibacy is an option. By contrast traditional codes expect everyone to marry, viewing marriage ‘as not simply the coming together of two... individuals,’ but ‘the marriage of two families...’ according to Untermann speaking of Orthodox Judaism. The extent of parties’ prior acquaintance and the role of guardians varies but there is close identification of young people with community and family interests. Some communities still betroth minors through guardians; in theory the child can repudiate marriage at puberty but their freedom to do so is questionable given familial expectations. Personal agency is constrained by honour-based regulation of friendship, relationships and obedience to family and community.

It is this context in which parents or elders coerce marriage motivated by understandings that their duty is not only to arrange good marriages but also to prevent

326 Re B-M (Care Orders: Risk) [2009] EWCA 205 Wall LJ
329 A Untermann op cit p.136
bad and extra-marital relationships. Preventing forbidden relationships\textsuperscript{332} saves children from harmful liaisons which is preferable to punishment for zina and dishonour or izzat which affects the whole family. Even rape or indecent assault affects honour and marriage prospects. In Attorney General’s Reference (No. 51 2001)\textsuperscript{333} the Court of Appeal, aiming at cultural sensitivity, accepted an argument that damage to the victim’s marriage prospects justified an increased sentence as an aggravating feature. Yet the decision condoned constructions of rape that stigmatise and penalise victims, colluding with the communal stigma underlying izzat and forced marriage which in some cases leads victims to marry an abuser to save family honour. ‘Honour’ also operates post-marriage as divorce brings dishonour with consequences for siblings’ marriage prospects. It is this communal aspect of sexuality that must be recognised as underlying phenomena like forced marriage and controlling and affecting young people’s integrity, particularly young women.

‘Honour’ crime, forced marriage and cliterodectomy are now recognised as child protection concerns.\textsuperscript{334} However, UK experiences of tackling such concerns demonstrate the difficulties of applying universal norms when confronted with constructions of harm, autonomy and the person that differ from liberal assumptions. Failure to address traditional communal pressures surrounding marriage and cliterodectomy led to inadequate initial responses by UK enforcement agencies and mean that current law still does not fully protect young people who have insufficient information or autonomy to consent freely. These offences illustrate the need to engage with different worldviews, motivations and understandings of humanity to protect the most vulnerable in all communities. Key issues include rights to protection from exploitative marriages motivated by property or procuring spouses as carers or visa sponsors but also raise wider issues about constructions of ‘honour’.

\textsuperscript{332} Outside religious or class boundaries or same-sex relationships; see case studies at \texttt{www.karmanirvana.org.uk} (accessed 08.11.2010), \texttt{www.soas.ac.uk/honourscrimes/resources/file55416/pdf} (accessed 28.04.2011); M Hester, C Khatidja & G Gangoli Forced marriage: the risk factors and the effect of raising the minimum age for a sponsor, and of leave to enter the UK as a spouse or fiancé(e), pp.1-4, School for Policy Studies, University of Bristol, 2008.


\textsuperscript{334} HM Government Foreign & Commonwealth Office Young people & vulnerable adults facing forced marriage (London: HM Govt 2004 updated 2009)
Homosexuality:

Another significantly contested area of sexuality which remains unrecognised as a child protection concern is the treatment of homosexuality. Although now accepted by secular science as part of the natural spectrum of sexuality most religious communities reject same-sex orientation. Religious taboos attached to same-sex orientation make it difficult to gather statistics about its incidence or harm arising from its condemnation. Official religious statements condemn homophobic violence but emotional harm is caused through internalised homophobia generated by condemnation of same-sex orientation. Research indicates significant mental illness amongst gay youngsters caused through rejection by family, religious communities and friends, bullying, prejudice, negative media coverage, even violence and harassment. These lead to isolation, secrecy, low self-esteem and increased risk of self-harm, suicide and risk-taking behaviour with drugs and alcohol. Young people growing up with religious beliefs, in a traditional religious family, school and community are likely to grow up with high levels of religiously sanctioned homophobia.

Public arguments over homosexuality in the churches fuelled by faith group dissension over sex education also foster negative self-perceptions of homosexual orientation. The impact on mental health is highlighted by Professor King’s submission to the Church of England consultation on homosexuality and other

335 Synod of Bishops Issues in human sexuality (London: Church House Publishing 1994); Amicus/MSF, CARE, Evangelical Alliance & Others v Secretary of State [2004] EWHC 860
337 In Stonewall’s Understanding Prejudice 64% of white majority respondents admitted prejudice; 13% were influenced by religious beliefs, 14% by school, 19% by friends & 32% by parents. G Valentine & I McDonald Understanding Prejudice based on Profiles of Prejudice (2003) www.stonewall.org.uk
338 Eg same-sex parenting and adoption www.timesonline.co.uk/23.01.07; www.guardian.co.uk & www.bbc.co.uk24.01.07; Re G (lesbian parents) [2006] UKHL43
339 Schools of a particular religious ethos may... reflect that in... sex and relationships education policy” para. 1.7 &1.8, p.10; children to be “protected from teaching and materials that are inappropriate having regard to the... cultural background of pupils concerned”; para.1.23, p.13 “Guidance for sex & relationships education” www.education.gov.uk/sexeducation (accessed 2011); Clause 28 Local Government Act 1988
340 Professor M King Submission to the Church of England Listening Exercise on Sexuality (London: Royal College of Psychiatrists 2007)
Reparative therapy and exorcism to ‘cure’ homosexuality are also viewed as harmful by secular or liberal understandings which see homosexuality as natural for some. The harm is compounded by a double sense of rejection when not ‘cured.’ Sexual behaviour is affected by teaching that absolves isolated lapses but not committed relationships; unsafe sex is fostered by religious condemnation of condoms. Statistics on self-harm, bullying and the hidden nature of homosexuality suggest that the impact of homophobia, which affects self-perception well before the age of active sexual maturity, is a hidden child protection concern.

By contrast traditional religious perspectives argue that homosexuality itself is harmful as unnatural, unscriptural and sinful. Religious youngsters are aware that much religious teaching condemns homosexual activity with sinfulness attached to countenancing same-sex acts let alone relationships. HIV/AIDS has been cited in claims that homosexuality is contrary to human welfare though statistically it is not a ‘gay disease’. Extreme responses to homosexuality deny its existence and exclude gay people from the community. There is also evidence that some forced marriages are arranged to deter young people from same-sex relationships which are condemned even more strongly than extra-marital heterosexual relationships. More pastoral approaches insist that those with homosexual inclination remain celibate or seek to cure their inclination. Yet traditional religious teaching is protected by exemptions for religious organisations from laws protecting people of same-sex orientation from discrimination. Government guidelines concerning sex education remain attuned to religious sensibilities limiting curriculum content about gay relationships save to

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344 I Rivers (2001) op cit pp.33-46
345 Leviticus 18:22 & 20:13; Genesis 19:4-29; Romans 1:18-32, 1 Timothy 1:10, 1 Corinthians 6:9-10 & Jude 1:7; Qur’an, 7:80 – 84
346 J Winterson Oranges are not the only fruit (Vintage: London 1991); www.petersotoscano.com
347 M Hester, C Khatidja & G Gangoli Forced marriage: the risk factors and the effect of raising the minimum age for a sponsor, and of leave to enter the UK as a spouse or fiancé(e) (2008) School for Policy Studies, University of Bristol pp.1-4
348 Catechism of the Catholic Church op cit para.2357-2359, pp.504-5
349 R v DTI v CARE & others ex p Amicus & others [2004] EWHC 860; Equality Employment (Equal Opportunity) Regulations 2003; Equality Act 2006 s.50-60
deal with gay students privately and pastorally.\textsuperscript{351} This can result in unsympathetic responses particularly in faith schools exempt from the national curriculum on sex education\textsuperscript{352} and at best to hidden pastoral care.\textsuperscript{353}

Although discourses around forced marriage, cliterodectomy, ‘honour’ and homosexuality occur in different places, communities and contexts there are commonalities in all these concerns relating to control of sexuality and affective integrity. Control is exercised by parents, communities and religious authorities over the individual and their experience of affectivity and sexuality. Enforcement of sexual norms can include coercive treatment from emotional pressure to physical force in some instances. The fear of such consequences leads to suppression and consequent emotional harm which is now recognised and tackled in the case of forced marriage but remains unprosecuted in relation to cliterodectomy and covert for homosexuality. These concerns need to be addressed on terms understood within the religious communities affected, namely on the basis of religious authority.

**Behaviour and discipline….**

One worrying aspect of the control of sexuality is the use of physical correction to enforce sexual moral codes, from exorcism of homosexuality to kidnap in forced marriage and clitoral circumcision. Discipline and corporal punishment have been focuses of cultural difference in parenting\textsuperscript{354} for centuries. An example is the seventeenth century missionaries whose belief that ‘sparing the rod spoils the child’ was thwarted because ‘Barbarians cannot bear to have their child punished…’.\textsuperscript{355} Corporal punishment on religious grounds continues to be defended by some contemporary Christians who sought to retain its use in schools\textsuperscript{356} following
prohibition.\textsuperscript{357} Victoria Climbie\textsuperscript{358} and Child B’s\textsuperscript{359} deaths from exorcism motivated by beliefs about possession and \textit{R v Saidi}\textsuperscript{360}’s religious self-discipline by minors illustrate further concerns about religiously-motivated force and children.

Article 19 of the UNCRC provides rights to protection from physical and emotional abuse or neglect. Article 37 UNCRC prohibits torture and cruel, degrading or violent treatment reflecting Articles 3 and 5 of the ECHR. Yet neither prohibits cliterodectomy nor corporal punishment. The aspiration to abolish ‘harmful traditional practices’ is a state duty\textsuperscript{361} not children’s right and is aimed at cliterodectomy rather than corporal punishment. In UK law cliterodectomy is banned but the legislation remains unenforced. Corporal punishment, at least by parents, remains contested. The HRA grounded arguments both for corporal punishment as manifesting religious belief\textsuperscript{362} and its abolition as contravening protection from physical harm and cruel or degrading treatment.\textsuperscript{363} In \textit{R v Williamson}’s challenge\textsuperscript{364} to statutory prohibition\textsuperscript{365} the Law Lords accepted corporal punishment as religious belief but prioritised children’s rights to protection from physical harm or cruel and degrading treatment.\textsuperscript{366} Thus the legal rationale behind banning corporal punishment is to prevent physical injury.\textsuperscript{367}

This constructs children as psychologically vulnerable victims of others’ violence. Bad behaviour does not justify physically harmful punishment and discipline is deterrent not coercive.\textsuperscript{368} Yet parents retain rights to use physical punishment at home although it must not cause actual bodily harm.\textsuperscript{369} The law therefore continues to allow parents to

\textsuperscript{357} Parental objections led to the ban - Campbell & Cosans v United Kingdom (1982) 4 EHRR 293
\textsuperscript{358} www.victoriaclimbie.org (accessed 02.10.2009)
\textsuperscript{359} N Woolcock ‘Girl, 8 tortured for being a witch’ www.timesonline.co.uk/tol/news/uk/10.05.05; www.bbc.co.uk/radio4/today/angola/08.07.05 (accessed 09.12.2009)
\textsuperscript{360} D Pallister “Man guilty of making boys flog themselves with blades in Muslim rite” - R v Syed Mustafa Zaidi www.guardian.co.uk/27.08.09 (accessed 09.12.2009)
\textsuperscript{361} Art. 24(3) - ‘shall take steps with a view to…’
\textsuperscript{362} Article 9 ECHR; R v Williamson [2005] UKHL 15, [2005] 2 AC 246
\textsuperscript{363} Article 3 ECHR; Campbell & Cosans v United Kingdom (1982) 4 EHRR 293
\textsuperscript{364} R v Williamson [2005] UKHL 15
\textsuperscript{365} s.131 Schools Standards & Framework Act 1998
\textsuperscript{366} Article 3 ECHR
\textsuperscript{367} S.58 Children Act 2004; ‘The legislation is intended to protect children against the distress, pain and other harmful effects…. of physical violence…. That corporal punishment may have these harmful effects is self-evident.’ Para.49 R v Williamson [2005] UKHL 15
\textsuperscript{368} E.g. L Steinberg \textit{Ten basic principles of good parenting} (Simon & Schuster: London 2005)
\textsuperscript{369} S.58 Children Act 2004 - defined as interfering ‘with the health or comfort of the victim’ R v Donovan 25 Cr. App. R. 1 CCA, not ‘trifling and transient’- T v DPP [2003]EWHC 266
chastise children in ways that constitute common assault against adults. Given this exception there are risks that if schools prioritise scripture corporal punishment may continue and referrals not be made. Children raised in communities which use corporal punishment may not realise that it is illegal and cannot report abuse. The 2008 OFSTED annual report criticised inadequate child protection in independent schools raising questions about the vulnerability of children in religious schools. The more isolated the community the greater children’s vulnerability to over-controlling communities and punishment that they do not realise contravenes the law.

Whether punishment contravenes the law depends on physical consequences not emotional impact or intrinsic morality. Yet emotional harm from actual or threatened punishment can be as significant as physical punishment. UK law, like Article 19 UNCRC, seeks to protect children from emotional as well as physical harm but difficulties arise when evaluating and evidencing emotional harm. As English law treats children as objects of protective procedures rather than subjects of rights young people have a limited role in defining what they find harmful. Secular research links physical and emotional harm and indicates that physical chastisement is emotionally harmful, ineffective in correcting poor behaviour and may inculcate further violence. English law also recognises emotional harm from witnessing domestic violence. Religion has been criticised not only for physical punishment itself but also for punitive attitudes that cause emotional harm. Some religious commentators themselves recognise concerns about religiously induced shame, ‘dishonour’ and guilt. Alice Miller examines the negative impact of over-controlling or punitive religious parenting on children’s self-esteem and capacity for independent or

370 S.139 Criminal Justice Act 1988
371 s.58 Children Act 2004; R v Williamson [2005] UKHL 15
376 S.120 Adoption & Children Act 2002
378 A Miller For your own good: Hidden cruelty in child-rearing & the roots of violence (Canada: Harper Collins 1990 3rd Ed)
spontaneous thought. Some aspects of many people’s upbringing induce guilt or shame but the divine authority of religious teaching carries particularly forceful impact.

As with sexuality there is no clear division between religious and secular attitudes towards disciplining children. Whilst Christian schools opposed the ban on corporal punishment other Christians cite scriptural references to Jesus welcoming children as an argument for its prohibition. In Islam some madrassas use corporal punishment but other Muslims want DCFS child protection measures to cover Mosque schools. Some contemporary Jewish parents use corporal punishment but the Jewish state, Israel bans it even in the home, though this may owe more to feminism than Judaism. Attitudes range from liberal scientific and psychological understandings of children, which are shared by some religious groups alongside theological perspectives, to traditionalist views about punishment, religious and otherwise. Within the spectrum of views about corporal punishment across religious and secular communities is exorcism, a practice particular to religious worldviews.

Whilst there are proponents of corporal punishment in all three Abrahamic traditions those most publicly promoting corporal punishment are traditionalist Christian groups. Theirs are therefore the primary arguments for corporal punishment considered in this analysis of religious attitudes towards corporal punishment. Some Christians justify physical discipline as part of revealed tradition ordained by God in scripture arguing that ‘spare the rod, spoil the child’ requires corporal punishment as not only valid but a necessary punishment. Christian proponents of corporal punishment also base their views on theologies of original sin, which view humanity as

379 Matthew 18:25
381 Dr G Siddiqui “Safeguarding children at risk of FGM” (2007) & Dr G Siddiqui “Law to protect the young must cover Madrassas” Commentary The Times (10.12.2008)
www.muslimparliament.org.uk/media/childprotectionreport/pdf (28.04.2011)
384 J Dobson Dare to Discipline (Eastbourne: Kingsway 1993); R v Williamson [2005]UKHL 15
385 Proverbs 13:24; 23:13-14
sinful from conception and in need of correction. Other religious traditions have no theology of original sin but accept the principle of controlling children’s behaviour through corporal punishment for example Jewish Biblical mandates for corporal punishment are cited in Christianity.

Yet regardless of doctrine Christian proponents of corporal punishment also argue that corporal punishment is effective and rarely used as the threat itself produces good behaviour. Whether interpreted as required by scripture, to tackle original sin or simply to ensure compliance such approaches create negative views of children. Psychological research confirms that mere compliance generated by threats is unhealthy with negative consequences for long-term development. These include the risks of emotional harm identified by Sturje and Glaser and consequences varying from aggression and anti-social behaviour to depression and low self-esteem. However those who support corporal punishment believe the reverse is true and that lack of punishment is harmful. Again contested ideas about punishment, shame and honour affect children’s safeguarding and rights. The issue is what limits are set to parental authority and methods of control within the UNCRC concept of ‘parental guidance’ and parental responsibility and on what grounds the debate should be conducted.

The concerns raised by Miller, Pattison and others about the impact of religion on childcare go beyond the impact of corporal punishment and include the emotional

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388 Proverbs 22:15, 23:13-14
390 D & M Perl (1994); J Dobson (1993)
391 ‘innate in the heart of a child is folly’ Proverbs 22:15 Jerusalem Bible
396 J Dobson (1993); R v Williamson [2005]UKHL 15
397 A Miller op cit pp.3-91
398 S Pattison (2000) op cit pp.186-274
399 L Osborne & A Walker op cit pp.1-98
impact of teachings that undermine self-esteem. Although doctrines of original sin are limited to Christianity all monotheistic religions have concepts of sinfulness, judgement and growing capacity for moral responsibility which some argue creates guilt, fear and repression. Theologies of sin recognise human limitations, enable forgiveness and restored relations but excessive emphasis on sin gives rise to negative self-image, abusive manipulation and power-based constructions of what is sinful such as ‘honour’ or guilt. Some portrayals of sinfulness also undermine moral responsibility as children deemed irredeemably bad or depraved may be enmeshed in low self-esteem, self-condemnation, fatalism about capacity to change and self-punitive, destructive behaviour.

The deaths of Victoria Climbie and Child B at the hands of carers who believed they were exorcising spirits of witchcraft brought to public attention beliefs in possession and exorcism. Attention focussed on African particularly Congolese congregations but personal exorcism or deliverance is also found in more mainstream and charismatic churches. Characterising children as possessed and needing exorcism attributes behaviour not simply to original sin but to possession independent of the child with adverse consequences like demonization and incapacity to take responsibility for behaviour. Exorcism causing physical harm provides evidence of abuse on which to base child protection. Tackling emotional harm without physical abuse is more challenging evidentially. Yet viewing children as evil or possessed by witchcraft carries inevitable risks of emotional harm to self-esteem and identity, even without physical punishment. Using exorcism to cast out illnesses like psychosis, anorexia

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401 RW Maqsood op cit p.73 & p.208;A Untermann op cit pp.119-132; Ed. M.J. Bunge The Child in Christian Thought op cit pp.82-7 (Augustine), pp.110-120 (Aquinas), pp.144-152 (Luther) pp.164-174(Calvin)
404 L Osbourne & A Walker op cit pp.1-98
405 ndoki
407 A time to heal (London: Church House Publishing 2000)
408 L Osbourne & A Walker op cit pp.43-80
and aspergers syndrome\textsuperscript{410} risks neglecting serious medical conditions and further harm if the person exorcised is not only uncured but left feeling they lack faith. Exorcism for conditions like homosexuality demonises people as sinful in religious terms although seen as healthy by secular science. This increases obstacles to disclosure\textsuperscript{411} or self-understanding about sexuality and risks psychological harm.\textsuperscript{412} The difficulty for secular authorities tackling exorcism is that from the religious perspective conditions being exorcised are spiritual not medical and are only amenable to exorcism; religious epistemology underlies the practice.

Similar differences of epistemology are seen in religious mortification. Most religions have practices of ascetic self-discipline to get closer to God and mark sorrowful or preparatory seasons in the religious calendar. Mortification is supposed to be tempered by moderation to protect health and the self-flagellation associated with Opus Dei\textsuperscript{413} or Shia Islam’s \textit{zanjeer zani}\textsuperscript{414} is rare. The danger is that children observe rituals intended for adults as happened in \textit{R v Saidi}. Even if children do not themselves practice self-mortification they may internalise punitive parental example.\textsuperscript{415} Seventy percent of \textit{Opus Dei’s} members are adults with families.\textsuperscript{416} How far self-mortification affects their parenting is unclear but witnessing self-mortification may cause adverse effects along the lines suggested by Sturge and Glaser.\textsuperscript{417} Concern about children following parental example has also been expressed in relation to fasting and its impact on children’s education. Muslim schoolchildren’s observance of the Ramadan fast\textsuperscript{418} is a particular concern although children are not required to fast until puberty.

There is also some evidence of religious fasting becoming obsessive, leading to eating disorders\textsuperscript{419} in pursuit of religious perfection, physical control and identification with

\textsuperscript{410} Restoring the Foundations Ministry \url{www.RTF} Exorcism of autistic 15 year old
\textsuperscript{411} \url{www.petersontoscano.com} (accessed 28.04.2011)
\textsuperscript{412} Factional account of lesbian exorcism: J Winterson \textit{Oranges are not the only fruit} (London: Vintage 1991) pp.104-108
\textsuperscript{413} \url{www.opusdei.org.uk/messages} (accessed 27.12.2010)
\textsuperscript{414} \textit{R v} Syed Mustafa Zaidi D Pallister \url{www.guardianonline/27/08/09}
\textsuperscript{415} N Kazmi defends \textit{zanjeer zani} though not for children \url{www.guardian.co.uk/comment/28.08.08} but acknowledges children may be influenced by parents.
\textsuperscript{416} \url{BBC Religion & Ethics www.bbc.co.uk/religions/christianity/opusdei} (accessed 28.04.2011)
\textsuperscript{417} C Sturge and D Glaser (2000)
\textsuperscript{418} RW Maqsood op cit p.73& p.208
\textsuperscript{419} Catherine of Siena allegedly ate nothing but communion; the ‘fasting girls’ – 19thCE - were probably anorexic; S Bordo \textit{Unbearable Weight} (University of California Press 1992/3) p.69
the suffering of religious leaders or ‘the poor.’

Doctrines of eternal damnation may generate compulsive perfectionism and obsessive behaviour in fear of punishment or an intrusive, condemnatory God as experienced by Nietzsche. Competing pressures from secular media and perfectionist religion confuse the picture further, as described in Jo Ind’s autobiography about eating disorder. Other religious perfectionism includes Protestant work ethics and prosperity Gospels whose valuing of material success condemns misfortune and ill health. Plymouth Brethren and Jehovah’s Witness Puritanism and refusal to celebrate Christmas and birthdays has also led to welfare concerns. The UK is less interventionist about such religions than Canada but whilst not widespread extreme mortification is more likely to occur in isolated communities, making it difficult for youngsters to evaluate such experience as harmful or seek help.

Links between religious mortification and self-harm are little explored by mental health services. Motives for self-injury vary but many are linked to low self-perception and shame about behaviour, feelings or sexuality. ONS studies identified inability to deal with emotions as causing substitutionary self-harm. Inability to process emotion is exacerbated in ‘emotionally invalidating environments where parents punish children for expressing sadness or hurt.’ Religious teaching about

421 S Pattison op cit p.21 & pp.239-240
422 J Ind (1993) op cit pp.45-58
423 M Weber The protestant ethic and the spirit of capitalism (New York: Chas Scribner & Sons 1959)
428 H Meltzer “Non Fatal Suicidal Behaviour Among Adults aged 16 to 74” (2002) ONS Great Britain
suffering, punishment and self-control adds to emotional invalidation as religious practice is reinforced by divine sanction. Yet patients whose religious worldviews motivate self-harm may find it difficult to accept medical rather than spiritual advice about changing behaviour. Religiously-inclined anorexics can justify self-denial as spiritual, rendering harmful constructs that encourage self-control through abstinence. Impossible religious role models like the Virgin Mary can induce demoralisation or competitive religious practice and self-abnegation. Materialist analysis and reluctance to engage with religion due to insufficient understanding or fear of cultural insensitivity overlooks religious roots in mental illness. Yet fostering significant self-denial and self-abnegation may mean that children never attain sufficient autonomy and sense of self to meet their own basic needs.

Fostering such self-abnegation along with practices like excessive fasting, forced marriage and cliterodectomy illustrates difficulties in assuming freedom of choice about religious practices amongst dependent minors growing into adulthood. Psychological and social conditioning deters questioning of harmful practices or family and religious leaders’ unreasonable expectations undermining decision-making about observance and practice. Such practices illustrate the risks of paternalism in religious practice and parenting. Control is founded in parental and communal authority where community leaders have the power whether deliberately or incidentally to shape, control or manipulate ethical concepts like self-denial, sacrifice and honour; the more authoritarian the community the greater the power given to parents. Restrictions on alternative sources of information exacerbate the dangers of such control. Yet proponents of ‘reasoned tradition’ who oppose children’s rights cite such conditioning as the strength of parenting in such communities.

Children need adequate information and understanding of religious practices to observe them healthily, not driven by competitive or compulsive motivation. The

430 R Coles op cit pp.23-42
432 S Pattison op cit “Introduction” pp.1-20
434 SB (by her litigation friend Anne Marie Hutchinson) v RB & AM [2008] EWHC 938; 2 FLR 1588
impact of religious teaching in hierarchically structured communities is particularly evident in the treatment of young women and children. The impact on children’s rights of communal autonomy through authoritarian leadership and autonomous parental rights is of concern. Where capacity for autonomous discernment is lacking due to age or learning disability or is undermined by indoctrination the law needs to develop criteria as to what is harmful in order to protect children with insufficient autonomy to protect themselves.

**Conscience and educational diversity:**

The most influential factor in developing conscience, moral reasoning, self-understanding, identity and relationships to the wider world is education and socialisation by children’s family and community. Such socialisation also influences the extent of autonomous or heteronomous decision-making. From adult perspectives education is crucial for passing on knowledge, skills and communal *mores* to the next generation. For parents and children education shapes epistemology, values and attitude towards society, authority and autonomy. This has implications for rights and welfare from childhood into adulthood. Besides content the methods of teaching and skills taught affect capacity to negotiate life in family, community and society. The power of educators over children is significant be they parent, school or community. The importance of education is legally recognised by naming educational impairment as neglect and prosecuting parents for children’s absenteeism. The primary risk of educational neglect is incapacitating children through leaving them with limited knowledge and skills to negotiate the world around them. Yet wide educational derogation is permitted from normative standards to protect parental and minority communities’ rights to educate children according to their beliefs. OFSTED concerns about inadequate education in some faith schools indicate that Carolyn Hamilton’s assertion that ‘the rights of the child should not be sacrificed on the altar of religious

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437 S.31 Children Act 1989
438 S.437 Education Act 1996
439 Office for Standards in Education in state and independent sector Education Act 2002 ss.157-164, amended by Education Act 2005
freedom,” remains relevant given the long-term consequences for children of inadequate education.

The delicate balance between minority communities’ educational diversity and equality of safeguarding standards highlights the difficulties of applying theories like ‘multiculturalism within limits.’ The UNCRC includes rights to education to prevent ‘illiteracy’ and ‘ignorance,’ developing children’s ‘fullest potential’ using ‘modern methods’, science and technology. The values of such education are responsibility, a free society, ‘understanding, peace, tolerance, equality of sexes’ and cross-cultural friendship respecting human rights and parents. Minority education is envisaged through cultural identity, language, religious freedom and the values of countries of residence, origin and indigenous minorities. Associated rights affected by education include access to information, the media, healthcare, consultation, self-expression and leisure, ‘cultural life and arts.’

Interpretations of the UNCRC which assume cultural difference as an additional extra to core rights tend to view Article 28’s ‘progressive’ education, modern epistemology and comparative culture as the common core. However worldviews that reject modern science, sexual equality, comparative rather than confessional teaching of religion and personal autonomy are seemingly in conflict with the universal presumptions of the UNCRC’s educational ethos. Defining the UNCRC’s ‘minimum standards’ for education becomes particularly problematic where education is

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440 C Hamilton op cit p.342
442 Primarily Article 28-30
443 Article 29
444 Article 28
445 Article 2 provides for equality
446 Article 29(1d)
447 Article 14
448 Article 29 & 30
449 Article 30, separately from other minority rights
450 Article 17
451 Article 24(2e)
452 Article 12
453 Article 13
454 Article 31
456 Article 29 (2)
provided by ‘individuals and bodies’ of minority communities. English Education Acts\textsuperscript{457} and the Human Rights Act\textsuperscript{458} permit various forms of faith-based education\textsuperscript{459} reflecting in the UK a similar conflict between progressive and traditional religious education. Parents’ rights range from withdrawing children in mainstream schools from classes that conflict with their faith\textsuperscript{460} to independent schools’ exemption from the national curriculum. Exemptions are often exercised around sex education, PE and IT not just religious education,\textsuperscript{461} religious festivals and collective worship.\textsuperscript{462} State-funded faith schools teach the national curriculum, save for their confessional teaching and ethos\textsuperscript{463} but independent schools can teach non-secular curricula and non-English mother tongues.\textsuperscript{464}

OFSTED\textsuperscript{465} has expressed concerns about overly-narrow education in faith schools\textsuperscript{466} but the DFES position that religious schools need only prepare children for life in particular communities\textsuperscript{467} provides limited guidance on the conflict between minority and universal educational standards. The condition of the DFES concession, that religious schools should not foreclose children’s options, is unrealistic given the separatism of some communities and limited secular curriculum and skills. This raises key questions about where minimum educational norms should fall to avoid such foreclosure and to safeguard children in separatist, counter-cultural communities and schools. Concern about minimum standards increases in sectors not monitored by

\begin{footnotes}
457 Schools Standards & Framework Act 1998; Education Act 2002
458 Article 9 ECHR & Article 2 of the EU First Protocol on Education
459 1/3 of UK primary schools have ‘a religious character’ - 6,850 of 21,000 – \textit{Faith in the System: The role of schools with a religious character} (London: DCFS 2007); 40% of the independent sector are faith schools - Of 47 academies 11 are non-denominational Christian, 5 Anglican or Roman Catholic; over 850 of 2,300 independent schools are faith-based; 700 Christian, 115 Muslim and 38 Jewish. \textit{Faith in the System} op cit; over 90% of faith schools are Christian. 1,719,400 of 5,098,930 \textit{Faith in the System} op cit & Annual Schools Census 2004 \texttt{www.statistics.gov.uk/Children/Tables2b&c/schoolsbystatus&religiouscharacter} (accessed 28.04.2011)
462 s.444(3)c Education Act 1996
463 Education Act 2002 ss.76-96 (England), ss.97-118 (Wales) & similar provisions in Scotland and Northern Ireland; Schools of a religious character s.69(3) & s.124B(1)b Schools Standards & Framework Act 1998, Education Act 1996 & s.91 Education Act 2002;
464 S.91 & s.96 Education Act 2002 & Referral via QCA.
467 Talmud Torah Matzikei Hadass School (12.041985) TLR 15.04.1985 & OFSTED 2001 b
\end{footnotes}
OFSTED like home-schooling where parents need only provide undefined ‘suitable and efficient’ education. The extent of educational derogation permitted by UK law is highlighted by comparison with the US where Amish parents could only withdraw children from mainstream education beyond the eighth grade. Concerns also arise for children from non-English speaking communities for example South Asian Muslims, in areas where their majority in school populations provides little need or opportunity to engage with language and culture outside their community. This was noted in the Bradford Commission Enquiry following riots in 1995 and remains a concern for contemporary commentators.

Whether educational limitations caused by narrowly religious or minority community education are sufficient to constitute ‘harm’ in child protection or safeguarding terms is contested. The introduction of ‘safeguarding’ in 2004 extends child protection concerns from immediate harm to longer-term impairment of training, education and community contribution creating wider scope for value-difference. By these criteria it is questionable whether minimum safeguarding standards are met by education which prepares children only for life in particular communities, not wider society. Whilst the law states that minority education should not foreclose adult options some foreclosure seems inevitable if countercultural curricula exclude or actively oppose knowledge and skills required in the wider community. Bradney and Ahmed’s arguments that countercultural religious upbringing does not justify state intervention fail to address the difficulties of youngsters with inadequate linguistic or cultural knowledge to access employment or services.

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469 S.7 Education Act 1996
470 Wisconsin v Yoder 406 US 205, 32 L Ed. 2d15, 92S Ct.1526 (1972)
472 T Cantle Community Cohesion (Home Office, London 2001); Review of Community Cohesion in Oldham (Coventry, www.cohesioninstitute.org.uk 2006); P Lewis Young, British & Muslim (London: Continuum 2007)
473 S.31 Children Act 1989
474 S.10 Children Act 2004
The risk of foreclosure is exacerbated in English law by the fact that choice of religious education is exclusively that of parents, not children, regardless of age and capacity.\textsuperscript{476} Parents are not required to ascertain children’s views about their education\textsuperscript{477} thus limiting children’s own rights to religious freedom.\textsuperscript{478} Religious education that excludes any understanding of other worldviews reduces the child’s capacity for religious freedom and limits understanding of their own perspective in contrast to others in a multicultural society. UNCRC rights to religious freedom are qualified by parental guidance\textsuperscript{479} to reassure those who define religious belonging by birth community.\textsuperscript{480} There is no such qualification of children’s religious rights under the HRA. However, to date UK cases testing religious freedom to wear religious dress\textsuperscript{481} or refuse blood transfusion\textsuperscript{482} had parental support rather than seeking religious freedom independent of their family.

Underlying interpretations of religious freedom and education are different understandings of the nature and role of religion in the life of communities and individuals. In traditional communities religion is a matter of practice and communal heritage not belief or choice. This contrasts with religion in western, liberal thought as predominantly private belief and personal conscience. The conundrum is that education confined to particular religious communities limits knowledge of alternative worldviews. Epistemologically therefore it is not open to children from withdrawn or separatist communities to question and develop religious beliefs or practice independent of family and community. The issue is not simply that apostasy is forbidden but that the absence of understandings external to communities’ religious parameters forecloses alternative decisions limiting not only choice of religious community but how faith is lived within that community.

Exemptions from national curricula standards are permitted with little interrogation of the consequences for children and realities of foreclosure through derogation from national norms. Alternative curricula restrict children’s opportunities through lack of

\textsuperscript{476} Contrast Scotland s.6(1) Children (Scotland) Act 1995
\textsuperscript{477} Contrast local authority duties to consult children about services s.53 Children Act 2004
\textsuperscript{478} Article 14 UNCRC, Article 9 ECHR
\textsuperscript{479} Article 14(2)
\textsuperscript{480} K Marshall & P Parvis op cit pp.23-24, pp.25-30 & p.65
\textsuperscript{482} Re T (Jehovah’s Witness) [1981] 2 FLR 239; Re E (A Minor: Consent to Medical Treatment) [1993] 1 FLR 386; Re L (Medical Consent: Gillick Competence) [1998] 2 FLR
knowledge about dominant secular society and British culture, different scientific epistemologies and languages and limited numerical and IT skills. Bradney’s assertion that skills learnt in alternative curricula are transferrable seems overly optimistic and is contradicted by evidence from OFSTED and Muslim youngsters’ lack of linguistic skills. This affects capacity to engage in wider society from other than withdrawn and defensive stances and raises concerns for employment, training and vulnerability to practices like cliterodectomy, forced marriage or severe punishment.

Parental religious rights to withdraw children from sex education raise concerns about children being inadequately prepared for adult relationships. Concerns include the reinforcing of traditional gender roles which restrict girls’ opportunities through expectations of ‘honour’, early marriage and motherhood at the expense of education or employment. Teaching styles using rote-learning, found in some madrassas and independent schools, are criticised as forming compliant, absolutist children limiting decision-making, problem-solving skills, capacity for consultation, religious freedom and self-protection. Significant amounts of after-school time spent in religious schooling may adversely affect energy and capacity to engage adequately...
with mainstream education\textsuperscript{496} with consequences for further education and employment, although similar criticisms might be applied to all significant extra-curricular activity.

The national curriculum posits a minimum set of competencies and areas of knowledge amongst the population’s children. The exemption of faith schools from this curriculum results in different educational norms for those children. Difficult questions arise about the balance between educational equality with access to related rights\textsuperscript{497} versus rights to cultural and religious heritage insofar as the two diverge. However, as indicated by reports into some consequences of this inequality such as those following the Bradford and Oldham riots the issue is often posed from the perspective of community cohesion and crime prevention.\textsuperscript{498} This frames the debate in terms of the minority ‘other’ within wider society, demonising young people and promoting their assimilation rather than focussing on their integrity, rights and safeguarding. The latter focus acknowledges the wishes of young people to remain loyal to their religious and cultural identity but with the capacity to negotiate their faith in the context of a wider society. Elders’ fears of assimilation can reinforce defensive and controlling preservation of tradition via the next generation rather than positive development of tradition as a contribution to society.\textsuperscript{499}

Most children in faith-based education are not in separatist communities and have access to most aspects of dominant epistemology and skills via the national curriculum. However, even in maintained education some religious teaching like sex education conflicts with secular understandings. Groups most at risk from overly narrow education are those in independent sector schools derogating from the national curriculum. This includes 15,000 Muslim children, 60,000 Jewish children and uncertain numbers in independent and home-schooled Christian education.\textsuperscript{500} From the longer-term perspective of safeguarding and children’s rights the issue is how far such derogation restricts education. If foreclosed options are compounded by

\textsuperscript{496} R Maqsood op cit p.151& p.244; M.S. Seddon, D Hussain & N Malik op cit pp.19-39
\textsuperscript{498} Eg The Prevent Agenda www.dcsf.gov.uk/Prevent (accessed 27.12.2010)
\textsuperscript{499} T Ramadan (2004) op cit pp.1-8, pp.126-143
misunderstandings of wider society that limit access to services and employment they
dictate foreclosed decision-making. Insufficient awareness of alternatives results in
lack of capacity to object to communal expectations like early marriage and
domestically restricted roles, harmful punishment or other abuse or control.
Educational methods that limit enquiry and problem-solving restrict capacity to make
comparisons, assess beliefs and develop the decision-making capacity assumed by a
democratic, multicultural public sphere. The narrower the community and curriculum
the greater is the danger of indoctrination and foreclosure.

In homogenous societies education that only fits children for life in that society is less
problematic. However in multicultural communities such education leaves children
ill-equipped to make appropriate decisions if presented with alternatives within their
tradition or arising from a conflict between their tradition and their wider experience.
If education is limited those who try to explore different educational or employment
horizons or do not meet moral and religious expectations, for example through loving
the “wrong” people, are prejudiced. Theorists who promote group over individual
identity consider that an essential safeguard for individuals is the right of exit from
communities. However, the right of exit is difficult to exercise where options are
foreclosed by differential education let alone the emotional realities of such exit.

The limited access to information caused by such foreclosure restricts the cross-
cultural application of Eekelaar’s theory of ‘dynamic self-determinism’. Children
who most need skills to negotiate religious difference are those with least access to the
broad curriculum and resources to develop such skills. The boundaries for educational
norms need to engage with this difference so that children can be equipped to negotiate
contemporary society whilst retaining the integrity of their faith without fearing
assimilation. Yet restrictions on sources of information external to the religious

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501 Re K sub nom LA v N& Others [2005] EWHC 2956; Re T (Jehovah’s Witness) [1981] 2 FLR 239; Re E (A Minor: Consent to Medical Treatment) [1993] 1 FLR 386; Re L (Medical Consent: Gillick Competence) [1998] 2 FLR 810
502 C Hamilton op cit pp.241-336; J Fortin op cit pp.342-358
504 S Levine op cit pp.124-138
community also need to be addressed because of their tendency to exacerbate the dangers of control in hierarchically structured communities. Restrictions on children’s rights, agency and integrity are increased by the reinforcing of parental authority through communal and divine sanction. Thus engagement with differential approaches to education also requires engagement with sources of value and authority, belief and its interpretation in religious communities.

Identity and belonging through the lens of parental responsibility:

Interpretations of religious freedom and education as determined by parents and community of birth rather than personal conscience and choice raise questions about how religious, cultural, racial and community identity are constructed. Different understandings about these questions between traditional religious and liberal or secular perspectives are illustrated by approaches to adoption or alternative parental care. Constructions of familial and communal belonging have implications for the integrity of children’s identity and understandings of welfare, education and longer-term safeguarding. Through the UNCRC children have rights as subjects to both personal and familial identity through name and nationality and protected relationships between child and parent through rights to care. Where parents cannot provide care children retain rights to name, nationality and state care if necessary. However, like other UNCRC provisions identity rights are variably interpreted and the different forms of alternative care outlined below are all encompassed within the UNCRC.

Differences between traditional religious and liberal secular constructions of children’s familial and communal identity and genetic heritage are highlighted by cases of adoption and alternative care. Like the UNCRC English law gives birth parents rights to name their children and choose religion and education in accordance with their beliefs. From parental relationship flows identity in terms of community, culture, religion and language. As seen above educational choice and upbringing within religious communities can have a significant impact on children’s lives varying with the extent to which the community is assimilated or counter-cultural. Upbringing is in turn influenced by varying rules for communal membership and priorities between social or genetic parentage.

507 Articles 7-10 & 18
English adoption law severs birth parents’ ties with their children transferring rights and responsibilities to the adoptive parents. ‘An adopted person is... treated ... as if born as the child of the adopters....’ In English law adopted children take their adoptive parents’ surname, nationality, religion, community identification and education. Adoptive parents are advised not to change their child’s first name to provide continuity of identity but such a change is not legally prohibited. Birth identity is legally erased by a new birth certificate and ending direct contact with birth parents in most cases. Adoptive siblings become legal siblings sharing inheritance and other legal entitlements. Although modern practice provides for children to be told of their adoption and birth family through life story work and indirect contact, this depends on adoptive families’ discretion. For adopted children genetic and gestational parents are superseded by the social, psychological parents who raise them day to day. Legal rights to trace birth family are unenforceable until adulthood by which time identity has been developed in the adoptive family.

By contrast Residence or Special Guardianship Orders only confer partial parental responsibility; changing name or religion requires consultation with birth parents and there is no change of nationality. The legal relationship is with the adults only not with siblings. If parents separate natural ties are transcended through preserving relationships between birth and step-parents; cultural and religious heritage become matters of decision for the child once they reach sufficient maturity. The law prioritises biological parents’ rights as between separating partners and preserves biological ties through extended family in child protection cases, if possible. However, if not possible the preference is adoption in which English law changes children’s relational identity through adult decisions that transcend genetic and natal heritage. Adoptees are aware of but not restricted by genetic heritage.

By contrast Jewish and Muslim law determines identity according to birth family regarding genetic heritage as unchangeable by human agency or law. In Jewish adoption and Islamic kefala ‘adoptees’ are treated as the child of another by contrast

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508 S.67 Adoption & Children Act 2002
510 Appendix A
511 Re S [2004] EWHC 1282
512 Re G [2006] UKHL 43
with the familial ‘ownership’ constituted by transfer of birth parents’ rights in English law. The consequence is different understandings of children’s ontology, autonomy and welfare. Jewish adoption and Muslim *kefala* resemble Special Guardianship for which part of the rationale was to accommodate religious communities that do not recognise English adoption.\textsuperscript{513} Carers have responsibility for ‘adopted’ children but the children do not legally become members of the carer’s family. They retain their birth family name, nationality, status, inheritance rights and relationships through direct contact with birth family. Jewish adopters are agents and can use the child’s property in caring for them. Muslim adopters are trustees and must care for the child from their own resources, preserving the child’s property for maturity. Whilst social and psychological parenting forms relationships with a different community from their birth family, personal identity through name and related rights remains that of their genetic origins. However, whilst retaining the psychological benefits of genetic and birth family identity such children also remain bound by problematic birth circumstances like illegitimacy or gentile birth. Immutable familial origins are also reflected in arrangements if parents separate; the paternal family takes responsibility for upbringing, religious and cultural heritage and new partners are excluded.\textsuperscript{514}

Circumstances of birth particularly illegitimacy led to English legal fictions of adoption creating a new family. Prior to regulation illegitimate and orphaned children were cared for by extended family or the workhouse. In legislating\textsuperscript{515} to address care by strangers, from philanthropic agencies to ‘baby farming’,\textsuperscript{516} Christian agencies’ concerns about illegitimacy and protecting adopters from biological families\textsuperscript{517} led to secrecy about biological parentage.\textsuperscript{518} Severing familial ties was seen as justified by moral imperatives giving children a new start in ‘untainted’ families and better

\textsuperscript{513}Department of Health Adoption: A New Approach para.5.8-9 (London: The Stationary Office 29.12.2000)

\textsuperscript{514}A.S. Roald op cit pp. 213-236; D Pearl (1999) op cit Eds. L Sebba & G Douglas op cit pp.86-92

\textsuperscript{515}Adoption Act 1926


\textsuperscript{517}C Bridge & H Swindells *Adoption: The Modern Law* (London: Jordans 2003) p.3; Dr J Keating (2001) op cit pp.5-7

\textsuperscript{518}Through evidence to the 1920 Hopkinson Committee; Dr J Keating *A child for keeps: A history of adoption in England 1918-1945* (Oxford: Palgrave MacMillan 2008) - 75% of children adopted in 1926 were illegitimate.
opportunities in life. Christian views influenced secular law so that adoptive parents replaced birth parents. By 1949 children were not even told they were adopted and birth parents’ only residual right was choosing their child’s religion. Greater tolerance of illegitimacy alongside psychological evidence that adoptees benefit from knowing their genetic and cultural origins reduced secrecy about adoptive origins. Yet, such knowledge is generally limited to theoretical knowledge of birth family through life stories and indirect contact. Genetic identity continues to be subsumed beneath psychological and social parenting and adoptive familial relations, the one exception being that adoptive siblings can marry recognising like Judaism and Islam the lack of blood relationship.

Although concerns about illegitimacy underlay Christian arguments for secrecy about adoption various aspects of Christian theology lend themselves to the severing of familial ties more readily than other faiths. Examples include baptism as new birth, renouncing biological for Christian family and St Paul’s metaphor of Roman adoption for relationship with God. This is reinforced by Catholic theology’s subordination of nature to grace; according to Lisa Sowle Cahill, ‘Biological identity and connection … do not determine… humanity’s highest interpersonal and spiritual relationships’. For Stephen Post, Protestant theology locates familial relationships in the human and divine agency of covenental love not just genetics.

520 Church of England Children’s Society; RC Children’s Society; Catholic Care, NCH (Methodist) & Christian philanthropy - Barnardo’s, Fairbridge
521 Despite natural law reservations about alienating parental rights – C Hamilton op cit p.215
522 Adoption of Children Act 1949, now repealed
524 Re JM Carroll (An Infant) [1931] 1 KB 317 CA
526 C Bridge & H Swindells (2003) op cit pp.1-10
529 Similar to English secular adoption, replacing birth family with adoptive - Romans 8:14-17; Galatians 4:4-7; Ephesians 1:5
Despite transcendence of biological origins Christian theology does not see children as the ‘blank slate’ of Benthamite theory. Recognition of familial, genetic, religious and linguistic background acknowledges children’s situated historical identity. Yet despite contemporary psychology confirming the importance of adoptees’ origins the importance of situated identity is reduced in the 2002 legislation. Secular law universalises and prioritises psychological attachment over aspects of cultural and religious identity viewed as immutable in Islam and Judaism and important in Christianity. Consequently although western adoption creates greater parental ‘ownership’ of the child than Judaism and Islam, identity is transformable, independent of genetic or cultural history and less essential than psychological needs for security and permanence.

Jewish and Muslim understandings of humanity mean that no-one is seen apart from their genetic heritage regardless of who raises them. This is at the heart of the conflict between secular and religious views in *Birmingham City Council v P & Others* and *Z v Newcastle*. Definition of identity by birth family is genetic before social or psychological as emphasised by Jewish definition of religious belonging through communal ethnic identity. Although Islam does not define community membership by ethnicity prohibitions on apostasy tend to define community membership immutably in terms of religion at birth. This further illustrates the contrast between belonging through genetic or birth heritage, especially in Orthodox Judaism versus secular or Christian understandings of religious identity and allegiance through belief. Thus two different understandings of identity arise. The western liberal model, which owes something to Christian theology creates autonomy from birth ties, scope for self-definition and subsumes children’s natal identity and genetic history in psychological parenting. By contrast Jewish and Muslim understandings give children their own essential identity, inherently and immutably defined by genetic and familial heritage independently of who cares for them.

532 J Bentham *Moral Philosophy & Political Philosophy* [www.iep.utm.edu/bentham](http://www.iep.utm.edu/bentham)
533 Adoption & Children Act 2002 s.1
536 (2005) EWHC 1490
However, rules creating this autonomy constrain the development of cultural identity assumed within UK law and exclude some children from full membership of the family and community in which they are raised. This is particularly so in cases where illegitimacy stigmatises children by parental conduct, restricting community membership, education and marriage. Problems are therefore posed both by secular divesting of genetic heritage and religious essentialism about genetic origins and birth status. The former restricts even denies historic, genetic identity. The latter binds identity by circumstances of birth and parents’ conduct. Adoption therefore illustrates different constructions of children’s identity with varying consequences depending on which aspects of identity are denied or promoted. The power that controls identity lies with communal law where identity is prescribed immutably by traditional religious communities but by the individual to a greater degree in secular law. These differences also need to be addressed to ensure protection of children’s integrity within the communities they need to negotiate throughout their lives.

Conclusions:

The analysis above illustrates the range of issues featured in public fora in which differences between traditional religious and liberal secular understandings of children and families go to the core of parenting. Each issue is inter-related and affected radically by differences of worldview. Thus different understandings of parental role in their children’s relationships lead to phenomena like forced marriage, which in liberal terms are gross breaches of human rights. Scriptural or religious attitudes to discipline, which are also used to police conduct surrounding sexuality and relationships, can lead to punishment and self-punishment seen as excessive by English law. Underlying children’s responses to these codes are educational differences and different understandings of community belonging and identity. The analysis presents the poles of debate although in practice no tradition provides a homogenous picture. The next chapter examines in greater depth the theological and philosophical differences that underlie such differences so as to identify avenues for developing greater normative consensus and interpretive consistency in safeguarding.
Chapter 4: The nature of the problem:

Theology and philosophy behind the differences...

Having considered some contemporary concerns about childcare which highlight differences between traditional religious understandings and secular premises this chapter seeks to analyse broader theological and philosophical assumptions underlying those differences. The analysis illustrates how the headline concerns are inter-related through the religious, theological and epistemological constructs of traditional worldviews. However, the contested nature of religious discourse is illustrated as well as secular versus religious difference. Of the issues discussed sexuality is one of the most contentious both between religious and secular perspectives in the public square and within religious communities themselves. It illustrates tensions between liberal and traditional religious worldviews, between personal integrity and communal authority and differing epistemological sources. Codes of conduct governing sexuality were examined when considering forced marriage and cliterodectomy. This chapter explores religious and theological approaches to gender and sexuality which underlie such codes. A feature of much traditional theology about gender, sexuality, race and religion is an essentialist approach to constructions of human nature. Essentialism operates for each of the concerns examined, namely sexuality, adoption, education and discipline, as a means of delimiting, inculcating and enforcing religious rules and ethics, raising questions about communal religious and legal authority and its derivation. The purpose of the analysis is to identify core differences and obstacles to common norms for safeguarding children and their rights in order to find ways to transcend obstacles to agreement.

Differences of view about the issues discussed are not limited to disputes between religious and secular or traditional and liberal perspectives. For example whilst comparison of Jewish, Muslim and secular adoption illustrates different understandings of race, religion, family and communal belonging, similar differences are reflected in secular discourse about adoptive placements. The Association of Black Social Workers\textsuperscript{538} argued at the Children Act Enquiry that racial matching is so essential for children’s identity that failure to place them with carers of similar racial

\textsuperscript{538} J Small, Evidence to the enquiry on the Children Act 1989 (London: NABSW undated)
heritage is harmful. Yet the research relied on by NABSW\(^{539}\) is contested. Empirical research with transracial adoptees by Tizard and Phoenix\(^{540}\) suggests that children’s needs to develop religious, cultural and racial identity can be met by means other than racially matched carers. Transracial adoptees themselves, for example Sandra Patton Imani\(^{541}\) and lawyer John Murphy\(^{542}\) defend their upbringing in white families arguing that other welfare factors are more important than race or cultural matching. In \(Re M\)^{543} the court returned a Zulu boy to his birth parents prioritising racial heritage. He chose to return to his white carer in London suggesting that for the child concerned psychological attachment and affective identity was more important than essentialist approaches to racial heritage.

This illustration of secular disagreement over one aspect of children’s welfare highlights several factors to be addressed in trying to achieve consensus over safeguarding norms. Debates about nature versus nurture and essentialist understandings versus social psychological constructions of human identity affect not only gender, race and religion but human nature generally. Questions of normative authority and epistemology are raised by differently constructed beliefs about human ontology, religion, understandings of the world and moral or legal norms. Normative sources of knowledge and ethical premises in contemporary Britain include science and technology, philosophies of liberalism, utilitarianism and individual rights as well as religions. Kant’s legacy means that religious beliefs particularly from more traditional communities are perceived as problematically incapable of dialogue with secular, scientific debate because of differing epistemological paradigms. Science is perceived as provable knowledge, religious beliefs are not.\(^{544}\)

Theistic religion is premised on belief in objective divine authority. Differences arise about how that authority is mediated through sources of scripture, tradition and the believing community, interpreted by priests or elders. Personal prayer and believers’

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\(^{539}\) L Chestang *The diverse society: implications for social policy* (Washington: NASW 1976)


\(^{543}\) Re M (Child’s Upbringing) [1996] 2 FLR 441

\(^{544}\) J Habermas *Between naturalism and religion* (Cambridge: Polity Press 2008)
experience may be recognised to varying degrees, either as revelation or discerning the application of belief. Some define their lives according to a sole source of authority, an approach more common within traditional religious communities. Others recognise multiple sources of authority, so liberal and liberationist understandings of religion accept modern scientific theory as the empirical context for applying religious beliefs. For example liberation theology applies theological belief to understandings of the world using material and social scientific data and the personal experience of those excluded by dominant discourse. Reports that illustrate use of multiple authorities include *Issues in Human Sexuality* and *A Time to Heal*. Multiple sources of authority are reconciled in varying ways. Some take one source as the primary lens through which other epistemologies are viewed. Others distinguish epistemological authority from different spheres or grant relative rather than absolute importance to different sources of knowledge. Anna Roald’s analysis of observant Muslims whose primary allegiance is to scriptural authority interpreted in the light of modern understandings illustrates the former position. Theologian Karl Barth, who advocated reading the Bible alongside the newspaper, viewed all sources of authority as relative to God revealed in Christian Scripture.

Scientific methodology like most religion claims objective truth based on realities external to the believer. Unlike religion scientific method requires those realities to be grounded in observable, empirical evidence. Debates within science raise questions about what constitutes objective evidence. Materialist rationalists may reject as non-scientific methodologies based on social science. Although perceived in secular thought as the final arbiter of much modern knowledge scientific research can be influenced by premises which produce results confirming researchers’ initial subjective assumptions. Historic studies on racial and gendered intelligence illustrate the pitfalls of research that affirms existing prejudice rather than scientific objectivity. Secularism, science, personal moral autonomy and individual rights which are the predominant cultural philosophies of UK society are generally unreflectively assumed

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as common sense.\textsuperscript{551} Religion is not necessarily abandoned but its homogenising, communal impact is eroded by setting personal autonomy over objective sources of authority.

Differences between worldviews also arise from varying initial premises about human motivation and purposes of life as well as biological differences like race, nationality, gender and sexuality. Moral and legal premises about such issues are based on epistemological assumptions of often unquestioned truths. This is also true of childhood. It is these unexamined assumptions and their inter-relationship with governing sources of authority which underlie the issues considered in the previous chapter. They affect the interpretation of wording and application of concepts like rights which have prima facie been commonly agreed but are differentially understood. Variations of approach to applying moral rules also lead to differential application and impact in particular contexts. All these variables need further examination in the quest for safeguarding norms that can transcend religious differences.

\textbf{A foundational difference:}

Besides the specific areas of difference examined in the previous chapter a more basic challenge is posed by traditionalist Christian theologians like Stanley Hauerwas to both rights and the possibility of universal consensus. Hauerwas,\textsuperscript{552} following MacIntyre’s\textsuperscript{553} ‘Virtue ethics,’ rejects human and children’s rights and the perceived autonomy on which liberal, secular society is based. The basis of the argument is twofold; firstly understandings of human beings as autonomous are misguided as humanity cannot be divorced from relational community, narrative and history. Secondly, attempts to reach universal agreement cannot succeed in the absence of common understandings about humanity, morality and authority which are lacking in modern multicultural societies. The divorcing of moral authority from narrative traditions of particular communities is rejected as incoherent. The latter argument encompasses both the theoretical impossibility of moral agreement which is Hauerwas

\textsuperscript{552} S Hauerwas Community of Character (Notre Dame: Notre Dame University 1981) pp.9-88 & pp.89-154
\textsuperscript{553} A MacIntyre (1985)

This challenge to UN and liberal assumptions reveals different understandings of human nature and society. Traditionalists oppose autonomy of moral authority arguing that it inevitably fosters individualism and relativism at the expense of objective moral codes and the common good. Rights-based approaches to ethics or moral authority are rejected as minimally protective, negatively competitive understandings of humanity rather than positive aspirations to a comprehensive view of a good society.\footnote{A MacIntyre (1985); W Cavanaugh "Politics & Reconciliation” The Blackwell Companion to Christian Ethics Eds. S Hauerwas S Wells (Oxford: Blackwell 2006) pp.196-208; J Milbank Against Human Rights www.theologyphilosophycentre.co.uk undated} This opposition assumes that the result of rights and individualistic understandings of humanity is a Nietzschean society in which the morality which triumphs is that of the strongest army or loudest voice.\footnote{A MacIntyre op cit pp.109-120; W Cavanaugh op cit pp.196-208; M Kirwan Political Theology: A new introduction (London: DLT 2008) pp.88-96} Human rights are also rejected specifically in relation to children on the basis that they are incapable of autonomy and therefore cannot be rights-holders, an argument also advanced by Hauerwas and Milbank who both reject rights based on autonomy generally. They argue that individualistic, competitive readings of rights exclude children from citizenship for lack of autonomy leaving them dependent on autonomous parental protection in a competitive world.\footnote{J Milbank op cit pp.12-15 & pp.39-44; S Hauerwas (1986) op cit pp.125-141} They also raise fears that rights create opposition and competition in children’s relationships with parents.\footnote{S Hauerwas (1981) op cit pp.171-3}

Yet, as discussed later, such interpretations of rights and the philosophy behind them are contested both as misunderstandings of rights and under-estimation of children’s autonomy. These negative understandings of rights are challenged by Christian writers like Wolterstorff\footnote{N Wolterstorff Justice: Rights and Wrongs (Princeton: University of Princeton Press 2008)} who defends rights generally but fails to address either the position of children or the challenges of seeking common norms about universal goods in multicultural and multi-religious societies. Marshall and Parvis\footnote{K Marshall & P Parvis op cit pp.1-10, pp.267-364} defend children’s rights under the UNCRC from a Christian perspective. Although they address
children’s rights they do not engage differences of worldview at much depth but assert near-universalism based on levels of support for the UNCRC. Neither defence addresses adequately the criticism of traditionalist theologians that in the absence of common premises universal norms cannot be achieved. These foundational differences highlight again the need to consider at greater depth not only differences of worldview underlying particular concerns like forced marriage but also broader differences of understanding about human ontology, epistemology and moral authority.

The ‘Problem’ of Women...

Perceptions of gender and sexuality as a major area of difference between religious and secular worldviews particularly Islam and ‘the west’ arise from headlines about religious dress, forced marriage and honour killing. Yet distinctions based on sexual difference are found across all cultures and ages. The question is why and to what degree such distinctions are problematic. Although much discourse about sexuality perceives personal relationships as privatised and excluded from the public square along with children, family and religion, in practice the state intervenes over domestic violence and child protection. Legislation also seeks to prevent discrimination on grounds of sex or sexual orientation recognising that gender-based distinctions and sexual discrimination have significant impact on those affected. Discrimination in childhood exercises significant control over adult lives which is noted by commentators from a number of backgrounds referring to constructions of communal reputation and identity based on female ‘honour’.

Behind what is styled as discrimination by UK law lie different conceptions of human sexuality and sexual difference based on varied understandings of what is natural, harmful, scriptural or traditional and subject to parental guidance or control. In practice discrimination continues in liberal democratic societies despite aspiring to equality of opportunity, autonomy and human rights. A major difference between equality-based liberal paradigms and traditional religious perspectives is the latter’s rejection or

differential construction of equality as a goal of gender relations. Yet views about gender and sexuality cover a range of stances towards assimilation and modernity, relying for their authority on a variety of sources. All three Abrahamic faiths state that men and women are equal before God in worth, responsibility for conduct and conscience. However, traditionalists in all three faiths promote essential sexual difference on the basis of theological interpretation. As children mature this becomes internalised as a daily reality and women adopt as their own identity readings of tradition proposed by religious leaders and elders. Yet young women asserting rights to wear religious dress illustrate the need for norms that balance protecting young people from coercion and indoctrination and respecting their religious freedom. Bearing in mind these parameters religious approaches and exemptions are assessed to identify their premises, consequences and implications for safeguarding, rights and equalities legislation.

Premises and authorities

As noted earlier UK law aspires to prevent specific forms of harm through prosecuting domestic violence and cliterodectomy, protection from forced marriage and promotion of equality. Dominant human rights discourse aspires to equality yet understandings of equality vary. UNCRC and ECHR provisions frame equality as protection from discrimination interpreted in liberal terms as equal treatment, respect and opportunity, regardless of sexual, racial or religious difference. The law relating to discrimination operates largely in employment, education and services rather than private spheres of family and community. Yet the latter can cause indirect discrimination by preventing access to education and employment as well as extreme forms of control like forced marriage. Equal treatment also disadvantages some, for example, women who take career breaks or work part-time to accommodate childcare. Equality of outcome rather than opportunity necessitates differential treatment to

566 R(on the application of Miss Begum) v Denbigh High School [2006] UKHL 15, [2007] 1 AC 100; [2006] 2 WLR 719; [2006] 2 All ER 487; R (On the application of Miss X by her father) v Y School [2007] EWHC 298, [2008] 1 All ER 249
567 UNCRC Article 2, Article 18 equal parenting & Article 28 re education; ECHR Article 14; The Convention on the Elimination of Discrimination against Women 1979
eliminate disadvantages arising from continued differences of gender-related responsibility.

Traditional religious interpretations of equality argue that women are ‘equal in dignity but complementary’. These interpretations are protected through rights to religious freedom and to minority culture with implications for overarching equalities provisions. Insofar as religious interpretation depends on communal codes that control sexuality several rights assumed by the UNCRC and ECHR may be breached. Whilst the relatively rare instances of forced marriage or ‘honour killing’ are prohibited by law, less obvious issues of discrimination arise through breaches of rights assumed in the overarching framework. These include undermining free association, privacy and reputation through segregation, ‘honour’ codes and freedom of religion and conscience. Breaches of rights are particularly acute where contested expressions of religious belief for example over dress lead to exclusion from the community. Although not specifically mentioned in human rights documents prohibiting homosexuality infringes rights in similar ways to controlling heterosexuality. The consequences of such interpretations have implications for children’s safeguarding insofar as they control and restrict access to opportunities through limiting education, information, employment or physical safety. Yet conservative interpretations of religious tradition are protected in law through exemptions to the Equality Acts. The impact of these exemptions in protecting essentialist and discriminatory religious beliefs is considered further below.

Yet the statutory framework of equality contrasts with the welfare checklist’s particularity about sexual differentiation alongside age, race, culture and language. The checklist suggests that biological differences are matters essential to children’s nature requiring variable decisions rather than equal treatment. Equality of treatment versus equality of outcome and exceptions to equalities legislation further illustrate the

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569 Articles 14, 28-30 UNCRC & Article 9, 14 & 1st Protocol on Education ECHR
570 Article 15 UNCRC, Article 11 ECHR
571 Article 16 UNCRC, Article 13 ECHR
572 Equality Act 2006 ss.57-61 replaced by Schedule 23 Equality Act 2010
574 S.1(3) Children Act 1989; s.1(4) ACA 2002

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variable nature of ‘welfare,’ accommodating groups who do not accept equality. Although there is no differentiation of sex, race or religion in defining significant harm or safeguarding, essentialist constructions of biological difference would view variation of ‘natural’ role as harmful. For example gendered codes of ‘honour’ and sexual purity construct sexual harm as more harmful to young women than young men.\(^{575}\) Such perceptions are discriminatory, generally against young women even in secular western culture which characterises young women as either ‘slags’ or victims who need protection whilst young men simply ‘sow wild oats’.\(^{576}\)

Including sex as a factor in the welfare checklist and equalities legislation demonstrates that sex-related distinctions continue in liberal, secular cultures despite professing equality. The extent and purpose of sexual difference varies across history and culture going beyond merely physical consequences of biology.\(^{577}\) This highlights the constructed nature of sexual differentiation into which children are socialised affecting expectations, self-understanding and decisions from daily life to lifelong goals. Although UK law aims to ensure equal treatment, opportunity and autonomy regardless of sex, continued differences in income, employment, childcare and domestic roles indicate that equality remains an aspiration\(^{578}\) rather than reality. Liberal assumptions about equality, autonomy and choice are more clearly realised in sexual relationships. Dominant culture no longer restricts sexual activity to marriage but tends to reserve marriage for the most serious commitment after sexual experimentation and testing relationships.\(^{579}\) There are also no restrictions as to appropriate marriage partners save for consanguinity and capacity to consent. Consent to marriage is separated from consent to sexual intercourse\(^{580}\) the former requiring greater capacity. There is little stigma to divorce, single parenthood or illegitimacy, save for single parents dependent on state benefits.\(^{581}\) Sexual orientation is understood

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575 T Ramadan (2004) op cit pp.138-143
580 Re SK (Adult by her litigation friend AM Hutchinson) [2004] EWHC 3202, [2005] 3 All ER 421
scientifically as a spectrum from homosexual to heterosexual with homosexuality accepted as a legitimate expression of sexuality.  

Yet these understandings of sexuality and relationships are recent developments like the aspiration to equality. Post-enlightenment science defended ‘natural’ inequality on grounds of sex and race. Early feminists also assumed essential, biological difference arguing for recognition in public decision-making of assumed feminine qualities like caring and intuition. More recent feminist understandings argue that sexual difference is socially-constructed, performative rather than fixed, making sexual difference and gender neither naturally-determined nor restricted. Contemporary feminism includes those affirming female experience in the public sphere, challenges the division of public from private and recognises gendered intersection with experiences of racism and colonialism. These understandings of feminism all broadly aspire to equality regardless of biological difference but equality and the means of achieving it are variably interpreted. Like its secular counterpart feminist theology has varied interpretations of equality but religious writers are amongst those most likely to challenge secular liberal assumptions, some in relation to their own community, others more widely.

Traditional religious codes reinforce sexual difference as ‘complementary’ through dress, conduct, domestic role, education and training for adulthood. Sexuality is understood as heterosexual, the key to moral living, oriented to procreation and

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582 Professor M King Submission to the Anglican Church Listening Exercise on Homosexuality (Royal College of Psychiatrists: London 2007)
583 E.L. Graham (1995) op cit pp.77-98, pp.147-168
585 C Gilligan In a different voice (Cambridge/Mass: Harvard University Press 1982)
587 C Gilligan op cit pp.24-63
588 S Benhabib op cit pp.107-113
590 Ed. S Frank Parsons Challenging women’s orthodoxies (Surrey: Ashgate 2000)
requiring regulation of relationships with the opposite sex. Intimate relationships are limited to marriage which is a matter of family not just personal choice. Homosexuality is viewed as unnatural because it undermines sexual differentiation and is therefore an abomination in Christianity, Judaism and Islam. Judaism also condemns homosexuality as contravening mitzvah to procreate. Religious codes are based on understandings of nature reinforced by divine order revealed through scripture and tradition. Interpretations of scripture and tradition vary from literal immutability to recognition of historical and cultural contingency. Feminist scholarship across traditions illustrates how sexual difference and families are shaped by patriarchal interpretation of Biblical and Qu’ranic scripture, proposing less patriarchal readings.

Some scripture not only regulates codes of dress, behaviour and role, but also character and morality, portraying women as inferior through condemnation as temptresses or defined by dependence. Christian texts include women covering their heads, obeying husbands and renouncing leadership, despite early church...

594 A Untermann op cit p.136
596 Although liberal Jews argue this can be fulfilled via Artificial Insemination or adoption www.liberaljudaism.org (accessed 19.12.2009)
598 R Radford Ruether Christianity and the making of the modern family (Boston, Beacon Press 2001)
600 Nagging, brawling & tempting - Proverbs 6:24-32; 7:5-27; 8:13-18; Tainted by menstruation - Leviticus 12: 2-8 & 15-20
602 Ruth & Boaz- Book of Ruth; Leah & Rachel-Genesis 29:15-30; Numbers 30
603 1 Corinthians 11:3; 1 Timothy 2:12
604 1 Corinthians 11:3-9; I Timothy 2:11-5, I Corinthians 14:34-5; Colossians 3:18; Ephesians 5:22-4 & 5:25-33
practice to the contrary. Other studies highlight absence, non-naming of women in scripture and male imagery for God as further factors prescribing women’s subordination. The Qu’ran and hadith also differentiate male and female roles with implications for leadership, family responsibilities, inheritance and homosexuality. Both the Qu’ran and hadith condemn homosexuality as depraved. Qiyyamma prescribes that men are breadwinners in return for women’s obedience and childcare; nushuz also requires women’s obedience and fidelity. Although both parties to adultery should be punished evidential rules give preference to men, meaning that punishment falls on women even in cases of rape.

Scripture concerning sexual difference is reinforced by theological traditions like ‘natural law’ theology in Catholicism which follows Aquinas and Augustine’s presumption that women were inferior men; less rational, more ‘earth bound’ by childbearing and fitted for domestic roles. Similar views were expressed by Reformed theologians like Luther who argued from his own marriage that women were suited to domesticity. Contemporary natural law theology argues that women are ‘complementary’ rather than inferior to men as a matter of natural harmony. Islam also appeals to ‘natural law’ to justify gender complementarity, with similar
arguments advanced by the Vatican and Muslim states.616 Judaism617 and conservative Protestant Christianity618 base theologies of sexual complementarity on scripture rather than natural law but assumptions about natural functions like menstruation and childbirth underlie scriptural precepts.619 Natural law theology and essentialist understandings of sexuality also underlie condemnations of homosexuality.620 Religious authorities thus establish perceptions of religious revelation as immutably gender-biased requiring exemption from equalities legislation to protect religious authenticity.

Yet there is no single theological reading of sexuality and gender.621 Understandings of human nature, gender, race and religion are contested in religious communities as in secular discourse. The Christian theologian Elaine Graham, reviewing theological debates about sexual difference, concludes that understandings of sexuality as socially constructed are consistent with Christian teachings.622 However, Vatican opposition to gender theory and its essentialist teaching of natural law theology about gender predominates in public fora like the media623 and UN discussions, despite varying views amongst its congregations.624 Muslim scholars defend women’s rights625 as do many Muslims according to Esposito’s survey, yet Islamic understandings of women’s rights vary.626 Some interpret obligations or rights to wear religious dress as protection from male attention and claim protection from employment so as to concentrate on the domestic.627 Other Muslims view such teaching as oppressive.628 Roald considers a

617 A Unterman op cit p.186; S Sheridan (2005) op cit pp.222-3; M Solomon (2005) op cit pp.401-412
618 K Barth Church Dogmatics Vol III/4 Vol 54 pp.109-231; Plymouth Brethren, Jehovah’s Witnesses & Christians Schools Trust observe female dress codes.
619 Leviticus 12 & 15-20; B Greenberg “In defence of the daughters of Israel” Eds J Soskice & D Lipman op cit pp.229-243
620 G Moore op cit
622 E.L. Graham op cit pp.214-231
624 J Chittister (1996)
627 A.S. Roald op cit pp.118-184 & pp.254-294
range of perspectives finding significant difference even within a small group of educated Arabic Muslims. Similar diversity over sexual difference is seen within Orthodox and progressive Judaism. In addition, some scholars in all three traditions defend progressive understandings of women’s role in society, arguing that women’s place in the Qu’ran, hadith, Hebrew Bible and Christian scripture was progressive against the cultural context in which they were written.

Therefore neither Scripture nor tradition is determinative of theology. Interpretation is both possible, through *ijtihad* in Islam and Talmudic interpretation in Judaism and necessary in addressing societal, cultural and legal developments. All traditions use a variety of interpretive approaches, methods and hermeneutics. These include recognising internal textual inconsistencies, assessing the strength of authorities, reading against overarching theological values, application to contexts not envisaged at the time of writing and contextualisation in the light of modern knowledge. Even traditional theologies recognise the need to apply scripture and tradition to new situations, knowledge and understandings for example ameliorating the harshness of negative texts such as those about *qiyyama*, cliterodectomy and women’s subordination or exclusion.

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629 A.S. Roald op cit pp.118-236  
635 E.g. Galatians 8:27-29 contrasted with I Corinthians 11:3-9; I Timothy 2:11-5; I Corinthians 14:34-5  
637 G Moore (2001) op cit pp.1-12, pp.64-91; D Novak op cit pp.113-162  
640 A.S. Roald op cit pp.145-184; L Badawi op cit pp.84-112

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Yet traditional readings of scripture and tradition continue to essentialise and thus discriminate against women in all three traditions through opposition to women’s leadership particularly in religious matters, restricted education and employment, definition by domestic roles and controlling sexuality through segregation, purity laws and forced marriage. Although relatively few may feel called to religious leadership closing such roles to women reduces expectations and curtails exploration of talents in other spheres. Who and what women are and are capable of doing becomes restricted by essentialist understandings of women’s nature within the broader human picture. Children raised in such traditions internalise discriminatory teachings, reducing their capacity to access alternative information or question received wisdom. Risks of such control are greatest in counter-culturally separatist communities which view alternative worldviews and communities as suspicious, irreligious or evil. Forced marriage illustrates the risks of religious control with discriminatory impact as 85% of UK complaints of forced marriage are from young women.\textsuperscript{643}

It is these traditionalist expectations about sexuality, religion, ‘honour’ and arranged marriage which are the cultural background to forced marriage. Yet such essentialist expectations restrict autonomy more widely by limiting young peoples’ ability to question the expectations. Arranged marriage and the involvement of immediate and extended family and community\textsuperscript{644} reduces the couple’s autonomy both when choosing partners and within marriage. In traditions that expect newly-wed couples to live with extended family, financial autonomy is reduced. The burdens of sexual morality focusing primarily on women can restrict their autonomy in many aspects of life, including clothing and education. ‘Honour’ codes mean that, even if force is used in marriage or sexual assault, reputation becomes contingent on others’ behaviour with moral responsibility transferred from perpetrator to victim. Making illegitimacy an essential status with consequences for marriage, education and community membership transfers moral responsibility from parent to child by penalising the child for parental conduct. All such codes detract from personal responsibility, autonomy and integrity of identity with the impact most acute for young people, women and children still dependent on their families. Simply condemning extreme forms of sexual

\textsuperscript{642} See Footnotes 597-604
\textsuperscript{643} FMU Statistics www.fco.gov.uk/FMU
\textsuperscript{644} S Levine Mystics, mavericks and merry makers (New York: NY University Press 2003) eg pp.162-4
control like cliterodectomy, forced marriage or homophobia does not address the underlying constructions of person and relationships that lead to such conduct.

Essentialism can also be seen in traditional religious approaches to the other aspects of human ontology and issues of concern identified. In some instances underlying theologies are inter-related affecting a number of issues. Traditional approaches to discipline based on Proverbs and theologies of original sin are essentialist about children’s nature as evil, necessitating correction or taming. Yet perceptions of children as innocent can be equally essentialist, underestimating children and the parenting they need. Understandings of sexuality as corrupting, wicked or irrational temptation add to essentialism about evil. Restricting education to epistemologies that preserve a closed, absolutist community promotes essentialist understandings of racial, religious and sexual identity. Such education both perpetuates and is affected by such codes, in turn informing children’s understandings of right, wrong, harm and discipline. The extent of communally determined as opposed to personally discerned roles, identity, initiative and experience is also dictated by education. Traditional religious rules about communal membership and apostasy control racial and religious as well as sexual identity with essentialist consequences for children’s self-understanding, decision-making capacity and approaches to authority.

Yet, as identified in relation to sexuality, all traditions have a variety of hermeneutics and means for applying theological reflection. Thus Christians who condemn corporal punishment counter Proverbs’ ‘spare the rod, spoil the child’ with

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647 M.E. Stortz “When or where was your servant innocent: Augustine on childhood” Ed. M.J. Bunge (2001) op cit pp.78-102; M Marty The Mystery of the Child (Grand Rapids: Eerdmans 2001) pp.154-7
Jesus’ injunctions to let the children come to him.\textsuperscript{650} Beliefs in the same theological premise can be applied with different outcomes. For example both Wesley and Calvin accept doctrines of original sin; Wesley supported corporal punishment,\textsuperscript{651} Calvin argued instead for education.\textsuperscript{652} Others, as reviewed in \textit{R v Williamson}\textsuperscript{653} defend corporal punishment in terms of effectiveness. This is countered by psychological evidence that such punishment is counter-productive.\textsuperscript{654} Thus epistemological authority is given to non-Biblical psychological arguments even by those using the most traditional interpretations of scripture. Within Judaism the greater importance given to matrilineal genetic heritage in Orthodoxy as compared with Reformed or progressive Jewry illustrates diversity of theology even about membership. Both examples show the difficulties of separating religion from culture and the interplay of religious with non-religious epistemology in the practical application of religious norms.

Essentialist epistemology and religion taught as absolutist rules, rather than skills for learning and discernment, also carry significant weight because presented as divine. In practice however religious teaching and what carries divine force is defined largely by an elite male religious leadership. Exclusion of other voices and experiences in theological discernment results in theology and ethics which incidentally or deliberately provide self-reinforcing views of the elite leadership. Communities who understand religious authority as wholly absolute and external to the individual confine their interpretation of truth to that promoted by their leaders and jurists. Exclusion of women from leadership, in some cases even from prayers,\textsuperscript{655} means that the vast majority of priests, rabbis, imams or alim are male. Despite some theoretical expansion of access to theological training, in practice resources available to train priests outweigh resources to train laity. Although in theory Muslim women can train to be

\textsuperscript{650}\textit{Proverbs 23: 13-14}; \textit{Matthew 18: 1-5}
\textsuperscript{651}\textit{R.P. Heitzenrater “John Wesley & Children” Ed. M.J. Bunge op cit p.279-299}
\textsuperscript{652}\textit{B Pitkin “The heritage of the Lord: Children in the theology of John Calvin” Ed. M.J. Bunge op cit p.160-193}
\textsuperscript{653}[2005] UKHL 15
few do so because of limited resources and authority. Women still cannot lead prayers in the Mosque. Orthodox Jewish women do not usually learn Torah beyond mitzvah specific to them about domestic celebrations and purity. Continued exclusion from leadership means lack of theological education or tools to challenge leaders’ interpretations of scripture and tradition.

Male religious leaders therefore shape and control religious orthodoxy, access to theological tools and resources for such training. Such exclusion affects not only career aspirations for girls but the shaping and interpretation of religious tradition and its perception both in public fora and within religious communities. This has an impact on all members of the religious community, particularly on minorities like women and children subjected to power imbalances created by patriarchal religious leaders in the name of divinity. It is this power over orthodoxy which led to religious exemptions from equalities provisions. These dynamics of power over theology need to be considered when assessing religious exemptions from education, equalities and other laws and norms, particularly those affecting children.

Progress towards female leadership in Judaism and some Christian denominations, changing understandings of gender in Islam and differing approaches to homosexuality demonstrate that theological and scriptural prescriptions are not absolute or unchallengeable. Some religious understandings of these issues are also consistent with contemporary ideas of equality and human rights. The issue is which understandings of religion are voiced or allowed to prevail in the public square and internally in religious communities. Patriarchal control of religious orthodoxy, continued promotion of ‘honour’ and religious conservatism, especially in local communities divorced from wider society, has a significant impact on the lives of

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656 ‘Jurists’ see T Winter “Gender from a Muslim perspective” Eds. N Solomon, R Harries, T Winter Abraham’s Children op cit pp.236-243

657 S Levine op cit p.46 & pp.182-188

658 Roman Catholic seminaries do not admit women; H Ner David op cit pp.102-108; A.S. Roald op cit p.185-200 re. political leadership, p.197 Shari’a Courts; T Winter “Gender from a Muslim Perspective”


661 S Sheridan op cit pp.222-3; M Solomon op cit pp.401-412; G Moore op cit pp.182-208; Ed. Y Suleiman Contextualising Islam op cit pp.47-8
children and young women in particular, as evidenced by concerns explored in the previous chapter. This is a major concern from the perspective of protecting children and their rights. Teaching religious knowledge by rote makes the problem even more acute as the capacity for reflection on the application of religious belief when confronted with conflicting information, experience or worldviews is reduced.

Sociologists, the psychologist Dinesh Bughra and philosophers like MacIntyre suggest that in homogenous societies with a common faith tradition there is less risk of harm because conflict between experience and religion is limited. Yet concerns about treatment of women and children remain, even in homogenous communities, as evidenced by domestic violence, cliterodectomy and exorcism. In a multicultural society, whether considered from the perspective of Britain or the global village in which Britain is situated, such homogeneity no longer exists. For families with roots, histories and continued familial links with countries of origin outside the UK acute multicultural conflicts arise particularly for younger generations. In the best cases this results in the need to make sense of faith within wider, secularised society; in the worst cases it results in being caught in limbo between different faith and linguistic traditions. Both positions are illustrated by Phillip Lewis’s research, as an external commentator, on being Young, British and Muslim. In terms of understandings of community cohesion and informed moral autonomy lack of knowledge about religious worldviews is also problematic for liberal atheists. However their access to majority

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663 R Maqsood Islam (London: Hodder/Teach yourself 2004) p.152; T Ramadan op cit pp.126-143; P Lewis op cit pp.33-60
664 J.L. Watson Between two cultures: Migrants and minorities in Britain (Oxford: Blackwells 1997); M.S. Seddon, D Hussain & N Malik British Muslims between assimilation and segregation (Leicester: MIHE 2004)
668 P Lewis op cit pp.33-118
culture means that such ignorance does not have the safeguarding consequences of restricting access to training, work and other opportunities which affect minorities.

Two poles of the educational spectrum are seen in contrasting Hauerwas’ theological criticism of children’s rights\textsuperscript{669} and John Eekelaar’s concept of ‘dynamic self-determinism’.\textsuperscript{670} These arguments identify core differences between liberal and traditional religious understandings of children, their education and implications for the role of religion in safeguarding and children’s rights. Hauerwas, with others from a variety of religious traditions defends religious education and parental freedom to pass on traditions which they believe are the best upbringing for their children.\textsuperscript{671} Although a Christian, Hauerwas cites Hassidic Jewish communities as examples.\textsuperscript{672} He argues that education should teach children ethics nurtured by practice true to the authority of their religious tradition. It assumes an adult-led understanding of education in which children are recipients of tradition and socialisation rather than agents in learning, let alone potential sources of revelation. The goal of such education is membership of and conformity to communal religious traditions rather than wider society. This gives rise to understandings of protection as safeguarding children from potentially corrupting influences in wider society, rather than fitting them to live in that society, as seen in the illustrative practices considered earlier.

By contrast liberal education assumes comparative teaching from a range of traditions rather than confessional instruction.\textsuperscript{673} Moral autonomy based on personal discernment and experience is the goal, assuming that faith and ethics are personal decisions not communal obligations, that all viewpoints should be tolerated and common values sought. Such assumptions are implicit in Eekelaar’s normative proposals for ‘dynamic self-determinism’ which posits access to wide-ranging sources of information enabling autonomy and self-determinism. Promoting autonomy through non-confessional religious teaching, distinction of sacred from secular and knowledge or ethics external

\footnotesize{\textsuperscript{669} S Hauerwas (1986) op cit pp.125-142
\textsuperscript{672} S Hauerwas (1986) op cit pp.125-130
\textsuperscript{673} www.curriculum.qcda.gov.uk/subjects/religioeducation (accessed 12.11.2010)
to the religious community is rejected by educationalists from several traditions.\footnote{Sheik Mabub op cit p.88-97; OE Schremer op cit p.80-88} For traditional religious communities autonomy and personal experience are suspect save for literal application of the tradition’s \textit{mores}. The concern is that unformed children and young people are unable to discern appropriately. MacIntyre’s philosophy,\footnote{A MacIntyre \textit{After Virtue} (London: Duckworths 1985)} that membership of communities of ‘reasoned tradition’ is foundational for virtuous ethics opposes liberal assumptions of moral autonomy and negotiated positivist norms. Autonomy is also rejected as a normative ethical good from other disciplinary perspectives including Hauerwas’s communitarian Christian theology and Kymlicka’s political philosophy. All argue that ethical development and upbringing are inoperable without community\footnote{W Kymlicka \textit{Multicultural Citizenship} (Clarendon: Oxford 1996)} because human beings are innately relational and community-oriented. Charles Taylor goes further suggesting that community interests and preservation should take precedence over individual autonomy.\footnote{C Taylor “The politics of recognition.” Ed. A Gutman \textit{Multiculturalism} (Princeton: Princeton University Press 1994) pp.25-42} Yet rejecting individual autonomy promotes community autonomy as evidenced by exemptions from education and equalities law for religious communities.

There are difficulties with both understandings particularly from the perspective of children and their safeguarding. The difficulties are examined here before arguing in the next chapter for an understanding of relational autonomy that provides a mid-point between unfettered personal autonomy and potentially oppressive communal autonomy and authority. Hauerwas’ and other traditional religious approaches to education and moral upbringing are diametrically opposed to the assumptions of the UNCRC and the UK’s national curriculum as communal autonomy goes to the core of traditional upbringing. This is particularly the case where rejecting personal autonomy favours communities that seek separation from wider society. As indicated in Chapter Two each tradition has varying understandings of the interaction between religious and secular communities, worldviews and values. Within Niebuhr’s\footnote{H.R. Niebuhr \textit{Christ and Culture} (London: Harper Collins 1951)} analysis communities that are wholly oppositional to dominant culture like Jehovah’s Witnesses, Exclusive Brethren\footnote{Re R [1993] 2 FCR 52} Haredi Jews\footnote{S Levine \textit{Mystics, Merrymakers & Mavericks} (New York: NY University Press 2003); E Don-Yehiya “Traditionalist Strands” Eds. N de Lange & M Freud-Kandel (2005) op cit pp.93-105} or Deobandi Muslims\footnote{T Ramadan op cit p.24; A Wingate op cit p.158} assert
separatist autonomy through both economic and educational self-sufficiency. These communities most closely resemble the communities of reasoned tradition envisaged by MacIntyre and Hauerwas’ argument. Other communities engage with wider society in terms of employment and civic involvement but assert autonomy over children’s upbringing through independent sector education.

The reality for the majority of society including most religious communities is that communities intersect, interact and generate multiple allegiances requiring negotiation of different values, epistemologies and priorities. Religious communities and children’s heritage also overlap where parents come together in mixed-faith marriage. As Niebuhr’s analysis suggests religious engagement is complex, from assimilation to counter-culture. Christians in Church of England and Roman Catholic schools whose education predominantly adopts the mainstream curriculum have multiple assimilated community affiliations. Yet teaching encourages engagement with public life to bring their religious values and ethos to bear on wider society in ways that transform or synthesise. Although Islam is stereotyped as publicly counter-cultural through distinctive dress or the hostility to western culture of a terrorist minority, in practice many Muslim children attend mainstream schools teaching the national curriculum. Aspirations are fostered to mainstream occupations, family businesses serve the wider community and Muslims are involved in public life. Many Muslim children are therefore less separatist, assuming they have access to sufficient grasp of English language, than children in independent schools run by counter-culturally separatist religious communities such as the Haredi or Exclusive Brethren.

Most children therefore need to be equipped to make sense of cultural and religious difference and conflicts between their own tradition and other worldviews so as to negotiate their own faith in relation to other traditions. Yet variable approaches to secular society are fostered by an education system which permits differential educational objectives, content and methods. The universal framework of the national curriculum allows particular religious belief but non-confessional religious teaching assumes faith as a matter of private choice. These assumptions contradict those minorities who fear the undermining of religious belief and community continuity by

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assimilation, particularly where they do not have access to faith schools. By contrast independent faith schools can teach in ways that undermine core assumptions of mainstream education, confirmed by the DFES concession in *Talmud Torah Machzikei Hadass School v DFES.* Yet at some point engagement with and negotiation of wider society is necessary; even separatist communities need to negotiate religious exemptions from mainstream norms, including educational standards and to access healthcare and other services.

The need for religious communities to encounter and negotiate a variety of allegiances in a multicultural and multi-religious society is recognised across the faith traditions for example in Rowan Williams’ speeches about religious law and human rights in the UK, Jonathon Sacks in terms of Jewish identity and Tariq Ramadan and *Contextualising Islam*. Separatist education which fits only for particular communities in a multicultural society exerts control through shaping of conscience in ways that restrict information and thus decision-making capacity. Lack of information is compounded by rote-learning through lack of skills to negotiate difference or resolve conflicts. This has an impact not only on personal moral autonomy and safeguarding children but also on communal sustainability in a global polity and economy. Regardless of past tradition the nature of contemporary society necessitates some negotiation of difference and informed personal understandings of value as well as communal mores. Besides promoting children’s capacity for self-protection, autonomy and negotiation of difference, an adequately informed community is better able to defend its traditions through positive development rather than fragile continuity through defensive retreat from the world.

Hauerwas’ communitarian argument also raises concerns in specific safeguarding terms. For children caught between communities, for example in traditional Muslim

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685 12.04.85 at *Times Law Reports* 15th April 1985

686 R Williams “Archbishop’s Lecture to the RCI: Civil and Religious Law in England: a religious perspective” (07.02.08) & “Religious Faith and Human Rights” (01.05.2008) [www.archbishopofcanterbury.org/Speeches/2008](http://www.archbishopofcanterbury.org/Speeches/2008)


688 T Ramadan op cit pp.126-143; *Contextualising Islam* op cit pp.21-44

689 T Ramadan op cit pp.3-8, pp.126-173
communities but attending mainstream schools, there are risks of cultural conflict causing sometimes irresolvable tension.\(^{690}\) Children without the skills, information and permission to resolve tensions between divergent aspects of their experience are at risk of emotional harm even if situations of forced or physical discipline do not arise.\(^{691}\) For children isolated in separatist communities, risks arise from indoctrination or being unable to draw attention to abusive adult behaviour. Child sexual abuse in the Roman Catholic Church and the church’s failure to deal with the allegations illustrates painfully the dangers of closed communities where respect for religion leads to internal collusion and inadequate external accountability. Another danger is communities, particularly those operating in separatist, counter-cultural or isolationist ways which leave children in a stigmatised limbo through essentialist constructions of race or illegitimacy.\(^{692}\)

Failure to take account of various familial allegiances or mixed racial and religious heritage creates tensions in community belonging and citizenship, seen for example in the mixed Jain/Muslim marriage of Re S\(^{693}\) and Re M, the Zulu boy.\(^{694}\) Rights of exit proposed by several communitarian commentators\(^{695}\) are unavailable to dependent children. For those leaving when older overly particular education leaves them ill-equipped for wider society’s expectations and in severe emotional conflict if they are rejected by the community. The conflict is even more acute where community rejection is for behaviour deemed incompatible with faith rather than a conscientious rejection of faith. This is particularly problematic for young women who wish to remain faithful to their religion but are torn between gender roles modelled at school that differ from what is learnt at home.\(^{696}\) Emotional and physical control and punishment of children torn between cultures, seen as apostates or non-compliant with communal morals, perpetuates religious essentialism. In some instances rebellious

\(^{692}\) JFS v Brent [2009] UKSC 15; A Shachar op cit pp.17-44
\(^{693}\) Re S [2004] EWHC 1282; [2005] 1FLR 17
\(^{694}\) Re M [1996] 2 FLR 441
\(^{695}\) C Taylor (1994); W Kymlicka (1996)
\(^{696}\) A Wingate op cit pp.170-173; P Lewis op cit pp.96-99; S Levine pp.87-106, pp.124-138
children may be typecast and punished for multiple stigma defined by race, legitimacy, religion and sex but also as essentially bad because ‘rebellious’. 697

Unlike UK law which only allows removal of children from their parents where parenting causes significant harm religious rules can exclude parents from children’s lives for parental behaviour deemed morally harmful like adultery, apostasy or disobedience. Again women, as they cannot disguise pregnancy, bear most of the consequences of adultery including sanctions and exclusion from the faith community.698 Children of parents deemed immoral because born illegitimate either pre-maritally or as a consequence of adultery also suffer sanctions for parental conduct. As women cannot disguise pregnancy they bear most of the consequences of adultery; there is less sanction for male immorality. Such approaches focus on non-compliance with external or communal authority as disobedience or evil requiring punishment, rather than addressing underlying differences of view and recognising the need for negotiation of differential faith interpretations. The challenge is to respect religious views and accommodate some particular religious education within limits that enable self-protection and decision-making and prevent foreclosure and indoctrination. Even Hauerwas concedes that in a multicultural society where differing worldviews challenge mutual accountability and common standards some agreement over essential rights may be a necessary evil.699

At the core of human rights breaches through duress, exploitation,700 indoctrination, foreclosure of options and lack of freedom for genuine consent are issues of autonomy. Other aspects of that autonomy include rights to freedom of expression, thought, religion and conscience, association, privacy and information.701 Whilst these may be read separately, in practice they are connected aspects of human ontology based on personal integrity and freedom, collectively known as autonomy rights. Consideration of such rights in relation to children is contested because of scepticism that children can exercise them and scepticism that autonomy is an appropriate ethical or child-

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697 S Levine op cit “Rochel Lehrer” pp.87-106
699 S Hauerwas (1986) op cit p.128
700 eg ‘battle over status & money’ in Noor Mohammad v Mohammed Jialiddin (1992 MP 244) cited by D Pearl & W Menski op cit p.157
701 Articles 13-17
Yet religious groups contesting the wearing of religious dress in school or use of corporal punishment rely on such rights to defend religious belief and practice.

The issues examined in this and the previous chapter illustrate tensions between secular liberal and traditional religious views of human ontology, between equality and diversity, personal and communal autonomy and competing rights or interests. Popularly such tensions are associated with countercultural views on sexuality, relationships and marriage. Arguments about religious dress demonstrate the conflict between religious autonomy to manifest faith against liberal suspicion of such clothing as repressing women’s sexuality and expression. Court cases about religious dress also illustrate tensions about interpretation and observance within religious traditions. However, to date such cases have focussed on young women asserting religious autonomy within rather than against communal expectations. If perceived as control of women’s sexuality by parents suspicions of indoctrination are a concern but prohibition of veiling is equally perceived as oppressive of religious freedom.

English law protects young people’s rights to express religious beliefs in particular ways provided that is their free decision. Imposing dress codes for religious or socio-political reasons infringes freedom of expression, privacy and principles of equality. Autonomy is assumed by the law and impliedly adopted by those bringing such claims. However, as with issues like forced marriage the concern is whether young people have the autonomy to make such decisions with free and full consent. The interpretation and exercise of autonomy rights is affected by education, attitudes towards autonomy and community and issues of punishment or control. Theoretically rights enable analysis of conflicting perspectives unlike children’s welfare which may be over-identified with continuation in the familial community. Yet where children’s perceptions of their rights and welfare are dictated by parents and upbringing, rights-based analysis of separate perspectives has little weight, a critique supported by Leora Bilsky.

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702 S Hauerwas op cit pp.125-128; J Milbank op cit pp.13-15
703 Baroness Hale of Richmond R v Begum [2006] UKHL 15 para.92-98
704 Articles 13, 16 and 2 UNCRC; Articles 8 & 14 ECHR
Educational restrictions and pressure created by codes of conduct enforce rules through the binding of conscience. Where corporal punishment and exclusionary sanctions are used to enforce moral codes or religious rules, conscience as well as bodies are bound by physical force. Sanctions for illegitimacy and rules about membership stigmatise and bind illegitimate children for circumstances beyond their control. Removal of children by relatives sanctioning deemed misconduct keeps children in the faith but excludes the errant parent from their lives. Such rules stigmatise and punish children regardless of personal responsibility for perceived immoral behaviour. Education that inculcates such rules hinders discernment in favour of absolutist codes of behaviour, morality and rules based on essentialism about human nature, race, community and sex. The rules and essentialism are dictated by external sources of authority portrayed as divine but mediated to the community, interpreted and enforced by elite religious leaders and their authority over the community. Such rules and expectations are further mediated to their children by parents and elders charged with the continuation of the tradition to the exclusion of alternative experience or theological interpretation.

At the heart of difference:

This analysis of epistemological, ethical and authoritative difference between liberal secular and traditional religious approaches to children’s upbringing illustrates conceptual and ontological differences underlying particular practices. These include the degree to which children are seen as integrally part of their genetic family and community or individuals in their own right and the extent of ethical essentialism over familial, communal, religious and sexual aspects of human nature. Each of these differences is related to underlying conceptions of human beings as varying in degrees of autonomy versus heteronomy, of attitudes towards personal experience and discernment versus communal interpretation even dictation of religious truth, morality and mores. In turn these differences affect interpretation of supposedly commonly agreed forms of words and normative rights. The essentialism of traditionalist religion

708 Illustrated internationally in L Sebba & G Douglas Children’s rights and traditional values (Surrey: Ashgate 1998)
with contingent essentialism about race, gender, sex and childhood prioritises community over personal experience and identity. This contrasts with liberal approaches which view individuals as prior to relational ties. The concrete illustrations given of diametrically opposed views about cliterodectomy or children’s nature ranging from innocent sources of revelation to sinful objects of control, demonstrate the extent of difference over what is seen as harmful or constitutes children’s best interests.

Whilst essentialist and absolutist rules about conduct and community norms provide defined personal, familial and communal identity with purposive socialisation and moral frameworks, they also raise concerns. Such fixed identities can both limit and exclude children particularly if combined with stigma about sexuality or illegitimacy. Rigid interpretation of rules can be abusive or manipulative of power. If religious certainties fail or are challenged by conflicting experience or worldviews children are left isolated by communities that cannot negotiate difference, particularly if skills and language are lacking. Restricted access to information and decisions about employment and marriage can leave children isolated, vulnerable to abuse and with no comparative assessment or guidance about what is happening to them. Where decisions and discernment are constrained questions need to be asked about safeguarding, the impact on development and reduced capacity to object to harm or negotiate wider society. In the worst cases this can result in injury, even death where physical means are used to enforce what are believed to be religious codes.

Although some religious commentators reject liberal secular defences of personal autonomy, even regarding it as harmfully individualistic many religious groups assert human rights and religious freedom. Defence of groups’ religious practice and exemptions from wider societal norms are assertions of communal as opposed to personal autonomy. Rights protect individuals from state abuses of power but where religious essentialisms are exempted or protected minorities in religious communities may be unprotected. The legal resolution of conflicts between particular religious rights and societal norms revolves around the concept of autonomy of the individual seeking to assert the right, as clearly articulated by Baroness Hale in *R v Begum.* Autonomy therefore arises as an issue in all the examples discussed including consent.

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709 *R (on the application of her litigation friend) v Denbigh High School* [2006] UKHL 15, para.92-98; [2007] 1 AC 100; [2006] 2 WLR 719, [2006] 1 All ER 487
to marriage, asserting religious rights, bodily integrity in cliterodectomy, punishment and possession, decision-making in education and life, personal versus community identity and autonomy versus hierarchy in interpreting belief and practice. In relation to children there are particular concerns about how far autonomy is possible or necessary with widely differing understandings of children’s interests and capacity. Given the prevalence of conflict over autonomy versus heteronomy, of personal experience against communal mores it is necessary to examine further whether these differences of religious versus secular, traditional versus liberal worldviews are insurmountable. Additionally consideration of autonomy from theological perspectives may be the key to transcending the differences identified so as to enhance children’s rights and safeguarding. It is this examination that forms the substance of the next chapter.
Chapter 5: Transcending the differences:  
Can theology reach the parts that other paradigms fail to touch?

The previous chapter identifies tensions between heteronomy and autonomy as underlying differences of philosophy, theology and ontology between traditional religious and secular liberal worldviews in assessing the illustrative concerns. At the close of Chapter Two it became apparent that normative understandings of children amongst both legal commentators and child theologians assume that children have a measure of autonomy and agency. Such assumptions of autonomy contrast with both traditional religious and communitarian theorists on children and rights and with the practices identified as headline concerns within traditional religious communities. This chapter argues that such differences are surmountable through understandings of autonomy grounded in theological paradigms of relationship, integrity and protective justice. Moreover such paradigms are the key to transcending the differences identified and to enhancing consensus over children’s rights and safeguarding. This makes explicit and develops insights about relational autonomy explored in child theology but provides more substance than ‘mystery’ or ‘vulnerability’ to a theology of rights within a safeguarding framework. As traditionalist Christians have raised significant objections to autonomy and rights from theological, philosophical and political perspectives the first step is to defend the thesis in Christian theological terms. Application of the thesis to other traditions is considered in the following chapter.

The thesis proposed is that an expanded and graced understanding of human autonomy applicable to children as well as adults can provide a normative interpretive tool in protecting children and their rights. The expanded understanding of autonomy encompasses human integrity located in conscience, affective integrity, subjective and communal identity, personal giftedness, vocation and bodily integrity. Within a Christian theology each of these features of humanity is given by the grace of a creating God, revealed through the incarnation and ongoing involvement in creation through the Holy Spirit in each new life. This understanding of autonomy is realised and operates only in the context of relationship following the pattern of an inherently relational Trinitarian God. Such insights are reinforced by research into children’s spirituality which illustrates an innate sense of human inter-relation. However, it is an understanding of relationship that recognises the need to protect the distinct personhood of each party within relationships from the familial to the communal.
The model of rights as primarily protective of these distinctive features of humanity with both extra-legal ethical authority and the potential for legal enforcement is viewed as compatible not only with Christian theology but also with other traditions. This understanding of an expanded and relational autonomy is proposed as an interpretive tool which can promote greater normative consensus about the implementation and development of children’s and human rights. The aspects of human ontology that constitute an expanded understanding of autonomy are reflected in the rights prima facie protected by the United Nations Convention on the Rights of the Child most of which apply to all human beings. If the expanded concept of autonomy is used to protect the most vital aspects of humanity this also provides normative criteria for defining harm as that which infringes the rights protecting what is most truly human.

Whilst children’s autonomy expressed as voice and participation rights is defended in court proceedings, medical procedures, and sociology there is little interrogation of that autonomy and what it means more broadly. The autonomy assumed by contemporary writing and research in child theology and spirituality is revealed through children’s experience and questions about God, liberation from abuse and from poverty. Some of the earliest child theology, St John Chrysostom’s imagery of parents sculpting the \textit{imago dei} in their children, assumes children’s separate and unique identity; it is cited in Marshall and Parvis’ defence of children’s rights. However, child theology’s assumptions about children’s autonomy are implicit and the scope, substance and consequences of such autonomy remain little-

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713 D Hay & R Nye \textit{The spirit of the child} (London: Jessica Kingsley 2006); A Richards \textit{Through the eyes of a child: New perspectives on child theology} (London: Church House Publishing 2009)

714 J Berryman \textit{Godly Play An imaginative approach to religious education} (Minneapolis: Augsburg Fortress 1999)


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explored. ‘The moral and political status of children’ considers ethical and political philosophy surrounding children’s autonomy. Most contributors are sceptical about children’s autonomy and rights as discussed further below. Lawyer, Michael Freeman defends autonomy as a basis for rights arguing that children’s autonomy is as significant as that of adults. However, his characterisation of children’s autonomy as capacity for rather than actual autonomy is critiqued by Catherine Lowy who cites children’s projects as a basis for ‘current autonomy, as opposed to mere capacity for autonomy’.

Lowy’s analysis locates children’s autonomy in a broader ontological range than the usual conception of autonomy as decision-making and voice. Lowy’s thesis reflects Marty’s theological defence of children’s mystery and independence of adults’ control and mirrors Dorothy Martyn’s psychological and theological defence of children’s autonomy in the self-motivating projects of growing-up. That capacity for autonomy is variable in English law dependent on the competence required for decisions of differing gravity is illustrated by John Coggan. His analysis of legal decisions dependent on levels of subject information, manipulation and risk attaching to the decision illustrates that varied approaches to autonomy and competence apply to adults as well as children.

Therefore whilst there are areas of agreement about children’s autonomy and rights between some secular commentators and some religious understandings there is no universal consensus within either religious or secular circles. Christian theologies vary from scepticism about children’s autonomy and rights to those which extend beyond affirming autonomy to children’s revelation of alternative ways of being before God. For example, Grassi’s liberation theology of Godly humility and uncorrupted trust derived from children in scripture and Jensen’s thesis of children’s graced

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720 Professor M Freeman “Taking children’s rights more seriously” International Journal Law, Policy and the Family (1992) Vol.6(1) pp.52-71
722 M Marty The mystery of the child (Grand Rapids: Eerdmans 2007)
723 D Martyn Beyond deserving (Grand Rapids: Eerdmans 2007)
725 Matthew 18: 1-5
vulnerability\textsuperscript{727} propose children as models for adults, not just objects of protection. In ways that parallel feminist arguments for women’s insights in policy, child theology argues that values revealed by children have implications for wider society not just decisions about children. However, images of children as vulnerable, trusting or oppressed simply highlight their need for protection rather than providing norms for such protection or means to resolve conflicting views, priorities and interests. Similarly implicit support for childhood autonomy does not overcome opposition to such autonomy from orthodox theologians like Hauerwas.

An-Na’im’s proposal for ongoing conversations about rights which include views from the women and children affected also assumes autonomy but does not propose any greater normative criteria for cross-cultural protection of children.\textsuperscript{728} Such proposals also fail to acknowledge the limitations of consulting children in traditional authoritarian communities with little scope for questioning, access to information or paradigms external to the religious community. However, assumption of children’s autonomy by Muslim commentators like An-Na’im and Ramadan as well as Christian child theology suggests that such concepts merit further exploration. Such exploration is also indicated by the fact that personal autonomy versus communal heteronomy is identified as a core difference between religious and secular paradigms for childcare. It is first acknowledged however, that autonomy has been critiqued from several perspectives particularly in relation to rights and children’s rights. These criticisms are therefore outlined before considering the positive arguments for an expanded and graced understanding of autonomy that both applies to children and provides greater insights into adult rights and relationships.

Autonomy:

‘Autonomy’ is derived from the Greek ‘auto’ and ‘nomos’ meaning ‘own law’ or ‘self-governing.’ It was originally applied to states but by the Enlightenment was also interpreted as applicable to self-regulating agency exercisable by adults capable of reason and independent decision-making, at that time male, property-owning

\textsuperscript{727} D Jensen \textit{Graced Vulnerability} (Cleveland: Pilgrim Press 2005)
citizens. Autonomy is foundational to Kantian ethics which propose that each person must make and evaluate their own moral decisions rather than accepting traditional or institutional morality on faith. Kantian autonomy has been critiqued as irreligious, devoid of history, individualistic and relativist in promoting personal conscience at the expense of communal morality. Ultimately such relativism is criticised as the Nietzschean morality of the will to power based on might not right. This criticism of autonomy is extended to rights which are perceived and interpreted as fostering autonomous individualism. Yet given that application and interpretation of religious and ethical principles requires some personal discernment in any religious tradition locating moral discernment with the individual’s conscience is not irreligious. The concept of graced and relational autonomy, grounded in the theological sources explored below, challenges the argument that autonomy need be interpreted as entirely individualistic.

Critics like Hauerwas also argue that understandings of humanity based on Kantian moral autonomy misconstrue human beings and the development of moral consciousness in assuming the capacity to transcend authority or relational ties. The argument is that community is prior to the individual in shaping identity, values and ethics. It is a critique of Enlightenment understandings of children as blank slates and the ‘unencumbered’ Kantian adult divorced from any communal moral context. However, according to Macken to read Kantian autonomy as individualistic and unencumbered is a misinterpretation. Kantian autonomy concerns the search for purity of decision according to objective criteria sought by reason as opposed to libertarian understandings of autonomy proposed by Kantian interpreters like Fichte. Kant does not reject religion or authority but argues that individuals should discern and test moral decisions rather than accepting on trust or command alone the authority of an individual's conscience.

729 J Macken SJ The autonomy theme in the Church Dogmatics (Cambridge: CUP 1990) pp.1-3
731 A MacIntyre After Virtue (London: Duckworths 1985)
733 W Cavanaugh op cit pp.196-208; J Milbank Against human rights www.theologyphilosophycentre.co.uk/undated;
institution, group or system. Kant also asks that norms be tested by experience and amenable to reason which some suggest poses problems for religious premises grounded in faith without reference to reason. However, most religions engage with scientific reason in some form as even traditional religion makes assumptions about nature within scripture and tradition. The issue is how far these differ from modern science.

For proponents of reasoned tradition morality independent of communal narrative development of normative moral frameworks is impossible. Education is a unilateral imparting of communal mores and knowledge to the next generation rendering autonomy suspect and children incapable of exercising it. Children, along with adults with learning disabilities, are deemed unable to exercise moral autonomy for lack of competence in reasoning. Research into children’s spirituality cited above demonstrates initiative, insight and reasoning by children independent of adult perspectives which challenges arguments for education as a unilateral process. Research in secular settings also indicates that children are capable of sophisticated decision-making in relation to medical decisions, court processes and developing responsibility. In addition to evidence of empirical research even critics of children’s autonomy like Hauerwas accept that children have agency. In order to exercise agency a degree of autonomy is needed as shown by Marty and Martyn’s observations of children’s projects and development that are particular, even mysterious to them. All such evidence tends to refute the idea that children have no capacity for autonomy, a proposition explored further below.

735 J Macken SJ op cit pp.3-11 & pp.11-21
741 A Solberg “Negotiating Childhood: Changing constructions of age for Norwegian Children” Eds. A James & A Prout op cit pp.126-144
742 S Hauerwas (1986) op cit pp.125-142
The Anglo-Catholic theologian John Milbank shares Hauerwas’ scepticism about children’s rational capacity and autonomy in general but also argues\(^\text{743}\) that children’s dependence on adults and communities constrains their capacity for autonomy. The concept of autonomy that Milbank rejects is self-possession and self-disposal, derived from Franciscan theology, which he argues leads to preoccupation with property and Enlightenment individualism.\(^\text{744}\) Scepticism about children’s autonomy is not limited to religious writers. Like Hauerwas, philosophers Griffin, Brighouse and Callan\(^\text{745}\) all reject children’s autonomy or agency rights. Griffin argues that rights should not be diluted by giving them to children as subjects incapable of their exercise.\(^\text{746}\) Brighouse acknowledges children as the subject of basic but not agency rights, again for lack of capacity.\(^\text{747}\) Samantha Brennan\(^\text{748}\) regards young children as only having interests rather than choice-based rights; she does not wholly reject autonomy but argues that autonomy rights develop only with age. From a perspective similar to Hauerwas, Callan rejects liberal autonomy as promoting shallow approaches to morality when compared with traditional, albeit insular religious upbringing.\(^\text{749}\) Some feminists also critique autonomous ethical development as proposed by Kohlberg or Erikson\(^\text{750}\) suggesting that women’s greater socialisation for caring shapes female discernment relationally\(^\text{751}\) rather than autonomously. Barbara Arneil rejects children’s rights on this basis.\(^\text{752}\)

Yet rejecting children’s autonomy and rights on grounds of incapacity ignores evidence from practice and empirical research that even young children can exercise some decision-making autonomy and agency.\(^\text{753}\) The argument that children cannot have rights because they are dependent ignores the fact that most adults’ lives are at

\(^{743}\) J Milbank op cit pp.12-15


\(^{745}\) D Archard & C.M. McLeod *The moral and political status of children* (Oxford: OUP 2002)

\(^{746}\) J Griffin “Do children have rights?” Eds. D Archard & C.M. McLeod op cit pp.19-30

\(^{747}\) H Brighouse “What rights (if any) do children have?” Eds. D Archard & C.M. McLeod op cit pp.31-52

\(^{748}\) S Brennan “Children’s rights or children’s interests?” Eds. D Archard & C.M. McLeod op cit pp.53-69

\(^{749}\) E Callan “Autonomy, child-rearing and good lives” Eds. D Archard & C.M. McLeod op cit pp.118-137

\(^{750}\) Discussed critically at C Gilligan *In a difference voice* (Cambridge/Mass: Harvard University Press 1982) pp.64-150

\(^{751}\) C Gilligan *In a difference voice* (Cambridge/Mass: Harvard University Press 1982)

\(^{752}\) B Arneil “Becoming versus being: a critical analysis of the child in liberal theory” Eds. D Archard & C.M. McLeod op cit pp.70-84

\(^{753}\) J Fortin op cit p.87 & p.371
least inter-dependent.\footnote{J Herring “Relational autonomy and rape” Regulating autonomy Eds S Day-Sclater, M Richards, F Ebtehaj & E Jackson (Oxford: Hart Publishing 2009) pp.53-72} Arneil and others’ understanding of rights solely as individualistic self-regulation or libertarian independence misconstrues motivations for modern rights. The understanding of autonomy proposed by this thesis recognises both adults’ and children’s autonomy and inter-dependence. The difference between adults and children is not absence but degree of autonomy. The issues are what constitutes autonomy, what it means for children and adults to have autonomy and what factors constrain autonomy appropriately or otherwise. Forced marriage is an example of constructed dependence which constrains consent and autonomy regardless of victims’ age, demonstrating precisely why respect for individual consent, autonomy and rights need protecting from communal pressures. Those who most need protection are those whose circumstances, of which age is only one factor, make it most difficult for them to defend their integrity in terms of affect, conscience, vocation or other unique giftedness. It is an argument for ensuring the ability to resist inappropriate pressure or manipulation created by familial dependence rather than denying autonomy and rights.

That autonomy is not limited to rational decision-making agency and moral discernment but covers each area of human life examined as giving rise to concerns about children’s rights and protection, is another key aspect of the thesis. Thus autonomy is relevant to education and cognitive integrity, relationships and affective integrity, punishment, discipline and bodily integrity and integrity of identity. Several UNCRC articles illustrate that aspects of autonomy apply even to the youngest infants. Rights to name, nationality, familial identity\footnote{Articles 7-8} and recognition of minority or indigenous heritage\footnote{Articles 29-30} all apply from birth. This recognises even babies as the subjects of autonomous identity and features that constitute that identity. Criticism of religious rules about illegitimacy\footnote{MJ Broyde “Adoption, personal status & Jewish law” Ed. T.P. Jackson The morality of adoption (Grand Rapids/Cambridge: Eerdmans 2005) pp.128-147; Y Ronen “Redefining the child’s right to identity.” International Journal of Law, Policy and Family (2004) Vol.18 147-177} which create stigma and discrimination mark rights to treatment independent of parental heritage through rights to good name and equal treatment. Seyla Benhabib’s construction of autonomy as the unique combination of genes, nurture, communal narrative, conscience, affective attraction, gift and mystery...
essential to personhood, identity, integrity and human relationship also applies to children.

Through including affective integrity and identity, autonomy assumes a relational rather than individualistic or competitive orientation. The absence of agreement over human ontology, moral authority and human difference means that the normative telos of cross-cultural dialogue about rights is the search for common meaning about humanity. Preserving human integrity and autonomy in relation to all levels of community is the universal safeguard against relativism. This operates both at the level of the individual within their community and particular communities within wider society. Through including affective integrity and identity, autonomy assumes a relational rather than individualistic or competing orientation. The value and integrity of each child as autonomous from though related to their parents and community is what is recognised as worthy of protection. This expanded understanding of autonomy can be defended from religious tradition and scripture as well as secular sources like the UNCRC and Benhabib.

**Affective integrity and relationship:**

If conscience constitutes cognitive or intellectual integrity, affective autonomy and integrity is the subjectivity of love and emotional attachment. This aspect of autonomy arises prior to the exercise of decision-making capacity concerning not only intimate relationships but all forms of emotional attachment. Even rationalist modern societies, espousing concepts of equal treatment and objective decision-making, recognise personal likes and dislikes particularly in the affective subjectivity of friendship and relationships. Behaviour motivated by these aspects of autonomy, which are linked to personal and subjective needs, desires and preferences is seen from infancy onwards. Who likes whom and why is a mystery unique to each person and relationship, both in chosen relationships like friendship and those dictated by circumstances like work or family. This is seen even in small children’s preferences for particular parents, siblings or family friends. As with cognitive integrity the capacity to regulate affective preferences and needs develops with maturity but it exists from birth. It is this personal

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distinctiveness of relational or affective subjectivity that constitutes an area of autonomy overlooked in understandings based on rational decision-making.

The importance of affective integrity is reflected in requiring consent to sexual relations and marriage recognising, even in arranged marriages, that the decision to share life and its most intimate aspects with another is supremely personal not something into which people can be forced. There are differences between liberal conceptions of the person and traditional communities in that arranged marriage and segregation lead to more restricted scope for sexual and affective autonomy. However, this does not undermine the fact that consent to marriage is required confirming the supremely personal area of integrity and autonomy in friendship, relationships, marriage and sex. UNCRC protection of familial relationships does not simply protect children’s right to care but reflects the importance of children’s well-being through attachment and affective relationships. Similarly, although Article 15 is often interpreted as the right to political association it is also viewed as protecting affective and cultural relationships like friendship and communal association.

Conscience, cognitive integrity and education:

The exercise of conscience can be characterised as cognitive or intellectual integrity. Conscience and decision-making are the aspects of life most commonly associated with rationalist autonomy. Conscience is framed as a right to exercise or manifest, not merely hold and express views enabling participation and voice in all levels of society, family and community. From birth children have a distinctive identity and place in the world affording them an element of moral autonomy in terms of rights and interests that need to be met to enable them to live. Although the youngest voices represent an unformed and inarticulate autonomy with limited capacity for independent exercise of rights and interests, the capacity to make needs and presence felt within family and community remains important. It is that concept of autonomy as a distinctive identity and moral presence in the world that is explored here. Although suspicious of

759 Articles 5–10 – parental guidance, care & familial identity & 18- parental care
760 Tabernacle v Secretary of State for Defence [2009] EWCA 23; Metrobus v Unite [2009] EWCA 829 in relation to Article 11 ECHR the equivalent to Art 15 UNCRC
children’s rights or capacity for autonomy Stanley Hauerwas nonetheless accepts that children have agency. Their unique presence in the world, capacity to articulate need and express their personality constitutes that agency. It is unclear how agency can be exercised without some element of autonomy whether seen in voicing the need to be fed, crawling to reach something attractive or a teenager arguing for a night out. Autonomy operates alongside agency albeit with growing degrees of awareness and reflection as children mature. Both secular research on decision-making and research on children’s spirituality shows that children can apprehend both ethical decisions and God, developing according to their own capacity and timescales often regardless of adult expectations.

Autonomy rights in the sense of decision-making are recognised for older children following the Gillick decision. They have been increasingly exercised in cases concerning religious freedom and school uniform. Hannah Jones’ refusal of a heart transplant was upheld as Gillick competent, demonstrating courts’ increased willingness to recognise children’s capacity for autonomy in medical decisions, particularly where not influenced by religious belief. Research shows that children under ten are capable of sophisticated understanding about their illness and treatment. UNCRC participation rights have no lower age limit acknowledging that even young children have views to express and take into account. It is the weight accorded to those views that varies with children’s maturity, the gravity of the situation and degree of paternalism exercised by the adults responsible. Young children may now be recognised as capable of giving evidence about what has happened to them. Even pre-verbal babies express emotions, needs and reactions non-verbally. Whilst the

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762 S Hauerwas op cit p.128  
763 P Alderson op cit in J Fortin op cit p.87 & p.371  
764 A Richards op cit pp.44-84  
765 Gillick v West Norfolk AHA [1986] AC 112  
767 “Girl wins right to refuse heart” www.bbc.co.uk/11.11.08; M Weaver “Right to die teenager changes her mind” www.guardian.co.uk/21.07.09 (accessed 14.12.2009)  
768 Contrast Re L (Medical Treatment: Gillick Competency) [1998] 2 FLR; Re E (A Minor: Consent to Medical Treatment) [1993] 1 FLR 386; Re S (A Minor: Consent to Medical Treatment) [1994] 2 FLR 1065  
770 Article 12  
772 M Hall “Giving evidence at the age of 4: Just means to an ends?” Family Law (July 2009) Vol.39 p.608-611
UNCRC assumes that children need care and material provision, generally from parents, children can survive on the streets or in child-headed households. This does not make the UNCRC aspiration inappropriate but challenges children’s construction as inevitably dependent. To overlook or restrict children’s agency and autonomy and accept parental autonomy and accounts of harm without further investigation risks ignoring children requiring protection.\(^7\)

Education is the area most readily linked with the formation of autonomy in its usual sphere of moral reason. Children learn values, epistemology and skills in the relational communities of their upbringing but they are not passive recipients of education. In turn education shapes conscience influenced in varying degrees by external, communal authority and personal judgement. The particular shape and exercise of conscience is unique to each person and is engaged in all decision-making, from major moral and vocational issues to day-to-day decisions. Conscience is obviously engaged if manifested in decisions that contradict social norms. However, even when decisions conform to dominant morality, whether in a religious group or secular society, there is an element of conscientious personal decision in following the norm. Conscience is a vital aspect of personal autonomy protected in all human rights conventions\(^8\) and defended theologically for centuries. Rushton locates the foundations of religious freedom and conscience in the work of Latin American Missionaries like De Vittoria and Bartolomeo\(^9\) protecting indigenous peoples from forced conversion. Esther Reed locates religious freedom and conscience in Calvinist defence of the right to protest against unjust rule,\(^6\) a right applied by both Calvin\(^7\) and Barth\(^8\) to children and unjust parental rule. This reflects Barth’s conception of ethics as founded on the command and calling of God to the individual conscience.\(^9\) Catholic theologian John Henry Newman also valued conscience as a pre-rational integrity inspired by God,

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\(^7\) Baby P not examined as ‘baby cranky and miserable’. H Siddique, D Batty, L Glendinning “Baby P case: Key Officials” www.guardian.co.uk/2008/dec/01 (accessed 28.04.2011)
\(^8\) Article 14 UNCRC; Article 9 ECHR; Article 18 Universal Declaration of Human Rights
\(^6\) E Reed Ethics of Human Rights: Contested doctrinal and moral issues (Texas: Baylor University Press 2007)
\(^7\) B Pitkin “The heritage of the lord: Children in the theology of John Calvin” ‘if parents lead their children to violate the law they must regard them as strangers....’ p.172 The child in Christian Thought Ed. M.J. Bunge (Grand Rapids: Eerdmans 2001)
\(^8\) K Barth Church Dogmatics III/4 (London: T&T Clark Study Edition 2010) pp.246-256
lived out in reasoned and informed decision-making, famously stating that he would toast personal conscience before Papal authority.\textsuperscript{780}

Children’s capacity for decision-making autonomy in religious communities reflects secular constructs of child development. Early Christian theology notably that of Augustine recognises several ages of ‘man’ through growth from childhood dependence to adult autonomy.\textsuperscript{781} In more modern theology Barth talks of growth from heteronomy to autonomy.\textsuperscript{782} Maturation in decision-making and personal commitment is recognised in religious structures and membership ceremonies like first communion and confirmation. Another indicator of moral autonomy and personhood is the age at which legal obligations become binding. In UK law criminal responsibility arises from the age of ten. Capacity to consent to medical procedures and family arrangements arises during the teens\textsuperscript{783} depending on the gravity of the issue and adolescent understanding. By contrast Roman Catholic Law sees children as capable of sufficient moral autonomy to be bound by Canon Law from the age of seven,\textsuperscript{784} recognising children’s agency and moral responsibility at younger ages than secular law.

Autonomy in the sense of decision-making requires the development of skills and discernment informed by experience and education, recognising and encouraging moral autonomy as part of maturing. Hauerwas\textsuperscript{785} and MacIntyre argue that education can only occur within particular communities with a coherent moral tradition. However in a multicultural society most children and adults are members of overlapping communities, allegiances\textsuperscript{786} and value-based contexts, notably for children community, family and school. Personal discernment about values is needed to negotiate differing cultures, religious rules and their implications for decision-making. Education for discernment is needed from an early age, teaching the importance of

\textsuperscript{781} M.E. Stortz “Where or when was your servant innocent? Augustine on childhood” Ed. M.J. Bunge The Child in Christian Thought op cit pp.78-102
\textsuperscript{782} W Werpehowski “Reading Karl Barth on children” Ed. M.J. Bunge The child in Christian Thought op cit pp.386-405 at pp.396-398; CDIII/4 op cit pp.244-246
\textsuperscript{783} R v Gillick [1986] AC 112; R v Begum [2006] UKHL 15
\textsuperscript{784} Canon 11 Code of Canon Law (Washington: Canon Law Society of America 1983)
\textsuperscript{785} S Hauerwas (1986) op cit pp.125-128
values and integrity in a complex world both within and outside children’s natal community. The development of autonomy is reflected in the lack of lower age limits for any of the autonomy rights like association, expression, privacy, voice and education. Even those wishing to remain in separatist communities need some understanding of wider society if only to be apologists, negotiate the preservation of their way of life and access essential services like medical help from outside their community. In the context of safeguarding, children need to be aware of their right to protest mistreatment and unjust authority as well as negotiating an increasingly complex multicultural world. Additionally, education that fosters autonomy rather than rigid conformity nurtures agents rather than objects, better-equipped to represent, defend and develop their religious heritage than an uneducated, passive membership.

**Bodily integrity:**

The third area of concern is punishment and discipline which raise issues of bodily integrity. Throughout the centuries these aspects of human ontology have been protected through rights to bodily freedom, protection from assault and physically degrading treatment. Although in the UK children are subject to greater physical restraint than adults through retention of parental corporal punishment nonetheless their physical wellbeing is protected by limits prohibiting physical harm through chastisement. Defending human rights Rowan Williams cites the integrity of the human body and its communicative signification as the locus and ground of rights. McFadyen also conceives of personhood as communicative bodily integrity. Marshall and Parvis use incarnation and embodiment as grounds for locating human rights applicable to children, a theme developed further by John Wall’s adoption of feminist understandings of incarnation as bodying forth revelation.

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788 Offences Against the Person Act 1868 preceding rights-based formulations


791 K Marshall & P Parvis op cit p.324

Locating and justifying rights in the distinctive embodiment of each human person overcomes difficulties of limited application to children and adults with cognitive disabilities inherent in arguments based on human capacity for reason. The fact that biologically bodies are marked by the uniqueness of DNA also affirms bodily significance as distinctive gifts of creation. However, human bodies are also the location for all other aspects of human capacity which need protecting. Williams’ and McFadyen’s limitation of bodily significance to communication risks reducing human capacity to rationality; bodies in their fullness must also be recognised as locating affective, reflexive and identity-based aspects of personhood as well as communication.

Bodily integrity is linked to affective integrity particularly in sexual relationships and marriage. In most instances bodily integrity is denoted by the requirement of consent to touching, from hugs of friendship to sexual relations, medical procedures and physical contact in sport. Legal intervention to prevent coercion of sexual activity, marriage and other forms of physical violence starts with unwanted touch. The test for legal intervention largely turns on consent. In most cases consent remains a defining issue of autonomy even where there are questions about its validity due to incapacity, duress or, for medical consent, whether it was adequately informed. Autonomy is maintained through allowing victims to define whether they are harmed for example through decisions to prosecute. Consent signifies exercises of conscience, affective integrity in relationships, identity and other commitments. Through exercising consent individuals define their values and commitments, what is harmful or unwanted, determining what and who is most precious and integral to them and therefore what they want the law to protect.793

It is this emphasis on personal decision which fuels accusations of individualism about autonomy and rights and that undermines children’s claims to autonomy and rights, as they are deemed incapable of consent due to intellectual immaturity. This could be seen as reflected in distinctions between children’s and adults’ treatment through the continued legality of parental corporal punishment as an exemption to principles governing non-consensual touch and assault. Although the exception reduces children’s bodily autonomy in comparison with adults the distinction is often defended

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793 Herring considers problems with this understanding even in western constructs - J Herring (2009) op cit pp.53-72, whose analysis illustrates a need for relational autonomy respecting different capacities.
by parents’ need to restrain or punish children physically because of their limited reasoning. Yet the law criminalises corporal punishment that causes physical harm and limits chastisement to parents, thus equating this aspect of children’s autonomy with parental rights to consent to children’s medical treatment. The inviolability of children’s bodily integrity is preserved by parental exercise of consent on behalf of the child in medical situations and legal limits to punishment and parental authority where not exercised in the child’s interests. Increased involvement of children in their own medical decisions, in court and schools’ councils illustrates that children are not simply their parents’ property and can exercise some personal autonomy. The UNCRC orders these competing priorities by balancing parental guidance with education for developing autonomy.

Yet in some situations protection of bodily integrity does not turn on personal consent because the law intervenes to restrain autonomy for adults and children. Examples include prohibition of assisted suicide, sado-masochism and cliterodectomy through the criminal law and of starvation and self-harm through medical intervention and mental health law. Additionally parents cannot consent on children’s behalf to some adult practices like drinking alcohol and tattoos. In such situations consent, personal or parental definitions of harm and self-possessed autonomy are overridden by state definitions. Imposing protective norms which override religious belief for example cliterodectomy and corporal punishment, raises further questions about consent to physically harmful practices, religious, sporting or cosmetic. The issue is not whether children have autonomy but the extent of the state’s authority to protect citizens from harm even if consensual. For adults and Gillick competent teenagers consent is their own; for children without capacity their parents’. This is the key to the extent of personal autonomy in terms of self-possession.

Case-law about Jehovah’s Witnesses and blood transfusion establishes that the law preserves earthly life over religious belief where understandings about bodies and eternal life conflict. In cliterodectomy the law prioritises secular understandings of

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794 S.58 Children Act 2004  
795 Articles 5 & 14 UNCRC  
796 S.2 Suicide Act 1961  
797 R v Brown [1993] 2 All ER 75  
798 Female Mutilation Act 2003  
799 Licensing Act 1964 as amended by Licensing (Young Persons) Act 2000  
800 Tattooing of Minors Act 1969
bodily integrity based on medical science over religious constructions of dignity through cliterodectomy. However, whilst the law prohibits cliterodectomy in all circumstances for adults and children in the case of transfusions it intervenes only to protect children, allowing adults to refuse treatment even if fatal. The distinction is based on principles about not forcing treatment on non-consenting adults and non-intervention in adult omission or self-neglect by contrast with preventing self-destruction at all ages and abuse or neglect of children. The distinction between preventing self-destruction as contrasted with tolerance of adult self-neglect illustrates two different understandings of autonomy.

Prohibiting self-destruction curtails personal autonomy and preserves bodily integrity independent of the patient’s consent. This understanding of autonomy affirms the preservation of bodily integrity as graced giftedness with relational obligations. Lack of intervention where treatment is refused preserves self-possession in autonomy in the sense of making unfettered decisions about one’s own body. The latter understanding is defended in secular thinking for example in debates about assisted dying but in practice bodily integrity as graced giftedness is protected in law. As Hauerwas argues in some circumstances suicide is rational within a framework of autonomous self-possession; yet medicine, mental health and criminal law intervenes to prevent suicide, protecting bodily integrity and gift over individualistic self-possession. Interpreting autonomous personhood as gifts of grace and precious human distinctiveness provides a basis for protecting bodily integrity against extreme physical harm or death independent of and even overriding consent.

This understanding of bodily integrity as preserving the gifted individuality of each person, rather than self-possessed autonomy entitled to self-harm, is consistent with a Christian understanding of human person as God-given. It can provide criteria for normative interpretation of rights consistent with English law and addresses Christian critiques of rights and autonomy as individualistic, libertarian self-possession. The autonomy and distinct giftedness of all human beings means that the principle applies also to children thus marking the boundaries of parental relationship and guidance for their children. Such an understanding provides justification for prohibiting cliterodectomy for adults and children, for limiting corporal punishment and parental

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801 S Hauerwas (1986) op cit pp.100-113
autonomy and for recognising children’s rights to be consulted about medical procedures.

The principle applies to everyone but is most necessary to protect those least able to protect themselves whether because of physical size, immaturity, low self-esteem or vulnerable to communal pressures. The latter includes dependent, vulnerable girls and women at risk of cliterodectomy and other pressures to control sexuality within patriarchal culture. It is also arguable that young adults who seek cosmetic surgery for secular, media-driven understandings of bodily perfection are similarly vulnerable. If protecting bodily integrity and the fullness of graced autonomy provides the overarching framework and norm for personal autonomy there needs to be an objective analysis of equivalent risks in both secular and religious practices.

A limitation of this understanding of bodily integrity and autonomy is that such an approach requires agreement about medical and related science as the basis for defining harm. The fact that the medical risks of cliterodectomy are significant and potentially life-threatening, with long-term impact on female sexuality is difficult to contest, even if the significance of the operation is contested. Given that there are clear parameters to such science the law can justify overriding religious belief on this basis in the same way as protection from physical harm was prioritised in limiting corporal punishment. Other areas of religious belief and medical science are more strongly contested due to different worldviews about the underlying nature of humanity. Exorcism for possession is an example in which religious belief constructs the problem as a spiritual matter of demonic invasion of the human body. The belief requires deliverance of the physical human body from the other, non-visible demonic being by which it is possessed. Where this entails physical harm through beating or the extensive punishments and deprivations visited on Victoria Climbie, the law can intervene to prevent bodily harm. However, the principle of bodily integrity grounded in Christian teachings about the distinctiveness of human souls provides theological criteria for arguing against exorcism even where consequences are primarily emotional rather than physical.

802 Christian ‘care of souls’ is understood as body and soul
Whilst many aspects of rights to bodily integrity concern physical safety they also involve corporal and material wellbeing. This is reflected particularly in rights to protection from neglect not just abuse, to material provision and healthcare.

Both the ECHR and UN Declaration on Human Rights focus on Civic rights including property ownership. By contrast the UNCRC outlines rights to material provision rather than property ownership, thus correcting understandings of personhood that conflate personal and bodily integrity with notions of property. This does not devalue the importance of material rights but protects bodily integrity as key to human worth and graced autonomy rather than property rights which are inessential aspects of human life. Rights to material provision as opposed to ownership highlight the fact that like children most adults do not own property or enjoy landed independence.

**Identity, integrity, autonomy and belonging:**

The final aspect of autonomy highlighted by the contested issues considered earlier is integrity of identity in relation to family, community and dominant society within the nation state. Although constructed differently within secular law and some religious traditions as illustrated by adoption, identity is another important aspect of personhood. Each person has subjective integrity through an identity, gifts and vocation given by God which interacts with external construction of identity through family and community relationships. Identity influences aspects of personhood like conscience and the inhabiting of affectivity, sexuality and bodily integrity. Although each of these aspects of autonomy has distinct features they are inter-related, informing moral agency and decision-making but also personal integrity in a wide range of circumstances. This dynamic is illustrated by the realisation of identity which leads to affective responses and commitment through solidarity. Recognising a range of aspects of autonomy applicable to children, exercisable by them to varying degrees and vital for shaping identity provides a fuller understanding of human autonomy than its limitation to independent, rational decision-making. To recognise the affective, relational and identity-based dimensions of autonomy and their role in conscience and decision-making addresses feminist scepticism about autonomy. Provision by the

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803 Article 19 UNCRC
804 Articles 26 & 27 UNCRC
805 Article 24 UNCRC
806 J Milbank op cit pp.30-47
UNCRC for parental guidance in support of children’s maturing capacity for autonomous decision-making sets identity in a relational context. It also recognises that adult rights are relational and that major decisions like marriage and parenting cannot be made in isolation! This approach grounds both autonomy and rights in a relational framework not the individualism posited by critics. Yet such analysis does not fully ground either the defence of autonomy or rights theologically.

**Christian arguments for autonomy:**

There therefore follows a theological grounding of the expanded understanding of autonomy as an interpretive principle for safeguarding and children’s rights. Arguments which reject autonomy or suggest that it is a concept alien to religious communities overlook important theological insights. Christian tradition has a range of scriptural and theological sources which show that God is interested in individual human beings as well as communities. Christianity understands each human being as having a distinctive soul and identity known personally and particularly to God. This is emphasised for example in Psalm 139 which casts human uniqueness as God-given and relationship with God as directly not just communally mediated. Passages like Jesus’ admonition to followers that God clothes and provides for all of his creation, even the birds and particularly his human creatures highlights God’s omniscient personal care.\(^808\) The prevalence of scripture written in the first person voice of the Psalms, the Book of Job and David’s prayer\(^809\) confirms that the individual and their struggles are not solely a secular, western phenomenon. Individuals are created equal in dignity by and before God.\(^810\) It is also individuals who are chosen by God for particular vocations like Mary bearing Jesus,\(^811\) Jesus choosing the disciples,\(^812\) Peter chosen as the rock and shepherd\(^813\) and Saul’s conversion on the road to Damascus.\(^814\)

\(^{808}\) Matthew 6: 25-34  
\(^{809}\) 2 Samuel 7: 18-29; and Saul’s conversion Acts 9; R Williams (2001) op cit pp.3-15  
\(^{811}\) Luke 1  
\(^{812}\) Matthew 4:18-22; Mark 3: 13-19;  
\(^{813}\) Matthew 16:18 & John 21: 15-19  
\(^{814}\) Acts 8-9
Personal creation and call by God means that from a theological perspective individuals are also personally accountable to God for the conduct of their lives.\textsuperscript{815} Although conscience and agency are influenced by community, the God-centred relationship and accountability to God are grounded in personal responsibility and integrity as emphasised by Rowan Williams: ‘What I have to discover as I try to form my mind and will is the nature of my pre-existing relation with God and ... those ... who God has touched with whom I share a life of listening for God and praising God...discovery of a self already shaped by these relations and ... consequent responsibilities... in terms of the common language of ... faith... involves self-questioning and self-criticism in the presence of scripture and tradition, as well as engagement with the wider community of believers.’\textsuperscript{816} Individuals are called upon to realise their talents and the fullness of vocation and gift to which God calls them.\textsuperscript{817} Personal accountability is also recognised in the fact that religious commitments like baptism, confirmation, communion and confession are made individually both to God and a particular faith community. Even Barth, for whom scope for human action apart from God is limited, emphasises the radically personal nature of baptismal commitment.\textsuperscript{818}

Children’s individuality is also found in scriptural particularity through injunctions to care for specific children\textsuperscript{819} and recognition of children generically\textsuperscript{820} and particularly\textsuperscript{821} as inheritors of the kingdom, respected as gifts of God.\textsuperscript{822} Such views of childhood autonomy and integrity are consistent with theologies of childhood introduced in Chapter Two. St John Chrysostom talks of ‘sculptors’ who ‘remove what is superfluous and add what is lacking’. Children have ‘complete human status,’ in the image of God.\textsuperscript{823} Calvin recognises children’s need to develop their personal God-

\begin{footnotes}
\item[816] R Williams (2001) op cit pp.3-15  
\item[817] Matthew 25: 14-30  
\item[818] J Macken SJ op cit pp.80-7  
\item[819] Job 29:12-20; Matthew 18:1-10; Mark 9:42-50; Luke 17:1-3; Qu’ran s.89:15; 93:1; 107:1  
\item[820] Matthew 11:25-27; 19:13-15; 18:15-17; Qu’ran s.89:15; 93:1; 107:1  
\item[821] The Hebrew Bible’s chosen children include Joseph-Genesis 37-45; Moses-Exodus 2-3; 1 Samuel 3; & David 1 Samuel 17: 12-end; Christian theology speaks of God incarnate as a child. The Qu’ran honours Joseph (Su.12) & Jesus (Su.19) as children.  
\item[822] M Marty The mystery of the child (Grand Rapids/Cambridge: Eerdmans 2007); D Martyn Beyond deserving (Grand Rapids/Cambridge: Eerdmans 2007)  
\end{footnotes}
given capacities through education.\textsuperscript{824} Rahner\textsuperscript{825} and Marty\textsuperscript{826} recognise the mystery of children’s relationship with God through their capacity for spirituality. As noted earlier this theology is reinforced by evidence from Hay, Nye and Berryman’s research into children’s spirituality.\textsuperscript{827} The relationship of each individual with God is seen in their particularity of gifts, conscience, affections, bodily integrity and identity. The fact that all aspects of personal autonomy, not just moral autonomy and conscience, develop with maturity does not detract from its foundation in God’s grace and theological ontology for each human person.

Karl Barth particularly recognises children’s autonomy as founded firstly in God in that ‘all other disciplines...’ including parents’, ‘are relativised at their root by the discipline of God in the freedom of grace.’\textsuperscript{828} In Barth’s own words ‘the fact that Jesus Christ has fulfilled the law means that the kingdom of God has come from heaven to earth... and foreshadowed the end of all human history and therefore of the parent-child relationship.’\textsuperscript{829} Thus although children must obey their parents it is recognised that they may need to confront or act independently of them. In the case of poor and ungodly parents ‘sooner or later [parental limitations] must become obvious to the most compliant child and give it reason to pause.’\textsuperscript{830} In other cases children’s vocation and discernment of God’s will over parental expectations means they are ‘called to a being and action in which they have left behind the whole problem of [the parent-child] history.’\textsuperscript{831} The dynamic of obedience to parents but prior vocation grounded in God’s call is also considered in Marcia Bunge’s reflection on children’s strengths and vulnerabilities in \textit{The Given Child}.\textsuperscript{832}

Theologies of vocation and call are grounded in the work of the Holy Spirit and God’s grace. The glory of God’s creation contains a rich diversity of gifts, calls and ministries as well as a diversity of races, nations and cultures. These are generated

\begin{thebibliography}{99}
\bibitem{824} B Pitkin “The Heritage of the Lord” Ed. M.J. Bunge \textit{The Child in Christian Thought} op cit pp.174-181
\bibitem{825} M.A Hinsdale “Infinite openness to the infinite: Karl Rahner’s contribution to modern Catholic thought on the child” Ed. M.J. Bunge \textit{The child in Christian Thought} op cit pp.406-445
\bibitem{826} M Marty (2007)
\bibitem{827} A Richards op cit pp.44-84; JW Berryman \textit{Godly Play} (Minneapolis: Augsburg 1999)
\bibitem{828} W Werpehowski “Reading Karl Barth on children” Ed. M.J. Bunge \textit{The Child in Christian Thought} op cit p.390
\bibitem{829} K Barth CDIII/4 (T&T Clark: London 2010) 54:2 p.251
\bibitem{830} K Barth CDIII/4 op cit (2010) p.246
\bibitem{831} K Barth CDIII/4 op cit (2010) p.251
\bibitem{832} M.J. Bunge “Beyond children as agents or victims” Eds. T Wyller & U.S. Nayar \textit{The given child} op cit pp.27-50
\end{thebibliography}
through the operation of grace reflected in the particularity of God’s gift to each person. God speaks to conscience first; this is characterised by Barth as a ‘divine command’ preceding reason and by Newman as a pre-rational premise. The particularity of other aspects of autonomy, from affectivity expressed in romantic love to sacrificial commitment, and the diversity and particularity of bodies also illustrates the operation of grace in creating amazing diversity. This diversity, which can be seen in any group of children, illustrates the particular individuality of grace throughout creation. It is this particularity that is the self-governing aspect of each human being and constitutes graced autonomy.

**Autonomy in relationship:**

Yet autonomy particularly when understood as including affectivity and identity cannot be realised without relationship. Recognising autonomy in relationship addresses tensions between traditional religious heteronomy and liberal individualism. Individuals’ gifting and calling remains personally distinct and divinely graced but is realised within networks of relationships and commitments to others. This analysis recognises and protects children’s autonomy as foundational to integrity but also takes account of psychological attachment and communal expectation. Contrary to the fears of religious critics, the UNCRC does not dismiss parental involvement in children’s upbringing but identifies parental relationships as the context in which children are nurtured. This recognises that children’s identity, autonomy and self-understanding are shaped by family, culture and religious background. However, the parameters of those relationships are defined by a parental role framed as guidance and support not dictatorship, in which cultural education respects communal and religious allegiance as matters of freedom not control or entrapment. This too reflects Barth’s theology of young people as able to ‘step into freedom relatively unencumbered by the trappings of custom or habit’, ever open to ‘fresh hearing of the divine command’.

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837 W Werpehowski “Reading Karl Barth on children” Ed. M.J. Bunge (2003) op cit p.393
The relational dimension of autonomy and rights is also strongly ethical. Far from being individualistic, respect for personal autonomy and integrity within communal allegiances gives rise to responsibility within and contribution to community. The right to protection for my humanity is held not in isolation or preference to others but alongside them. Mutual respect for humanity is grounded in equality of respect for human worth\(^\text{838}\) fleshed out in the diverse integrity and fullness of autonomy. Research into children’s spirituality\(^\text{839}\) reinforced by more overtly secular research with young children\(^\text{840}\) indicates an innate and apparently universal sense of relationship providing a valuable revelatory insight into this aspect of human ontology. Yet relationship does not necessarily mean reciprocity. Precisely because young children cannot reciprocate equally it is necessary to protect the transcendent mystery of each human being in their integrity regardless of capacity.

Christian theology of relationship is grounded in a number of paradigms the best-known of which is the ‘golden rule’ of loving one’s neighbour as oneself,\(^\text{841}\) a principle replicated in other faiths.\(^\text{842}\) The parable of the Good Samaritan defines neighbourliness as universal including strangers, even enemies.\(^\text{843}\) Christian theology has also adopted the profoundly relational I/thou theology of God and humanity developed by liberal Jewish theologian Martin Buber.\(^\text{844}\) Unique to Christianity are theologies based on the inter-relationship of the persons of the Trinity. In each case the persons of the Trinity, God, Christ and Spirit are distinctly autonomous subjects bound in unified relation. It is Karl Barth who provides some of the most comprehensive and systematic approaches to Christian theology grounded in Trinitarian relationship which provides the model for his theological anthropology and human autonomy within relationship.\(^\text{845}\)

Barth’s theology of revelation is based in a Trinitarian understanding of God who did not need but chose to create relationally. Human beings are drawn into the Trinity and

\(\text{838}\) E Reed *The ethics of human rights* (Texas: Baylor University Press 2007); D Forrester op cit pp.77-106
\(\text{839}\) D Hay & R Nye *Spirit of the child* (London: Jessica Kingsley 2006)
\(\text{840}\) P Alderson *Young children’s rights* (London: Jessica Kingsley 2008)
\(\text{841}\) Leviticus 19:18; Matthew 22: 35-40
\(\text{842}\) Leviticus 19:18 – Hebrew Bible; No.13 Imam Al-Nawawi’s 40 Hadith
\(\text{843}\) Luke 10:25-37
\(\text{844}\) M Buber *I and thou* (New York: Chas Scribner & Sons 1970)
\(\text{845}\) J Macken SJ *The Autonomy in Theme in Church Dogmatics* (Cambridge: CUP 1990)
engaged as subjects and agents not passive recipients or observers.\textsuperscript{846} Barth interprets scripture that talks of humanity being in \textit{imago dei} as creation not in the image of a singular rational God but of a relational God.\textsuperscript{847} Grace operates within the framework of a relational creation, both placing and drawing human beings into relationship with God and grounding distinct vocation, relationship and situation. Barth’s understanding of creation is developed through a theological anthropology\textsuperscript{848} in which all humanity ‘from the very outset stands in some relation to God’\textsuperscript{849} as God’s partner.\textsuperscript{850} This partnership exists in a creation peopled with human relationships including man and woman,\textsuperscript{851} parent and child\textsuperscript{852} and near and distant neighbours.\textsuperscript{853} Relationship with God requires continued openness to God and the other\textsuperscript{854} and openness to the idea that anything is possible with God.

For example, although Barth adopts a traditional view of male/female relationships based on scriptural precedence he takes pains to ensure that no essential attribute or role is attached to any aspect of sexual difference. His meticulous challenging of scientific theories and traditional theologies about sexual difference makes his analysis of male/female relations entirely non-essentialist, contingent and open to God’s grace in the particular relationships of each person.\textsuperscript{855} Similarly, in discussing the parent/child relationship Barth recognises the usual parameters and Biblical injunctions about familial relationships. However, he also recognises the child as an independent party in parent/child relationships, with children grounded in their own relationship with God.\textsuperscript{856} There is recognition of childhood heteronomy in terms of relationship with parents and teachers but also of growth into autonomy in adulthood\textsuperscript{857} and acknowledgement of children’s autonomous insights and call in God, in some

\begin{footnotes}
\item[848] W Krothe “Karl Barth’s anthropology” Ed. J Webster op cit pp.159-176
\item[849] CDIII/3 op cit (1956-75) p.72
\item[850] W Krothe op cit pp.163-166
\item[853] CDIII/4 op cit (2010) pp.275-313
\item[854] CDIII/4 op cit (2010) p.109 ‘man is destined to be the covenant partner of God...’ which ‘has its counterpart in the fact that his humanity... is by nature and essence a being in fellow-humanity’
\item[855] K Sonderegger “Barth and feminism” Ed. J Webster op cit pp.258-273 particularly pp.262/3
\item[857] CDIII/4 op cit (2010) pp.244-246 & p.248
\end{footnotes}
instances to challenge parents or follow distinct courses of action.\textsuperscript{858} Thus children are recognised as having their own distinctive vocation and capacity to reveal God in new and different ways deriving from their distinctive insights and autonomy from parents, in their creation by and relationship with God.\textsuperscript{859}

Another distinctive feature of Barth’s relational anthropology is that whilst recognising marital and parental relationships he does not develop a theology of family\textsuperscript{860} nor regard family as an order of creation with any specific form. He also recognises that those who are single nonetheless live relationally for all relationship is grounded in God. Whilst cultural and community ties are recognised through groups of ‘near neighbours,’ Barth’s theology of ‘near and distant neighbours’ at the conclusion of ‘Fellowship in freedom’ emphasises the universality of relationship under God.\textsuperscript{861} Just as there is no essentialism about family or community Barth rejects ‘any pre-existing and definable human nature or potential that might be presupposed as the object of divine aid’ or ‘grace as a ... quality of pre-existing human nature.’\textsuperscript{862} In Barth the \textit{imago dei} is not a human attribute such as reason, moral law or immortal soul but is founded in the relationship humanity bears to Christ.\textsuperscript{863} Thus the \textit{imago dei} is analogy not entity and defined by relationship with the covenaniting God who calls humanity into relationship through the divine relationship with Christ.\textsuperscript{864} The individual is founded in the particularity of their creation and relationship with an unsettling God.\textsuperscript{865}

Particularity both pertaining to the individual and relationships in which individuals are placed is motivated, shaped, created and called by the operation of God’s grace working through the Holy Spirit. Thus Kathryn Tanner writing on \textit{Creation and Providence} states ‘creation and providence together with all the events in God’s history of relations with the world are bound together as aspects of grace.... though they are all grace they are not the same grace. United they are nevertheless distinct ... it is the distinctiveness of these acts of grace that ensures that they are each graces in the

\textsuperscript{858} CDIII/4 op cit (2010) p.251
\textsuperscript{859} CDIII/4 pp.234-256 in particular pp.246-256
\textsuperscript{860} CDIII/4 pp.299-305 & N Biggar op cit p.218
\textsuperscript{861} K Barth CDIII/4 op cit pp.272-313
\textsuperscript{862} J Macken SJ \textit{The autonomy theme in Church Dogmatics} (Cambridge: CUP 1990) p.82
\textsuperscript{864} W Krotke op cit pp.166-169
\textsuperscript{865} K Sonderegger op cit pp.260-263
sense of being free and not required by what has come before." 866 Grace is thus distinctive gift which shows itself in all aspects of human life and cannot be limited by human reason. It is this non-essentialist graced gift in the autonomy of each created person that needs protecting within the relational framework of human society. Such a relational paradigm grounded in autonomy has significant value for the concept of universal norms and understandings of human ontology when seeking consensus in interpreting human rights.

Barth is a wholly theocentric and Christocentric theologian not a liberal, trying to make sense of Christianity in rationalist or secular terms; his starting point is God, Christian orthodoxy and scripture. Barth’s theology is also respected by one of the foremost critics of rights and universalism namely Stanley Hauerwas 867 and other traditional or radically Orthodox Christian theologians. 868 Barth does not explicitly talk about rights but his conception of Christian community is universal and political. Humanisation and protection of the most vulnerable is at the heart of his political ethic 869 in ‘the state’s special responsibility for the weaker members of society... the poor and the socially and economically weak and threatened’. Barth’s universal theological anthropology grounded in God, the Spirit and the work of grace therefore provides a paradigm for theological understanding, defence and interpretation of rights. It also provides a relational ethic in which the particular incarnation of grace in each person’s God-given life frames autonomy in relation and a non-libertarian understanding of rights. Ethics based on autonomy in non-essentialist relationships contrast with the eudamonist virtue ethics proposed by MacIntyre and espoused by Hauerwas.

Eudamonism proposes an ethical system focused on personal happiness according to teleologically determined ideas of the ‘good life’. Wolterstorff argues 870 that the goal of personal happiness is more self-centred than relational rights and incompatible with Christianity. Eudamonist virtue ethics are also communitarian based on fairly static

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866 K Tanner op cit pp.116-7
867 S Hauerwas “The witness that was Karl Barth” With the grain of the universe (London: SCM Press 2001) pp.141-242
870 N Wolterstorff op cit pp.149-179
understandings of right order and telos, aimed at fostering virtuous character according to the traditions of narrative communities. This necessitates communal autonomy from the state so as to define virtues and codes of conduct according to the narratives and scriptures of that tradition. Personal discernment defers to the roles and telos of persons or institutions prescribed by the communal narrative. It is in this context that communal definitions and purity codes are developed, subjecting individual experience to absolutist communal narrative and creating conflict where the two are inconsistent. Where religious narratives and ethics are defined largely by elite, male community leaders lacking in communal accountability power imbalances arise. This can lead to conservative essentialism and exclusion of new insights and development, particularly from the young and from women. It is this dynamic which creates ‘honour’ codes which harm those deemed dishonoured and forced to save communal reputation. It is for this reason that Barth’s dynamically relational theology is chosen to ground an orthodox Christian understanding of rights and child protection rather than virtue ethics.

Those most sceptical of personal and children’s autonomy also often defend parental as well as communal autonomy for example to discipline children without state scrutiny and religious autonomy defined by traditional communal leadership. Barth’s approach corrects the risks of such communal dynamics through radical non-essentialism grounded in the prior autonomy of God and God’s grace lived in various relationships not static communities. Protection of vulnerable individuals means protecting the graced autonomy of each person from all oppression whether by partners, parents, religion or the state. Graced autonomy is relational not individualistic, it is an important aspect of human ontology grounded in religious understandings of the human person and relationship with God. Yet overcoming religious objections to autonomy does not necessarily ensure common norms or acceptance of rights for adults or children. This further dimension of the argument is considered next.

871 K Marshall & P Parvis op cit pp.52-56; R v Williamson[2005]UKHL 15
Rights and relational ethics:

Despite some religious scepticism several defences of rights are grounded in Christian theological premises. Christian opposition to rights perceived as individualistic and competitive has some validity in relation to early rights theory based on political sovereignty, defence of property and rights of rulers not persons. However, such criticisms are less pertinent in relation to the contemporary genesis and application of universal human rights. Contemporary rights instruments like the UNCRC, ECHR and UNDHR are primarily motivated by protecting personal humanity, dignity, equality and freedom from oppression. Whilst some equate this to Enlightenment understandings of self-possessive sovereignty the mutually protective and anti-oppressive inspiration for UN rights is not the individualistic, property-based eighteenth century vision suggested by critics. Instead it is a vision of personal human dignity in the face of tendencies to communal, particularly state, power. Signatures to UN conventions and a variety of writers suggest that most states aspire to this vision of universal human worth and rights. The extent to which religious values contributed to the development of rights is contested and beyond the remit of this thesis. However, writers from several perspectives defend universal rights as compatible with religious traditions and theological paradigms.

Finnis defends rights and defines their content from natural law theology. Duncan Forrester bases rights on human worth grounded in the innate dignity and equality of each human being made by God as set out in tradition, scripture and contemporary theology. His emphasis on rights as equality calls for political reform to defend human worth through defining a just society in terms of distribution of resources as well as dignity. This differs from Wolterstorff whose defence of rights engages the criticisms of eudamonist and traditionalist detractors. The difficulty with Forrester’s argument is variable understandings of equality defined by outcomes, opportunities or

874 Preambles to UNDHR, ECHR & UNCRC
876 N Wolterstorff op cit pp.1-64
877 J Finnis Natural Law and Natural Rights (Oxford: Clarendon 1979)
878 D Forrester op cit pp.107-166
879 N Wolterstorff op cit pp.19-64, pp.149-179
treatment, as illustrated when discussing sex and gender. By contrast Wolterstorff argues for both a protective vision and relational understanding of rights based on Judaeo-Christian theological paradigms, protecting humanity, particularly those most in need, rather than equality. Protection is grounded in the Hebrew Bible’s identification of justice with protecting the poorest in society represented by the ‘vulnerable quartet’ of orphans, widows, the alien and the poor.

Both Wolterstorff and Forrester see the ultimate force of their protective vision grounded in human worth under God and like Marshal and Parvis defend human worth through scriptural authority that humanity is created in the likeness of God. Natural law paradigms view creation in the image of God largely in terms of rationality. Forrester adopts an imago dei grounded in relationships, arguing that ‘in human relationships of love, solidarity and equality... the image of God is made manifest’. Wolterstorff defends rights as grounded in theist understandings of human worth and explores the rationale for imago dei at greater depth than other commentators. In an overly reductionist reading of Barth’s theology of relationship Wolterstorff rejects Barth’s relational image of God on the basis that it applies to all creatures, not just humans. He suggests that rather than divine characteristics like reason true human worth is the non-instrumental bestowal of his image and nature, in relation to the earth, by a loving God. Although insisting that rights are grounded in God locating human worth in having dominion over the earth contrasts significantly with Barth’s location of human worth firmly in each person’s relationship with God. Of these defences of rights only Marshall and Parvis consider children. On a practical note they point to the near-universal signing of the UNCRC as specific cross-cultural and religious support for children’s rights. They also defend children’s human worth grounded in Chrysostom’s metaphor of parental sculpting of children as imago dei reflected in

880 N Wolterstoff op cit Chapter 3, pp.72-88
881 Genesis 1:27
882 J Finnis op cit pp.100-133, pp.371-410
883 D Forrester op cit pp.82-4
884 N Wolterstorff op cit pp.285-361
885 N Wolterstorff op cit pp.342-5
886 N Wolterstorff op cit pp.342-361 particularly pp.348-360
887 K Marshall & P Parvis op cit pp.11-12
888 Marshall and Parvis op cit p.271 & p.291
John Wall’s patristic theology of children’s as revealing innocent wisdom and dependence on God.\(^{889}\)

Wolterstorff rejects secular understandings of sanctity\(^{890}\) as insufficient, whether based on human value grounded in Kantian reason or natural law.\(^{891}\) He argues that the *imago dei* is the only certain grounding of human worth. Yet as Wolterstorff’s review illustrates there is a lack of consensus about what constitutes the *imago dei* and like mystery the concept lacks content. There are disagreements about the extent to which the image is corporeal or limited to the soul, psyche or human intelligence. The distinction of body and soul may be a valid interpretation of ‘God created man in his own image’\(^{892}\) or the consequence of Hellenisation and Greek philosophy.\(^{893}\) On either interpretation the idea that *imago dei* resides in non-corporeal factors like intelligence mirrors the shortcomings of Kant and others’ reliance on reason. In relation to children Wall suggests that theologies of *imago dei* have led to over-idealisation of children at the expense of their material needs.\(^{894}\) Another difficulty with worth grounded in *imago dei* is its differential interpretation for men and women. From St Paul onwards there are suggestions in Christian theology that men are made in God’s image which women reflect at one remove.\(^{895}\) From a cross-cultural perspective Christian understandings of *imago dei* linked to the person of Christ or based in the relational Trinitarian God are problematic as Trinitarian theology is rejected by Muslims and Jews as well as non-theists.

By contrast the expanded understanding of autonomy outlined earlier in this chapter can deepen appreciation of human complexity, worth and the subject of protection. Besides lacking clarity about what constitutes human worth the *imago dei* and other defences of rights discussed also lack agreement about the content of rights. As argued in the next chapter an understanding of human autonomy with greater definition of

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\(^{890}\) N Wolterstorff op cit pp.333-334  
\(^{891}\) N Wolterstorff op cit pp.309-310 & pp.325-333  
\(^{892}\) Genesis 1:27  
\(^{894}\) J Wall (2007) op cit pp.107-111  
\(^{895}\) A Salvesen “The Image of God from a Christian Perspective” Eds. N Solomon, R Harries & T Winter *Abraham’s Children* op cit p.162
content can ground protection of rights within a variety of traditions not simply the mystery or *imago dei* of Christian theology. Wolterstorff discusses rights in terms of goods including intangible aspects of human worth like respect and reputation but does not fully define their content.\(^{896}\) Marshall and Parvis simply assume the content of the UNCRC leaving Finnis as the only religious writer who delineates a list of rights. The various attempts at defining the content of rights seen in Chapter Two illustrate the difficulties of achieving consensus over what is best for human beings. It is this difficulty in reaching consensus without a common understanding of human ontology which has led virtue ethicists and other sceptics to despair of the possibility of universal human norms. Yet in a multicultural society there is a need to define some core understandings of what is protected as most human rather than assuming a list of goods subject to wide cultural and historical variation.

Even Hauerwas concedes that rights or universal norms which can surmount differential understandings are needed in a society without common understandings of human ontology and what parenting entails.\(^{897}\) Hauerwas’ assumption that there ever was universal agreement about rights, virtues or parenting is illusory given variations across history, culture, class and religion. What has changed is modern recognition of collective responsibility to overcome such differences in protecting the most vulnerable and the search for greater consensus about such protection. Graced autonomy values and protects essential features of human ontology, expressed in the complexity of bodily, affective and cognitive integrity and identity. This outlines crucial aspects of human being whilst preserving the freedom for persons in community to define the specifics of rights within the parameters of protecting what is most human and the most vulnerable. It also allows for understandings of ‘the most human’ in a variety of overlapping theologies or philosophies thus engaging those whose primary ethical authority is located in God and religion. The approach does not seek to provide an exhaustive content-based list but a common interpretive vision for humanity with more concrete parameters than Wolterstorff and others’ assertions of respect, worth, dignity, mystery or *imago dei*.

Relational interpretation of rights also mediates between autonomy and heteronomy, the apparent dividing point for religious and secular, traditional and liberal

\(^{896}\) N Wolterstorff op cit pp.135-148  
\(^{897}\) S Hauerwas (1986) op cit pp.130-131
understandings about concerns identified in earlier chapters. Relational rights recognise that our existence and identity is inter-dependent with others but respects the specialness of each individual within their networks of relationships. It reflects more accurately the identity of persons with allegiances to more than one community, with autonomy and agency shaped but not bound by communal interaction. In recognising the need for the skills and knowledge to negotiate relationships between different cultures and values systems an alternative understanding of both person and rights is engaged. To quote Rowan Williams, ‘We discover who we are, in significant part, by meditating on the relations in which we already stand. We occupy a unique place in the whole network of human and other relations that makes up the world of language and culture; but that is not at all the same as saying that we possess an identity that is quite fundamentally unlike that of others.’

A relational model also enables analysis of tensions between individuals in community, recognising all parties to a situation and children as distinct from parents. Relational rights do not require full mutuality, which excludes younger children and adults with learning disabilities from protection, but provides a framework enacting respect for human beings of all capacities.

Although he rejects Barth’s understanding of the imago dei as grounded in relationship Wolterstorff nonetheless defends rights and an ethic of justice based on right-ordered relationship grounded in God’s love not mere legal obligations. However, Wolterstorff’s defence of rights as right-ordered differs from Barth’s radically non-essentialist understanding of relationship with God. Right-order theory determines rights and duties according to defined understandings of telos and role. Unlike Finnis however, Wolterstorff posits right-order without fully defining the content of rights, relationships or goods. Besides the dangers outlined above of communitarian codes which prescribe gender, race, religion and parenting such approaches to telos or function risk making human beings the means to other’s ends. For example parties to marriages arranged to unite family property become instruments of familial ends. Teaching requiring children to be obedient to make their parents happy renders children the means to the end of their parents’ happiness. Whilst it is hoped that children will bring parental happiness such outcomes are by-products not the purpose

898 R Williams (2001) Ed R Gill op cit pp.3-15
899 N Wolterstorff op cit pp.352-360
900 N Wolterstorff op cit pp.32-43
902 E.g. in Proverbs
of the child; nor should parental care depend on children’s capacity to please. Children’s immaturity, dependence, relative lack of voice, status as objects in UK law and inevitable inter-connectedness with parents all make them vulnerable to use as instruments of parental ambition rather than subjects in their own right. UNCRC rights to protection from exploitation\textsuperscript{903} are key markers of humanity. The understanding of autonomy as freedom from exploitation is unrecognised in other human rights instruments. Whilst particularly relevant to children it applies to all human vulnerability to others’ ambition, community survival or one-sided communal codes.

Non-essentialist approaches to human beings as the subject of rights also allows contextual discernment about how rights are applied rather than imposition of deontological, absolutist ethics or theory. This respects and protects each person’s full capacity and potential rather than restricting them to particular roles with the risk of force being used for non-compliance. Again Barth’s non-essentialist approach to relationships and nature, recognising that God’s grace cannot be fettered, models respect for each individual, each relationship and the rights to support them. Barth does not however posit a libertarian approach to human ontology. Relationship itself provides constraints on libertarian autonomy, obligations to others require discernment, prioritisation and application of principles. Relationship constrains the freedom of those with greater power to respect more vulnerable members of society. Barth also recognises the constraint on human beings of their finitude, the value but also the limits of their bodily integrity and circumstantial constraints. The fact that grace, conscience and discernment are grounded in each person’s relationship with God means that each person must discern what finitude means for their vocation.\textsuperscript{904} This means taking account of individual discernment of God within the diverse processes of God’s revelation rather than communities being dominated by limited interpretations of an elite authority. Community members may opt for traditional interpretations of religion but need the freedom to explore their God-given vocation rather than having it predetermined or forced on them by authoritarian leadership. In this way the graced autonomy of diverse individuals, including children, contributes to ongoing communal normative development.

\textsuperscript{903} Articles 34-36
\textsuperscript{904} W Krotke Ed. J Webster op cit pp.171-174
Recognising the most vital aspects of human being provides an important ethical framework for relationships with each other both as individuals and as communities. Respect for each human being’s graced autonomy constitutes a fetter on the risks of power concentrated within communal elites which can result in some bearing greater burdens than others.\(^905\) Respect for graced autonomy allows for wide-ranging practical applications to distinctive lifestyles and *mores*. Setting respect for human autonomy within a rights-based framework provides ethical touchstones for equal treatment of all human beings within a protective framework that vindicates rights and determines priorities in the event that ethics fail. Virtues are not necessarily incompatible with rights but are no substitute for them. Unlike virtues rights can also address material needs and wider socio-economic provision which underlies protection of bodily integrity. Rights also address protection from exploitation whether manipulation of children for inappropriate parental aspirations or communal expectations. Risks inherent in virtue ethics’ potential for communal manipulation of concepts like ‘honour’ demonstrate why rights are needed to protect autonomy.

Protecting the community over individuals, whether to preserve ‘honour’, reputation or communal survival\(^906\) provides no check against imbalance or manipulation of power through dominant constructions of ethics that prejudice minorities. In such situations children as the most vulnerable minorities are left unprotected in the event of abuse by parents or other adults, particularly if seen only as objects not agents in formation. Abuse need not be physical or sexual but can be the result of stigmatising perceptions and discrimination. *AG’s reference No.51*\(^907\) illustrates how individuals are hidden behind communal constructions. Judicial sensitivity to South Asian cultural norms deferred to community perceptions that a rape victim’s ‘honour’ and marriage prospects were damaged. Failure to see the individual meant that the injustice of ‘dishonouring’ stigma for rape victims went unchallenged. Had the individual been recognised her lack of moral responsibility or agency in the rape and the fact that ‘dishonour’ lay squarely with the rapist, could have challenged construction of women’s sexuality as tainted by ‘dishonour’. Yet in basing his defence of rights on

\(^{905}\) A Shachar *Multicultural Jurisdiction: Cultural differences and women’s rights* (Cambridge: CUP 2001) pp.55-57
\(^{907}\) [2001] EWCA Crim 1635
concepts of natural right-order Wolterstorff risks essentialism with similar potential for adverse effects on individuals in communities as pre-determined virtues.

Authoritarian promotion of communal orthodoxy and limited education to question such orthodoxy, whether in the community’s own terms or through external information, leads to young people internalising values defined by religious leaders which invalidate their own experience. Examples include young people who fall in love with someone prohibited by the community’s rules or who explore education or employment beyond the role the community prescribes for them. Limited education for autonomy and over-identification of children’s interests with parents and community leaves children and young people ill-equipped to appreciate that such restrictions are not inevitable or appropriate. \(^{908}\) Children’s vulnerability within communities is compounded by authoritarian assumptions in which rights are feared as setting children against parents. \(^{909}\) Fears that children will adopt alternative values or religion and assimilate to dominant culture exacerbate communities’ defensive authoritarianism. Whilst human beings are social and shaped by relationships, communities are made up of individuals not the other way about; as community membership changes so communities change with them. Habermas notes that communities are not endangered species to be protected at the expense of individuals. \(^{910}\) Such changes undermine arguments that religious communities are immutable, that shaping of individuals is unilateral or sacrificial to conservative interpretations of tradition. Religious traditions should not be dictators any more than parents; a non-foundationalist approach corrects this tendency.

This is not to argue for anti-nomianism or libertarianism for children as proposed by Holt\(^ {911}\) and Farson\(^ {912}\) but for recognition of younger peoples’ capacity for autonomy, from their birth and as it develops with maturity. It is also to seek recognition of their reality as the new generation challenged by societal developments, requiring upbringing that enables them to discern appropriately and protects them whilst they

\(^{909}\) K Marshall & P Parvis op cit pp.52-62
\(^{911}\) J.C. Holt *Escape from childhood: The needs and rights of children* (London: Harmondsworth/Penguin 1975)
\(^{912}\) R Farson *Birthrights* (London: Harmondsworth/Penguin 1978)
learn to do so. Victoria Climbie’s death, sexual abuse in the Catholic Church, forced marriage, cliterodectomy and the consequences of foreclosing children’s options show that communities do not always self-police optimally. There are also values and practices in western society like consumerism, the fashion industry and parental working hours which are not optimal for children. Openness to the challenge of other perspectives can develop common standards across communities to seek equal and optimal protection for children. It is recognised that family privacy sometimes needs to be disrupted to protect children. Disruption of community privacy may be equally necessary, even where those communities are religious. However, such disruption may be needed less if communities can agree common implementation of protective norms.

**Harm constructed as breach of rights**

The final argument of this chapter is that the key to consensus over child protection is consistent interpretation and implementation of normative frameworks, particularly the UNCRC as the most universal child protection document. The interpretive framework proposed is an expanded understanding of autonomy as graced and relational. Such an interpretation enables normative definition of harm as that which breaches or inhibits access to rights. The rationale for this definition is that breach of rights is evidence of impeding those most distinctively human features encompassed by human autonomy. It is recognised that in practical terms children’s autonomy is constrained in some respects through age and dependence on parents or carers for meeting needs. However, dependence should be no barrier to rights and protection of God-given integrity and autonomy; adults too are dependent on others from family to state institutions. Construction of children within the UNCRC as autonomous subjects enables identification of their interests as related to but independent of adults and allows their distinctive giftedness to be respected.

Conflicts between protecting individual and communal autonomy identified in the illustrative chapters demonstrate key differences between traditional religious and secular liberal viewpoints over children’s autonomy and concepts of harm. To an extent the two are inter-related. Communal restrictions on autonomy, role and

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913 R Layard *The Good Childhood: Searching for values in a competitive age* (London: The Children’s Society/Penguin 2009)
information affect young people’s judgement and access to understandings of what is harmful or possible. In turn this impairs capacity for self-protection from abusive or exploitative conduct and the ability to make informed long-term decisions or negotiate difference when faced with conflicting cultures and values. All such restrictions are harmful in impairing access to fullness of life and development of personal integrity as constituted by those aspects of identity, value and personhood outlined above. For this reason lack of education for autonomy is also harmful. It is because of phenomena like indoctrination, narrow or anti-societal education and rigid communal codes, affecting adults as well as children that intervention is needed to protect the fullness of graced autonomy not just decision-making capacity signified by consent.

All rights need protecting:

Some commentators distinguish between types of rights for example differentiating protective from autonomy rights. The former include rights to safety, physical integrity and protection from abuse; the latter are civic rights such as voice, participation, expression and association. However the autonomy at the heart of all rights, which can be traced in the UNCRC, needs protection in its physical, affective and cognitive dimensions. Coggan’s tri-fold division between neo-Kantian ‘ideal desire’, longer-term ‘best desire’ and immediate or ‘current desire’ autonomy is misleading. For example resistance to being forced to marry someone is a current, best and ideal desire exercise of autonomy. The issue is the weight and significance of the autonomy to be protected, reflected by the fact that legal intervention is apt for decisions about circumcision but not about eating bacon. Yet respect for exercises of autonomy about food is part of the ethical framework of rights even if not the subject of legal proceedings.

Within the UNCRC six articles relate to cognitive autonomy and decision-making through education and access to information, five rights cover aspects of personal autonomy like conscience, voice and expression and two specifically relate to identity. Bodily integrity and freedom are protected by fourteen rights. Nine articles protect children’s affective wellbeing through parental, family and communal

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914 Re U sub nom J (Circumcision) [2000] 1 FLR 57
915 Articles 13, 17, 24, 28, 29 & 30
916 Articles 12, 13, 14, 15, 16
917 Articles 7 & 8
918 Articles 6, 19, 24-27, 33, 34 & 35 - 40
relationships. All these rights, vital to personhood in all its dimensions, are recognised from birth. Protecting autonomy is not undermined by the fact that not all children can exercise all aspects of autonomy. The protection of such autonomy as can be exercised enables recognition and development of all aspects of graced autonomy from a young age. The paradigm provides key child protection tools through education for self-protection, active citizenship, negotiating values in a multicultural society and consistent ontology for defining the harm from which children need protection.

Conclusions:

Earlier chapters identified disputes about autonomy and heteronomy as lying at the core of differences between traditional religious worldviews and liberal secular understandings, leading to concerns about particular child protection issues. Yet there is scepticism about children’s autonomy and autonomy rights from a number of quarters both secular and religious, particularly Christian. Even John Eekelaar who supports the notion of children’s autonomy interests and self-determining autonomy is unsure about the legal enforceability of such interests. Perceptions of autonomy as self-standing libertarianism distort the concept and fail to see the inter-relation of decision-making autonomy with other aspects of children’s integrity, identity, protection and rights. The polarity of religious and secular views over autonomy and rights need not be so divisive. Autonomy interpreted as integrity of conscience, insight, affective capacity and identity all of which are graced and gifted by God is consistent with theological understandings of humanity particularly when understood in relational context. Such understandings of autonomy are also consistent with research about children in a range of contexts not least children’s spirituality. Indeed autonomy understood in relational context can provide a more social ethic than virtue ethics based on eudamonism.

Autonomy understood in this wider context is also protected through those rights contained in the UNCRC. By viewing the UNCRC through the interpretive lens of expanded and graced understandings of autonomy infringement of rights can be seen

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919 Article 5, 9, 10, 15, 16, 18, 20, 21 & 22
920 D Archard & C.M. McCleod The moral and political status of children (Oxford: OUP 2002); S Hauerwas (1986) op cit pp.125-128
as a pivotal norm for common understandings of harm. Despite some religious scepticism about rights and children’s rights in particular, Christian theology provides a number of bases for autonomy, universality and rights from natural law theology, scripture and traditional authorities. In particular, Barth’s combination of gifted and graced autonomy grounded in the relational God and lived out in human relationships from family to ‘distant neighbours’, provides a theological model for non-essentialist, relational understandings of humanity compatible with universal protective rights. Recognising children’s autonomy in an expanded, graced and relational context is therefore key to their protection and sufficiently consistent with Christian theology to overcome traditional religious and secular liberal differences. The next issue is whether such an understanding of autonomy can also transcend differences between secular, Christian, Muslim and Jewish worldviews.
Chapter 6: The thesis in other faith traditions.

The previous chapter defends a normative framework for interpreting children’s autonomy and rights based on Christian theology. The framework supports and develops reflection by research in Christian child theology, arguing that graced autonomy grounded in relationship provides greater scope and substance for agreeing and interpreting child protection norms. The challenge is to demonstrate that these norms also enable engagement with and application to non-Christian worldviews and religious authorities and are thus applicable cross-culturally. This chapter therefore considers the thesis in the context of Muslim, Jewish and secular worldviews and authorities. The chapter explores both compatibility with and the contextual application of rights and graced autonomy in its expanded, relational understanding within Judaism, Islam and secularism. Discourse and research in children’s participation and spirituality which assumes autonomy recognises the liberal white backgrounds of the children in much of the research. Yet research with children from other cultures supports children’s capacity for participation, autonomy and decision-making. This is corroborated by commentators from different traditions, for example An-Na’im’s assumptions about consultation. However, it is not simply practical evidence of participative autonomy that is at issue but the recognition of autonomy, its acceptance in different theologies and authorities and application in protective rights.

Graced Autonomy:

Many secular frameworks are derived from Kantian theory that individual human beings are valuable for themselves, not means to ends; guided by reason and conscience and responsible for their own moral autonomy rather than dependent on traditional authorities whether religious or political. Some argue that secular understandings of autonomy valuing individual conscience over coercion of belief

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derive from Christian thought. Whether or not that is the case it is Kantian reliance on reason, conscience and personal moral autonomy as foundational to ethics that has grounded much modern culture. This includes division of secular public reason, guided by the authority of empirical scientific method, from private morality and religion. On this basis the concept of personal autonomy particularly in matters of conscience is not only consistent with but foundational to secular framings of humanity. It could be argued that the religious grounding of autonomy in God inevitably renders humanity heteronomous. Yet religious doctrines of free will mean that although created by God humanity has the freedom to act independently, even in the significantly constrained possibilities suggested by Barth. From Barth’s perspective relationship with God is precisely what grounds personal autonomy in discernment and relationships with others.

The element of the thesis alien to secular thinking lies in grounding autonomy and all that constitutes human distinctiveness in concepts of divine grace. Being made in imago dei can have no credibility for secularists without belief in God. However, secular thinking does accept concepts of human distinctiveness and worth in autonomy of reason, conscience, consent and self-definition of identity. Dworkin for example talks of the sacredness of human life grounded in wonder about human being and complexity. Wolterstorff argues that Dworkin’s secular grounding of human value is inadequate stating that only belief in divine authority can genuinely guarantee respect for human worth. Yet the thesis that divine grounding of human worth is less fallible than secular rationales is undermined by the fact that belief in humanity as imago dei did not protect sexual abuse victims in the Roman Catholic Church. Dworkin’s appreciation of human life as sacred does provide some overlapping consensus with the idea of graced autonomy in recognising the complexity and sanctity of human life and the human project, particularly if the strict meaning of sacred, as being of God, is respected. Scientific realities like the distinctive complexity of human DNA, neurology and psychology also support the concept of gifted or graced uniqueness. Although not rooted in relationship with the divine there is nonetheless an appreciation of the

927 M.J. Sandel op cit pp.103-139
929 N Wolterstorff op cit pp.333-4
giftedness of human life, awe about human worth and recognition of the complex dynamic posited by graced autonomy rather than essentialist understanding of human ontology.

However, insofar as Dworkin conceives of the sacredness of human life as grounded in a project of entirely human self-determination, with the potential for self-disposal, there is an insurmountable difference from graced autonomy and its intrinsic grounding in relationship. This contradicts Dworkin’s wonder at the sacredness of life. Similarly to understand Kant’s autonomy as ‘absolute self-determination’ is a misconstruction according to Macken. Rather Kant understands autonomy as ‘self-determination according to the rational and moral being which is given to man,’ involving openness to the objective and the rational, tested in the other. This posits autonomy as given and dialectic rather than self-possessed and self-disposing. Insofar as secular understandings of autonomy respect the distinctive, precious and sacred quality of human life within relationship, secular understandings of autonomy can be consistent with the concept of graced autonomy.

The important factor is the protection of human worth in its fullness particularly amongst the most vulnerable. As noted in previous chapters secular law and practice does intervene to prevent self-disposal, euthanasia and self-harm in the interests of preserving the gift of life. Insofar as there is consistent interpretation of human rights as protecting the sacred gift of human life the fact that interpretation has different foundational premises for human worth is not an issue, it provides a framework for overlapping consensus about protecting human beings, including children. Acceptance of autonomy within secular frameworks means that for non-theists secular understandings and the grounding of human worth are possible within the framework of an expanded, graced and relational autonomy. Inclusion within graced autonomy of affective, bodily and relational dimensions of human ontology, along with cognitive integrity, addresses the Kantian limitation of autonomy to reason, encompassing those of differing reasoning capacity. Protecting the sacredness of each individual’s life through this understanding of autonomy prohibits their use as means to an end, restraining the risk of sacrificing minorities for collective happiness through secular utilitarianism even totalitarianism.

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930 J Macken SJ The autonomy theme in the Church Dogmatics (Cambridge: CUP 1990) p.10
Can religion accept autonomy?

The next issue is whether the paradigm is compatible with traditional Jewish and Muslim thought as well as Christian theology. Although Jewish and Muslim theology may not have a concept of grace quite like that of Christianity nonetheless, unlike secularism, both Islam and Judaism do accept ideas of human worth based on divine creation and gift.\textsuperscript{931} However, although monotheists view God as the ground of all being, the concept of human worth from \textit{imago dei} is not readily translated even into other Abrahamic traditions. The Christian basis for \textit{imago dei} in Genesis is an understanding of creation shared with Judaism.\textsuperscript{932} Yet the content of the image and likeness of God is disputed in Judaism.\textsuperscript{933} As in Christianity it is unclear whether the \textit{imago dei} consists in the human body and soul which are largely inseparable in Jewish scripture or only the incorporeal aspects of humanity. Jewish emphasis on interpretation, application and living of the \textit{Torah} as opposed to Christianity’s theological speculation also makes concepts of \textit{imago dei} suspect in Judaism.\textsuperscript{934}

Islam has even greater difficulties in accepting the idea of humanity as made in God’s image. Although Al-Ghazali writes about the human as \textit{imago dei} through Adam, such theology is contested by Muslim iconoclasm and arguments that God is so far removed from humanity that there can be no human likeness.\textsuperscript{935} Thus cross-culturally applicable norms need an alternative basis to the \textit{imago dei} cited by most Christian defences of rights. An expanded and relational understanding of human autonomy, integrity and identity addresses this problem by providing greater substance to what is most human without relying on the contested idea of \textit{imago dei}. It overcomes the limitations of Kantian definition of human worth by reason, the vagueness of \textit{imago dei} or mystery and provides a framework for human worth that can be grounded in both theological and non-theological premises.

\begin{flushright}
\textsuperscript{932} Genesis 1:27
\textsuperscript{934} Rabbi N Solomon \textquoteleft \textquoteleft The image of God in humanity from a Jewish perspective\textquoteright \textquoteright Eds. N Solomon, R Harries & T Winter \textit{Abraham’s Children} op cit pp.147-153
\textsuperscript{935} Yahya Michot \textquoteleft \textquoteleft The image of God in humanity from a Muslim perspective\textquoteright \textquoteright Eds. N Solomon, R Harries & T Winter \textit{Abraham’s Children} op cit pp.163-174
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Challenges to rights and paradigms based on personal autonomy come from traditional religious communities where authority is constructed communally as detailed in earlier chapters. Yet as in Christianity there are scriptural and theological grounds in both Judaism and Islam for understandings of human autonomy. Jewish scripture confirms God’s personal relationship with each individual for example in the Psalms and Job, like Christianity. Whilst most conversations between humanity and God are with male patriarchs like Abraham, Job or David\(^{936}\) there is also evidence of God talking to children like Samuel\(^{937}\) and women, for example Hagar.\(^{938}\) Many Jewish writers comment on the importance of the individual. For example, Chief Rabbi Jonathan Sacks refers to theologies of ‘I and thou’, constituting distinct persons in relationship,\(^{939}\) as explored by Jewish theologian Martin Buber.\(^{940}\) Whilst understandings of autonomy as independent self-possession, independent of history and relationships are rejected,\(^{941}\) the human as subject, with personal identity within and through relationship is accepted.\(^{942}\) Personhood is also emphasised in Jewish thought through personal responsibility and accountability in observing Torah, the annual Day of Atonement and post-mortem judgement by God for individuals’ conduct of their lives.\(^{943}\)

There has also been a strong tradition of Jewish support for Kantian understandings of personal moral responsibility in interpreting Jewish teachings about social responsibility and accountability. Although rejecting any notion of self-possessed autonomy Novak describes Kant as ‘the favourite philosopher of modern Jewish thinkers,’ affirming Kantian insistence on human beings as ends in themselves and relational understandings of moral action.\(^{944}\) Personal moral responsibility is also affirmed by Sacks’ understanding of responsibility as grounded in informed obedience to law, where ‘liberty is... a society of citizens articulate in their own law, each a

\(^{936}\) Genesis 12-25; Book of Job; David’s prayer 2 Samuel 7  
\(^{937}\) 1 Samuel 3  
\(^{938}\) Genesis 16  
\(^{939}\) J Sacks Radical then, radical now: The legacy of the world’s oldest religion (London: Harper Collins 2001) pp.75-80  
\(^{940}\) M Buber I and thou (New York: Touchstone 1971)  
\(^{941}\) J Sacks op cit pp.40-46  
\(^{942}\) J Sacks op cit pp.75-80  
\(^{944}\) D Novak Eds. R Rashkover & M Kavka op cit pp.145-7
guardian of justice." For Novak this points to the individual having value beyond community arguing that ‘the life of the human person itself seems to point to a transcendent dimension beyond the grasp... of society.’ Orthodox Jewish theologian Michael Wyschogrod, the ‘Barthian Jew,’ also affirms autonomy by reference to personal discernment at the heart of the question ‘what is God’s will for me here and now?’

Similar foundations for individual responsibility and relationship with God are found in Islam. Ramadan argues that ‘the practice and moral awareness’ at the ‘heart of Shari’a’ is ‘personal faithfulness and commitment’. Shari’a means ‘the Way,’ a path of discernment pursued by the individual within their spiritual and ethical journey rather than a monolithic set of legal obligations. Contextualising Islam also argues for conscience in observing Shari’a and in citizenship. Islamic understandings of human rights constitute human beings as subjects. Although conscience and decisions are influenced by being part of a community, relationship with and accountability to God are grounded in personal responsibility, integrity and agency. Individual responsibility is also implicit in the requirement for personal belief, practice and faith (iman) detailed particularly in Roald’s analysis of cultural versus practising Islam. Each individual has responsibility as members of the ummah grounded in relationship with God. Scripture also emphasises personal responsibility within the community, for example caring for those in need.

Both the Hebrew Bible and Qu’ran also support concepts of children’s individuality and autonomy. Obligations to care for orphans recognise the value of children and the sanctity of their lives even in the face of parental death or abandonment. Both

945 J Sacks op cit p.129
946 D Novak Eds. R Rashkova & M Kavka op cit p.109
948 “None of you...believes until he wishes for his brother what he wishes for himself.” No.13 Imam Al-Nawawi’s 40 Hadiths
950 T Ramadan (2004) op cit pp.31-61
951 Ed. Y Suleiman Contextualising Islam in Britain www.cis.cam.ac.uk/CIBP pp.37-8
952 Ed. Y Suleiman op cit p.45
953 A.S Roald Women in Islam (IMER Routledge: Malmo 2001) particularly pp.5-22
954 T Ramadan (2004) op cit pp.80-101
955 Surah 93
956 Job 24:3/5, 9 & 29:12; Deuteronomy 24:17 & 19, 27:19; Exodus 22:21-22; Isaiah 1:17 Qu’ran s.89:15; 93:1; 107:1
Judaism and early Islam’s defence of orphans differed from neighbouring and dominant tribal culture which practised child exposure. Both sets of scripture also provide examples of children particularly gifted or chosen by God. Teipen cites Abraham’s autonomy of decision-making from his parents as evidence that Islam should respect children’s autonomy. Both Islam and Judaism recognise children’s developing capacity for spirituality, relationship with God, conscience and morality. As in Catholicism Muslim children are regarded as capable of religious obligation, even fasting from seven. Similarly in Judaism children assume obligations of prayer, dress and fasting and make commitments like Bar Mitzvah. Such commitments are personal acts of conscience recognising children’s capacity.

Conscience and cognitive integrity:

Whilst recognising children and young people’s capacity to make commitments to the religious community there is less recognition of capacity to commit to alternative worldviews. There are more reservations to UNCRC freedoms of conscience, religion and other autonomy rights than most others, undermining UNCRC universality. Interpreting religious freedom in the UNCRC and other human rights instruments as freedom of faith and conscience open to change or choice is seen as imposing western or liberal worldviews. Yet all major religions reject coercion of faith and both Judaism and Islam have clear authority that faith and commitment must be freely and personally chosen not imposed. Novak and Wyschogrod argue for Jewish respect for other faiths.

Contextualising Islam make clear that religion cannot be compelled and the Qu’ran

957 E.g. Joseph-Genesis 37-45; Moses-Exodus 2-3; 1 Samuel 3; & David - 1 Samuel 17: 12-end & in the Qu’ran Su.12 Joseph; Su.19 Jesus
961 Article 14 UNCRC
965 D Novak Eds. R Rashkova & M Kavka op cit pp.231-252; M Wyschogrod (2004) op cit pp.149-164
envisages diversity, even in belief.\textsuperscript{966} These provisions may be interpreted as illustrating tolerance for other faiths but each tradition also recognises that personal conscience and discernment are needed in living the faith.\textsuperscript{967} The principle of non-coercion applies not only to explicit use of force but also of coercion arising from circumstances of birth. Although at one level religious heritage cannot be changed particularly where it includes a genetic element, Rabbi Sacks demonstrates that even Judaism’s founding families were free to decline God’s invitation.\textsuperscript{968}

Religious difference within traditions is recognised in scriptural sources and communities’ own processes for ethical and legal interpretation and development, acknowledged by traditional as well as liberal commentators. For example, Roald whose strict research criteria limit assessment of belief and practice to observant educated Arabic Muslims recognises different strands of Muslim inquiry\textsuperscript{969} just as the more liberal Ramadan.\textsuperscript{970} Diversity of debate about interpreting faith in practice is found in Judaism as charted by Freud-Kandel’s comparison of Orthodox, Reform and Liberal Judaism\textsuperscript{971} and Rabbi Sacks\textsuperscript{972} and philosopher/theologian David Novak.\textsuperscript{973} Wyschogrod specifically addresses Jewish ideas of conscience\textsuperscript{974} as does Contextualising Islam for the Muslim faith.\textsuperscript{975} Diversity of religious belief and practice within communities is recognised in English case-law as seen in R v Williams\textsuperscript{976} over corporal punishment in Christianity and R v Begum\textsuperscript{977} over Muslim religious dress. The fact that traditional religious communities use rights to religious freedom to assert religious practice illustrates implied acceptance of rights to religious freedom.

Such examples demonstrate that particular constructions of religious belief cannot be imposed on any part of any tradition. Freedom of religion and conscience is not only applicable to the right to belong to a particular religious community but also to the

\textsuperscript{966} T Ramadan (2009) op cit p.94 & p.268; Y Suleiman pp.39-44
\textsuperscript{967} N Solomon, K Ward & T Winter “Pluralism” Eds. N Solomon, R Harries & T Winter Abraham’s Children op cit pp.180-214
\textsuperscript{968} J Sacks op cit pp.23-24
\textsuperscript{969} AS Roald op cit pp.3-57
\textsuperscript{970} T Ramadan op cit pp.24-30
\textsuperscript{972} J Sacks p.4, p.182 & pp.156-174
\textsuperscript{973} D Novak Eds. R Rashkova & M Kavka op cit pp.3-20, pp.113-162
\textsuperscript{974} M Wyschogrod “Judaism and Conscience” op cit pp.75-90
\textsuperscript{975} Ed Y Suleiman op cit pp.39-44
\textsuperscript{976} [2005] UKHL 15
\textsuperscript{977} [2006] UKHL 15
practice and understanding of religion within that community. If different interpretations of religious belief and practice are recognised the importance of personal as well as communal discernment also needs to be acknowledged. Recognising individual discernment and the authority of personal experience is seen as limited in more traditional and authoritarian religious communities\textsuperscript{978} because constrained by religious authority which mediates the divine. Nonetheless the importance of personal discernment is recognised as intrinsic to religious understandings as illustrated by all religions’ rejection of coercion to faith. Additionally like Christianity, Jewish and Muslim doctrines of personal accountability emphasise personal responsibility for belief and practice.

Some traditions fear the potential of personal discernment and critical enquiry to challenge tradition. Yet critical enquiry need not lead to nihilism, assimilation or undermining of religion but deeper understanding as personal discernment strengthens religious communities’ witness to faith in contemporary society. Both Sacks\textsuperscript{979} and Ramadan\textsuperscript{980} argue respectively for education for Jewish and Muslim children that informs consciences, enabling them to live a fully participative life in their communities. Insights from younger generations at the forefront of multicultural engagement may be what enable communities to survive to a greater degree than separatism grounded in fear of the modern world. However, from the perspective of young people’s rights and capacity to grow in and exercise their faith, the important issue is protection within the context of their whole lives, particularly in situations where inter-generational conflict is most acute. Above all, if young people make a commitment to a faith community they must also be capable of discerning how that faith affects their lives. Informed conscience and discernment mean that anarchy, desertion or assimilation is not inevitable.\textsuperscript{981}

**Affective integrity:**

Exercise of personal agency and autonomy is not limited to decisions based in conscience or cognitive integrity. The requirement in all religions, even the most

\textsuperscript{978} S Hauerwas (1986) op cit pp.125-142 & \textit{Community of Character} (Notre Dame University 1981)

\textsuperscript{979} J Sacks op cit pp.129, pp.117-135 & pp.156-174

\textsuperscript{980} T Ramadan op cit pp.126-142

\textsuperscript{981} P Lewis \textit{Young, British & Muslim} (London: Continuum 2007) pp.61-118

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traditional, of both parties’ consent to marriage illustrates the importance of affective autonomy or integrity. Whilst cognitive integrity is involved in the ethical and practical aspects of consent to personal and intimate relationships, emotions and protection of bodily integrity are also invoked. Affective responses which precede cognition are engaged in initial reactions to relationships from family and friends to sex and marriage. Instinctive bodily reactions are also relevant from openness to physical contact like hugging to sexual attraction. Consent to sexual, marital and other close relationships therefore engages a number of features of personal integrity but particularly the affective. Even though extreme interpretations of the Qu’ran suggest that a shy young bride’s silence can constitute consent nonetheless her consent is required.\(^{982}\) Similarly in traditions which permit child betrothal the option of refusal at puberty confirms that consent to marriage is required from the individual concerned,\(^ {983}\) not adults on her behalf. It also confirms that free consent requires sufficient maturity and understanding. The fact that consent is to marriage to particular individuals not simply the arranging of the marriage also emphasises the autonomy and specific agency of the parties concerned. Thus affective integrity provides an interpretive requirement respected across religions that personal wishes, feelings and agency within relationships are respected and that consent is free and informed. This is emphasised by legal changes protecting young people from exploitation in relationships of trust.\(^ {984}\)

In practice the contested issue concerning affective integrity is the extent to which consent is freely and genuinely given. As discussed earlier the most serious challenges lie in grey areas like what constitutes consent and the inter-relation between affective and bodily integrity. One illustration of this interaction is whether marriage constitutes consent to sex. Secular law separates consent to marriage from consent to sex, deeming marriage no longer necessary for sexual relations. Conversely consent to sex is required separately from marital consent as signified by criminalising rape within marriage, emphasising that consent to sex is a distinct exercise of bodily and affective autonomy from consent to marriage. The disjunction of consent to sexual relations, as distinct from marriage, is reinforced by *Re SA*\(^ {985}\) where capacity was found to consent to sex but not to the commitment of marriage.

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\(^ {983}\) D Pearl & W Menski *Muslim family law* (Sweet & Maxwell: London 1998) pp.153-160 & pp.172-175

\(^ {984}\) Sexual Offences Act 2003 ss.16-24

\(^ {985}\) *Re SA* (Vulnerable adult) [2005] EWHC 2942, [2006] 1 FLR 867
This separation of sex and marriage contradicts traditional religious worldviews. Islam constructs sex within marriage as ‘honourable’ but extra-marital sex, even rape, as breach of ‘honour.’ Some interpretations of nushuz assume that consent to marriage is consent to sex as a marital duty. However, the head of the British Shari’a Council states that although not recognised as rape non-consensual sex within marriage is not condoned and patriarchal constructions of men assuming women’s sexual duty are rejected. Muslim leaders in Contextualising Islam and commentators like Ramadan go further emphasising women’s equality before God and rejecting practices of ‘honour’ that objectify them. This again confirms the importance of consent and bodily integrity. Regulation of sexuality through Orthodox Judaism’s purity laws is oriented towards male purity but establishes that marriage is not automatic entitlement to sexual relations. Jewish marriage law forbids forced sex within marriage and seeks to legislate for husbands’ caring treatment of wives.

Requirements of consent to marriage and to sexual relations within marriage provide the basis for respecting affective and bodily integrity in traditional religious communities. Such a principle is consistent with and reflects the respect for women’s dignity used to defend other aspects of traditional religious worldviews like dress. It is important that this respect for autonomy within relationship is respected and understood by children. It affects children’s capacity to protect themselves against inappropriate or unwanted intimacy as children and against being forced into marriage or cliterodectomy when older. Failure to provide clear education about rights to bodily and affective autonomy can leave women not only at risk of forced marriage and marital violence but believing that they deserve it because of traditional religious teachings about marital obedience or nushuz in Islam. Fear of violence and ‘dishonour’ corrupts young women’s capacity for free and genuine consent.

986 A.S. Roald op cit pp.171-176
987 T Ross “Rape within marriage impossible claims Muslim cleric” www.telegraph.co.uk/15.10.10 (accessed 22.11.10)
988 T Winter “Gender from a Muslim perspective” Eds. N Solomon, R Harries & T Winter Abraham’s Children op cit pp.216-247 at pp.236-243
989 Y Suleiman op cit pp.48-9; T Ramadan (2004) op cit pp.138-143
990 S Sheridan “Gender from a Jewish perspective” Eds. N Solomon, R Harries & T Winter Abraham’s Children op cit pp.216-223
993 1 Timothy 2: 11-15; Ephesians 5: 22-24; Colossians 3: 18
Contextualising Islam and commentators like Roald, Ramadan and An-Na’im make it clear that Shari’a sources can be interpreted consistently with respect for affective and bodily integrity and autonomy. Similarly in Judaism respect for the body, particularly in intimate relationships supports the principle of affective and bodily integrity.

Bodily integrity:

Besides regard for bodily integrity and autonomy, signified by requiring consent to marriage and sexual relations, both Judaism and Islam affirm bodily integrity and autonomy more generally. It is arguable that both traditions have greater respect for the body than Christianity as St Paul’s commending of celibacy\(^{995}\) and Augustine’s reaction to sex as a necessary procreative evil\(^{996}\) have led to ambivalence about sexuality. In turn this has generated self-mortificatory practices aimed at ‘subduing the flesh’.\(^{997}\) By contrast both Islam and Judaism respect the fullness of bodily life including sexuality as natural and gifted by God.\(^{998}\) Although both traditions observe purity rules particularly around menstruation which have taken on sexist connotations, the original purpose of the rules was hygiene and bodily care, not punishment.\(^{999}\) Judaism and Islam are both suspicious of self-mortification, as in practice is Christianity. Like Opus Dei’s self-flagellatory Shia practices of \textit{zanjeer zani} \(^{1000}\) and Jewish lashes or \textit{malkut} \(^{1001}\) are limited to minorities. Although the Ramadan fast in Islam is more extensive than fasts in other traditions, exemptions safeguarding the young and those who are pregnant or ill indicate respect for physical common sense. Bodily integrity is also safeguarded by teaching against suicide and self-harm.

However, corporal punishment to discipline others including children is found in both Islam and Judaism as detailed in earlier chapters. Examples include punishment of

\(^{995}\) 1 Corinthians 7;  
\(^{996}\) M Braybrooke “Gender from a Christian perspective” Eds. N Solomon, R Harries & T Winter \textit{Abraham’s Children} op cit pp.228-9  
\(^{998}\) S Sheridan, M Braybrooke & T Winter “Gender” Eds. N Solomon, R Harries & T Winter \textit{Abraham’s Children} op cit pp.216-247  
\(^{1000}\) D Pallister “Man guilty of making boys flog themselves with blades in Muslim rite” - R v Syed Mustafa Zaidi \textit{www.guardian.co.uk/27.08.09} (accessed 09.12.2009); N Kazmi \textit{www.guardian.co.uk/comment/28.08.08}  
\(^{1001}\) A Untermann op cit p.165
wives and young women based on *nushuz* and *quiyyama*, control through ‘honour’ and corporal punishment reportedly used in Mosque schools. Yet practices of corporal punishment in both traditions appear to be inconsistent with underlying concepts of bodily protection and integrity seen in both traditions’ scepticism about self-mortification. Similarly the practice of primary school children undertaking the Ramadan fast undermines safeguards for children’s bodily health and integrity within Islam’s own sources. Given general support for an ethic of bodily integrity it is arguable that autonomy of bodily integrity can be relied upon as normative protection from physical harm and used as the measure against which to assess practices within such traditions. This approach is consistent with An-Na’im’s appeal to religious authority to ground rights-based concepts without relying on external authorities like modern scientific theory.

However, although bodily integrity may assist interpretive consensus in the instances cited above the core obstacle to consensus remains differential understandings of what is harmful though only practices defended solely on religious grounds raise epistemic conflicts. As discussed above bodily integrity is largely defined through autonomy, signified by consent to bodily touch most notably in sexual relations. Yet restrictions on self-destructive consent and suicide ground understandings of bodily autonomy as uniquely gifted grace from God not libertarian, self-possession. The fact that both Judaism and Islam prohibit suicide and self-harm and are suspicious of self-mortification indicates that understandings of autonomy as gifted grace are compatible with both traditions. Both traditions’ understanding of bodily giftedness means that scope for adults’ consent to bodily interference is limited so it should also be for those incapable of consent through age, learning disability, indoctrination or dependency.

In the latter instances objective criteria for assessing harm are needed. Where debate is conducted in terms of non-religious premises, such as the efficacy of corporal punishment, the objective arbiter of the argument is medical and psychological science in whose terms the debate is conducted. Where practices defended solely on religious premises conflict with secular norms about what constitutes bodily integrity alternative criteria are needed to resolve the conflict. Secular and liberal norms, particularly those

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1002 A.S. Roald op cit pp.171-176
applied in child protection courts take their authority for bodily and emotional integrity predominantly from modern medical, psychological and psychiatric science. English law’s prohibition of corporal punishment in schools, overriding religious objections, was aimed at preventing physical harm through excessive chastisement. Cliterodectomy is also prohibited on medical grounds because of risks to long-term health, even life. Yet modern medical science is the obstacle to consensus about bodily autonomy and integrity for some traditional religious communities. As noted earlier all religious traditions engage with science through theology about creation and the natural but secular scientific method and its conclusions may not be accepted. In some instances like cliterodectomy science is rejected altogether. For others science is secondary to religious belief. Some religions accept some aspects of modern science but reject others, for example Roman Catholic teaching accepts modern science about foetal development to oppose abortion but rejects science about homosexuality.

If some aspects of science are accepted, consistency of approach should provide resources to negotiate consensus. Science is not alien to religion in that observation of the natural is found in the earliest scriptures and theological tradition, for example natural law in Catholic tradition and observation of creation in Islam. Where scientific knowledge has developed it is possible even for the most conservative of traditions to incorporate such developments into their theory and practice. An example from Catholicism is the incorporation of psychological grounds into Canon Law for annulment. Within Judaism the acceptance or otherwise of modern science is a point of division between different parts of the tradition, yet even Orthodox communities engage with modern science incurring similar charges of inconsistency to Catholicism. Islam also acknowledges the role of science in understandings of the world and application of religious belief. Science is relied on by Winter to defend gender difference and by Ramadan in considering medical ethics. Thus engagement with science as the material of theological reflection can ground

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1004 R v Williams [2005] UKHL 15
1005 G Moore The body in context (London: Continuum 2004)
1009 T Winter “Gender from a Muslim perspective” Eds. N Solomon, R Harries & T Winter Abraham’s Children op cit pp.236-243
1010 T Ramadan (2009) op cit pp.214-228
discussion about normative understandings of humanity without detracting from religious authenticity.

Where there is some acceptance of scientific rationale there is also scope for negotiating the priorities accorded to medical risks and competing religious dangers. Religious believers who defend corporal punishment argue that refraining from its use risks children’s long-term self-control and vulnerability to sin with potentially eternal consequences weighed against immediate physical harm. Jehovah’s Witness’ beliefs that blood transfusion risks damnation mean that even threat of imminent death through non-treatment is outweighed by eternal life if transfusion is avoided. If risks of religious harm feared by believers are relatively small or can be addressed through alternative treatment there is scope for negotiating consensus that scientific risks outweigh religious concerns. Where believers argue that religious risks outweigh the scientific imposing secular law can resolve conflicts by removing from believers the moral responsibility of making decisions contrary to conscience, as happens with blood transfusions for Jehovah’s Witness children.

There are relatively few instances like cliterodectomy or exorcism where rejection of science restricts dialogue to religious terms of reference alone. In the case of cliterodectomy religious scholarship rejects the practice on scriptural grounds as hadith about cliterodectomy are weak and not authentically Islamic. Thus UK Muslim leaders harness religious authority to support prohibition of the practice. Religious authority can therefore be used to enforce religious and legal norms in cases of overlapping consensus where religious arguments reach the same view as secular law. Difficulties arise where religious authority differs from secular law and behaves in ways seen as harmful or imposing oppressive burdens, like ‘honour’ codes or prohibitions on homosexuality, on minorities within its own membership. In these instances the principle of personal autonomy and bodily integrity provides justification for overriding the religious imperative and imposing secular law’s understanding of human well-being.

1011 J Dobson Dare to Discipline (Eastbourne: Kingsway 1993); R v Williamson [2005]UKHL 15
1012 A.S. Roald op cit p.237; Dr G Siddiqui “Safeguarding children at risk of FGM”
Such imposition is justified because overall the principle of bodily integrity is compatible with Islam and Judaism as well as secular and Christian paradigms. Although determination of what constitutes bodily integrity depends to a degree on scientific criteria these are not wholly incompatible with religion as outlined above. The criteria for resolving conflict between traditional religious and secular worldviews is the need to protect the child’s bodily integrity. It is only in relatively rare circumstances that imposition of scientific secular principles is needed to override religious belief as a basis for child protection. In most instances it is possible to base the justification for intervention on religion’s own sources. Religious regard for the sanctity of the body as God-given means that generally the principle of bodily integrity, autonomy and dignity can be established by reference to traditional religious teaching and applied as an overarching principle. Protection of material sustenance as opposed to property ownership can also be found in both Jewish concepts of tzedek\textsuperscript{1013} and in Islam.\textsuperscript{1014}

This understanding of bodily integrity as preserving the gifted individuality of each person rather than a self-possessed autonomy entitled to self-harm is more compatible with the majority of religious worldviews than autonomous self-possession, as seen in defence of life through opposition to abortion and euthanasia. However, this understanding of bodily integrity casts a challenging light on secular practices like boxing and cosmetic surgery. Yet in practice secular law largely protects the uniqueness and giftedness of human life in prohibiting actively destructive operations and the refusal of treatment by those deemed to have insufficient capacity to make the decision to refuse. Thus the interpretive benchmark of autonomy interpreted as bodily integrity and the gift of personhood in life has application across different worldviews.

**Identity:**

The final aspect of the expanded understanding of autonomy is identity. As seen in discussing conscience there are differences of opinion within all religions about the interpretation and application of scripture and tradition. Discernment about the application of religious codes in the context of each person’s life means that personal decisions are made even in traditions which place emphasis on communal authority.

\textsuperscript{1013} J Sacks op cit pp.120-122
\textsuperscript{1014} T Ramadan (2004) op cit pp.147-151
and religious law. These include decisions about dress, vocation, role, relationships, engagement within and outside the religious community and the lived reality of faith. Each of these areas of discernment has implications for believers’ identity subjectively within their community and in relation to wider society. *R v Begum* illustrates the assertion of autonomy of identity by public manifestation of belief through religious dress. Ms Begum sought legal protection to assert a particular identity within the public setting of school and against divided opinion about women’s dress within the Muslim community. Although not litigated in court there are similar assertions of identity through religious dress in Orthodox Judaism and traditional Christian communities like Plymouth Brethren.\textsuperscript{1015} Traditional communities\textsuperscript{1016} manifestation and application of belief is both personal and communal, demonstrating the relevance of autonomous identity across faiths.

Liberal, secular assumptions construct identity and its development in more subjective and therefore personally autonomous terms than traditional religious understandings. This is illustrated by prioritising early placement regardless of racial or cultural matching, contrasted with racial and religious essentialism over community membership. Nonetheless even secular presumptions assume interaction between communal identity and allegiance. Distinctions between secular and religious understandings of identity and belonging are not diametrically opposed but rather a spectrum with greater or lesser degrees of communal versus personal moral autonomy. Insofar as traditional religions emphasise community membership and practice over private belief there is unavoidable evidence of personal decision and commitment to a particular religious community and identity. Thus integrity of identity is not only consistent with traditional religious paradigms but is manifested to a greater degree than in secular paradigms where conscience and religious belief are more likely to be held privately.

Manifesting religious identity becomes more complex when it intersects with other aspects of human difference and identity. The way that different religious constructs approach these intersecting factors raises concerns about religious communities’ discrimination over illegitimacy, race, religion, sex and sexuality. Insofar as religious

\textsuperscript{1015} Both rely on religious exemptions to school uniform codes to permit head covering.

membership is a matter of community construction, which excludes through criteria based on ethnicity or illegitimacy, identity is fixed and autonomy undermined. Secular law takes a less biologically essentialist view of identity protecting autonomy of belief and conscience manifested by committed practice. Thus in JFS the convert mother’s commitment to Judaism was upheld as grounds for her child’s admission to the Jewish Free School rather than Orthodox definitions of membership by birth. Yet whilst the law has overridden essentialist definitions of religious identity linked to race in favour of religious commitment, it continues to uphold religious essentialism in relation to gender and sexuality although in all traditions these remain contested issues.

Whilst freedom to manifest belief, identity and religious commitment is accepted within Judaism and Islam, respect for other aspects of identity may be limited by religious essentialism. Those whose bodily identity, conscience and affective integrity are at odds with religious teaching are left with a sense of discordant identity. Their options are to seek to change their own community, live their faith in more liberal religious communities or conform to communal norms but deny part of their integrity. For adults these options are problematic and costly but children from religious communities experience such tensions around identity even more acutely because of their relative dependence on family and community and vulnerability to pressure. Yet these conflicts of identity are recognised within traditional religions, as illustrated in relation to homosexuality in Contextualising Islam; homosexuality remains prohibited whilst acknowledging that homosexual orientation may be fitrah for that individual. Recognition of similar conflicts and constraints is found in Orthodox Judaism and traditional Christianity.

Conflict of integrity and religion is also found in rejection of vocations that do not fit gendered prescriptions about role and capacity, whether suppressing women’s leadership or men’s caring capacity. These aspects of autonomy are most acutely and publicly contested in traditional religion. That this conflict of integrities is harmful is attested to by statistics and personal accounts of young people caught in the

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1017 JFS & Brent Uniting Synagogues v Brent [2009]UKSC 15
1018 Equalities Act 2006 exemptions s.56 & Equalities Act 2010
1019 Ed. Y Suleiman op cit pp.47-8
tension. Prioritising religious essentialism about biological difference over scientific understandings has parallels with religious scepticism about science concerning bodily harm. Yet whereas the law upholds scientific understandings of physical harm and race, where gender and sexual identity are concerned religious essentialism is protected. Accordingly secular law contravenes personal autonomy in integrity and conscience by supporting religious constructions that force choice between personal integrity and religious community. This undermines protection from coercion of faith and related affective and bodily integrity. Engagement is needed between religion, science and personal experience around biologically differentiated aspects of identity as well as definition of bodily harm and integrity. This does not subject religion to science but calls for religion to be informed by science and the experience of its members’ integrity, considering the impact on children and young people and their futures.

Autonomy in relation:

As identified by religious critics of liberal autonomy and rights no person stands in isolation; freedom is constrained by relations with others and by human and personal finitude. Personhood and identity are therefore understood as distinctiveness in relation to others from family to ‘distant neighbours’; personal autonomy protects not self-possessed libertarianism but self-governing aspects of individually graced giftedness and contribution to creation. This is reflected in the Muslim protective framework that values individuals within the context of family, community, wider society, nation and the world. Within Judaism there is a deeply embedded concept of individuals morally connected with others through a series of dialogue-based relationships with the Jewish community’s history, diaspora, revelation and ‘wider currents of thought’.

1023 Contrast South African Constitution
1024 Ed. Y Suleiman op cit pp.53-4
1025 J Sacks op cit pp.210-211
1026 J Sacks op cit pp.156-174
Both traditions have understandings of human nature that reflect the relational principle of the Golden Rule\textsuperscript{1027} grounded in relationship with God and the other.\textsuperscript{1028} Jewish thought also includes Buber’s I/thou theology for understanding of relationships with God and neighbour.\textsuperscript{1029} This emphasises that whilst communities are important, individuals and their relationships with all levels of family and community are vital. The individual is not lost or subsumed beneath a community but is protected for themselves and their unique gift, relationship and revelation from God.\textsuperscript{1030} Within Islam the concept of the \textit{ummah} grounds the relationship of each individual with God within the relationship of the universal Muslim community, which should respect the diversity of perspective within its membership.\textsuperscript{1031}

The challenge for traditional religious paradigms, as seen from earlier discussion of autonomy lies not in accepting relational understandings of humanity but in tensions between orthodoxy and personal faith discernment and experience. Communitarian approaches to relationship overlook individuals within those communities, particularly vulnerable individuals in minorities. By contrast the perception is that secular thinking disregards relationships in favour of the wholly autonomous individual. Yet as seen earlier the law does not in fact protect unfettered individualism but constrains self-harm, suicide and other libertarian behaviours. Relational understandings are also found in secular, psychological models of attachment with children dependent on parents yet individuals in their own right.\textsuperscript{1032} Universal acceptance of familial relationships and relationships of care and nurture within religious and secular legal paradigms such as the Children Act, clearly indicate cross-cultural acceptance of a relational ontology. UN CRC grounding of children’s care and identity in relationships with parents, carers, communities and heritage also demonstrates cross-cultural acceptance of individual children as subjects within a relational framework in both secular and religious paradigms.

\textsuperscript{1027} Islam – “None of you...believes until he wishes for his brother what he wishes for himself.” No.13 Imam Al-Nawawi’s 40 Hadiths; Judaism Leviticus - 19:18 ‘do not take vengeance against your kinsfolk, love your neighbour as yourself’ & 19:34 ‘the stranger who resides with you shall be as one of you, you shall love him as yourself’
\textsuperscript{1028} Leviticus 19:18 & 19:34
\textsuperscript{1029} M Buber \textit{I and thou} (New York: Touchstone 1971)
\textsuperscript{1030} J Sacks op cit pp.25-46
\textsuperscript{1031} T Ramadan (2004) op cit pp.80-101, pp.126-173; Y Suleiman op cit pp.45-50
\textsuperscript{1032} D.W. Winnicott & M Nussbaum \textit{The Family and Individual Development} (London: Routledge 2006)
Rights in cross cultural perspective:

Near-universal adoption of the UNCRC is evidence at some level that the concept of children’s rights is accepted across different worldviews. However, analysis of reservations to and omissions from the convention, differential interpretation and US refusal to sign, undermine its effectiveness. Additionally, support at governmental level does not ensure adherence throughout the population given cultural differences and scepticism about rights. Traditionalist counter-cultural religious opposition to the UN and secularism includes conservative US Christian groups, Wahabi and Salafi Muslims, Hassidic Jews, the Exclusive Brethren and Jehovah’s Witnesses. As signing the UNCRC does not guarantee universal acceptance of rights justification and implementation is needed through translation into terms compatible with religious paradigms.

The starting point however is that, despite some opposition, rights do have formal support amongst the world’s major religions through participation in compiling the UNDHR, UNCRC and contemporary UN fora. The search for human rights is a key preoccupation of inter-religious dialogue. Whilst no religious text contains specific enumeration of UN Convention rights, formulations of key ethical, legal and relational codes are found in religious scriptures. As in Christianity many Muslims and Jews claim compatibility of modern, universal rights with the principles of their legal and ethical codes. The seven Noahide commandments from the Torah’s Ten Commandments are defended by Novak as grounding universal laws. Novak also analyses Jewish law governing relations between individual, community and God for evidence of rights. Although he finds little specific Jewish authority for rights versus the state his research finds support for democratic rights within Jewish ethics, protecting the vulnerable and concepts of human worth. This reflects Wolterstorff’s defence of rights from the Hebrew Bible’s support for protecting the vulnerable and

1034 K Marshall & P Parvis op cit p.4, pp.11-72, pp.95-152
1036 A Race Interfaith Encounter (London: SCM Press 2001)
1037 Exodus 20: 1-17
1038 D Novak op cit pp. Xxiv-xxvii pp.124-144
1039 D Novak op cit pp.88-112, p.145-153; Proverbs 17.5
1040 N Wolterstorff op cit pp.65-95
Barth’s Christian political ethics. Although Novak does not discuss children specifically they are protected as within the vulnerable quartet. Novak also supports the value of the individual vis a vis the state arguing that ‘One can see individual rights as a limit on the power of society because the life of the human person ... seems to point to a transcendent dimension beyond the grasp and thus beyond the authority of society’. Wolterstorff cites Novak’s use of the Hebrew word tsedeqa as the righteousness grounding rights. It is material to concepts of rights as protecting personal integrity that tsedeqa can also be translated as ‘integrity’.

Many Muslim commentators argue for the compatibility of human rights with Islam and some claim derivation of rights from Shari’a. Ramadan argues that Shari’a is compatible with liberal western law including rights and assumes the existence of protective rights for Muslims to manifest their faith, receive equal treatment before the law and be involved in wider society. He also specifies basic rights to life, sustenance, family, housing, education, work, justice and solidarity. Like much Muslim commentary on rights Ramadan considers women’s rights, defending an ‘Islamic feminism’ derived from scriptural sources and principles of equality and dignity. Contextualising Islam also defends Islam’s support for universal rights within the context of individuals’ relationships with community, wider society and the world. Like Ramadan the report defends women’s rights but its list of substantive rights includes property and lineage as well as life, intellect and religion. Whilst lineage may be aligned with genetic and familial identity, protecting property is closer to 18th century libertarianism than theologically grounded human ontology protecting material sustenance but not ownership. Thus Ramadan’s list of rights fits the paradigm of graced autonomy more closely than Contextualising Islam, protecting

1042 D Novak Eds R Rashkova & M Kavka op cit p.109
1043 N Wolterstorff op cit p.69; J Sacks op cit pp.120-122; contrast Isaiah 59:vv 9, 14, 16 & 17 Jerusalem Bible (London DLT 1968)
1044 T Ramadan (2004) op cit pp.149-155; Y Suleiman op cit pp.45-50; J Esposito & D Mogaded op cit pp.29-64, pp.99-134
1045 T Ramadan (2004) op cit pp.11-112
1046 T Ramadan (2004) op cit p.70 dar al hab
1047 T Ramadan (2004) op cit p.70, pp.149-154, p.164 & p.168,
1048 T Ramadan (2004) op cit pp.149-152
1049 T Ramadan (2004) op cit pp.139-143
1050 Y Suleiman op cit pp.45-54
1051 Y Suleiman op cit pp.48-49
what is most human and applicable to children who require care, sustenance and housing.

Although none of the commentators cited specifically discusses or defends children’s rights their discussion of rights assumes a protective framework. On this basis there are grounds within Islam and Judaism for applying rights to children as the most vulnerable in the community and amongst those most in need of protection. This is supported by Scriptural authority in both faiths for protecting orphans and children as amongst the most vulnerable. Both traditions also support the relational ethic underlying this interpretation of rights, grounded in respect for the other not only as the corollary of respect for one’s own rights but also as respect for the dignity of each human life in God. The realisation of the relational ethic in the UNCRC’s defence of parent and child relationships, parental guidance and respect for community identity is also significant for religious understandings of human ontology and protection. Yet the rationale that makes individual rights into a restraint on state power should also provide a restraint on the abuse of power by religious communities.

**Rights and overlapping consensus:**

Whilst foundational premises vary, the above analysis illustrates that it is possible to find authority within each of the religions considered as well as secular paradigms, for valuing the individual within relationship and for protecting the vulnerable, including children. This contradicts traditionalist scepticism about rights particularly those based on MacIntyre’s argument that different foundational ethics make universal morality impossible. The overarching paradigm is an interpretive framework supporting universal respect for rights, founded in protection of personal integrity as an expanded and graced understanding of autonomy. Autonomy is lived in relationship, recognising all human diversity including children. The paradigm has resonance and authority within the ethical principles, theological sources, authorities and epistemologies of several traditions making it a good basis for negotiating greater consensus about interpretation and application of rights. Despite his scepticism even Hauerwas

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Qu’ran s.33:4-5; s.4:2&8; s.89:15; 93:1; 107:1
1053 A MacIntyre *After Virtue* (London: Duckworth 1985)
concedes that rights theory and dialogue have a part to play in developing consensus about universal values in a multicultural society.\textsuperscript{1054}

This thesis does not argue, contrary to Wolterstorff and Finnis, that rights are based in natural law. As Dworkin concedes, individual traditions’ observations of nature reach different understandings of ethics, rights and their application undermining arguments for self-evident natural rights.\textsuperscript{1055} Negotiating consensus across different religious and other worldviews is a process of legal positivism. Hauerwas’ concession to negotiated consensus seems to envisage positivism as a counsel of secular despair in the face of multiculturalism and loss of common value. Yet writers across a variety of traditions envisage legal positivism as appropriate even necessary in implementing law and applying the universal principles of their traditions. For example, from a Jewish perspective Novak notes that ‘Actual law is always positive law at work with authority in a specific concrete human community in history.’\textsuperscript{1056} This is supported by Wyschogrod and Sarna in discussing the interpretation of scripture within Christianity and Judaism.\textsuperscript{1057} In noting the disjunction between the cultural and societal circumstances of early Judaism, the writing down of Hebrew Scripture and subsequent diaspora, subjugation and Hellenisation it is recognised that law has to be reinterpreted from first principles and applied to changing circumstances and contexts.

A similar analysis is provided by Ramadan in relation to Islam. ‘There is in the book of the world another level of discourse that does not concern natural laws but diverse and changing human realities’,\textsuperscript{1058} emphasised by the Qu’ran ‘and among his signs is...the variations in your languages and colours’.\textsuperscript{1059} ‘Had God so willed he would have made you a single community but his plan is to test you.’\textsuperscript{1060} It is in this context that Muslim fiqh, ethics and concepts of legal and religious authority should be developed.\textsuperscript{1061} The concept of \textit{ijithad} in Islam recognises the need for historic sources to be understood within different situations as time and cultures change and provides a

\begin{footnotes}
\footnotetext[1054]{S Hauerwas \textit{Suffering Presence} (Notre Dame: Notre Dame University 1986) p.128}
\footnotetext[1055]{A Maclntyre op cit p.67}
\footnotetext[1056]{D Novak op cit pp.145-153}
\footnotetext[1058]{T Ramadan (2009) op cit p.94}
\footnotetext[1059]{Qu’ran 30: 22; T Ramadan (2009) op cit p.93}
\footnotetext[1060]{Qu’ran 49: 13; T Ramadan (2009) op cit p.94}
\footnotetext[1061]{T Ramadan (2009) op cit pp.122-125}
\end{footnotes}
mechanism for positivist development of law. This perspective is supported not only by the western-born Ramadan but also by analyses of different approaches to interpretation of tradition and sources from salafi literalism, scholastic traditionalism to reformist movements. Evidence that *ijtihad* is not a modern phenomenon is found in Badawi’s analysis of generous interpretations of gestational timescales to protect women with unexplained pregnancies. The extent of cultural variation in interpreting Islamic law and human rights is illustrated by An-Na’im’s worldwide review of Muslim family law.

Within Christianity Roman Catholic Canon Law is positivist law, signified by the fact that it takes effect only when promulgated and distinguishes ecclesiastical from universal law. Despite western Christianity enjoying political hegemony for parts of its history and retaining established status in the UK, accommodation has been necessary between Christian teaching and other traditions over history for example in Jewish and Quaker marriage laws. This establishes that much Christian law and that of Christian states is positivist and negotiated rather than a self-evident application of revealed religious tradition. In the Reformed tradition Barth’s non-foundational approach to revelation is reinforced by arguing that ethical specifics and their application in law and policy is only possible in context, through positivist application. Whilst natural law, scripture, Shari’a, halakah and other forms of revelation provide general principles within particular religious traditions, their interpretation, application and contextualisation all require positive law. Positivist implementation is all the more necessary where legal norms need to reflect and transcend differences between worldviews. Contextualisation takes its authority in a multicultural society from processes of law-making and norm-agreement that ideally involve broad participation and engagement with difference. This requires negotiation by all communities within wider society which has implications for communities’ internal norms and communal interpretation in response to the wider societal context. As already discussed such negotiation

References:

1062 T Ramadan (2004) op cit pp.24-30; AS Roald op cit pp.23-57, pp.118-144
1065 Code of Canon Law op cit Canons 1-12
requires translation of terms between different legal paradigms, terminology and authority along with ongoing processes of transformative normative development. The fact that all traditions also have doctrines enjoining observance of the law of the land makes positivist development of common norms in a shared community binding on religious citizens. The precise terms and application of rights differs across traditions reflecting diverse narrative, history, customs and authorities. However, testing the application of norms through the interpretive paradigm of protecting graced and relational understandings of human ontology, with substantive content for various aspects of personal autonomy, enables greater consensus. Consistent interpretation lies in greater agreement over human ontology. The force of the paradigm is its compatibility with the theology, tradition and scriptural sources of several worldviews. Starting from the value of individual diversity within familial and collective relationships, recognising but not bound by factors like gender and race, universal interpretive principles provide criteria for assessing whether particular religious or cultural practices breach universal rights. Concepts of *ijtihad* and other processes of theological, juridical reflection enable religious diversity of practice and belief to be maintained but with a common framework for what is valued about human ontology.

The process relies to a degree on processes of inculturation and adaptation as proposed by An-Na’im. Inculturation as a hermeneutic approach recognises the diversity and particularity of scriptural and religious interpretation within different cultural settings. Marshall and Parvis argue that customary practices like cliterodectomy can be tackled by prohibiting the merely cultural but permitting the religious. This ignores the extent to which religion and culture are intertwined and the way that culture shapes interpretations of faith within as well as across denominations and faith groups. Within the Anglican Communion alone a rural Yorkshire parish differs from parishes in central London or Johannesburg. Scripture may be the core of religious belief but religious tradition supplements interpretation making core elements of practice or belief hard to identify. Legal recognition of minority as well as majority religious interpretations like corporal punishment in Christianity and the *hijab* in Islam.

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1068 *Code of Canon Law* op cit Canon 22; Matthew 22: 15-22; D Novak op cit p.142-3, p.304-9; T Ramadan (2004) op cit pp93-96; Y Suleiman op cit pp.27-37
1070 [2005] UKHL 15
1071 [2006] UKHL 15
but rejection of Lydia Playfoot’s chastity ring,\textsuperscript{1072} complicate matters further. Even if religion is distinguishable from culture some religious texts can be interpreted in harmful ways like \textit{nushuz} justifying violence against wives\textsuperscript{1073} or corporal punishment in Proverbs. Thus the distinction of protecting religion as against culture is unrealistic. By contrast inculturation recognises cultural variants of religious belief but defines criteria and theological principles against which to assess particular beliefs or texts.

The most straightforward approach is the application of uncontested scripture, identifying whether practice accords with religious law where that law is consistent with secular law. An example is forced marriage in which religious scholars make clear that like secular law both parties’ consent to marriage is required.\textsuperscript{1074} The second stage translates collectively agreed norms into language and concepts that can be reconciled directly or by analogy with religious law. The aim is to enable religious assent to commonly agreed norms. The first approach recognises that some elements of tradition are uncontested and states the religious norm. The second recognises that there are diverse ways to interpret religious scripture and that tradition requires application in concrete situations and sometimes new contexts. Some scripture is considered more reliable than others, an example being the questioning of the validity of hadith about cliterodectomy.\textsuperscript{1075} Contextual interpretation considers not the strict letter of the text but the significance of situations in question distinguishing for example texts about male rape from contemporary understandings of same-sex relationships.\textsuperscript{1076}

Reframing secular norms in religious terms can achieve goals sought by secular law through reasserting religious rules. An example is appeal to Muslim exemptions from fasting for the young in addressing secular concern about fasting undermining children’s education.\textsuperscript{1077} A further interpretive method appeals to alternative, contrasting scriptural texts and overall theological interpretation from the same tradition. For example, Christians relying on Proverbs\textsuperscript{1078} to defend corporal

\textsuperscript{1072} \url{www.purityring.org/lydiaplayfoot/statement} (accessed 02.02.2010)
\textsuperscript{1073} A.S. Roald op cit pp.165-171
\textsuperscript{1074} Y Suleiman op cit pp.48-49
\textsuperscript{1075} A.S. Roald op cit pp.237-253
\textsuperscript{1076} G Moore \textit{The body in context} (London: Continuum 2004); D.B. Martin \textit{Sex and the single saviour} (Westminster: John Knox Press 2006)
\textsuperscript{1077} W.R. Maqsood op cit pp.73-77
\textsuperscript{1078} Proverbs 22:15, 23:13-14
punishment can be challenged by texts which show Jesus protecting children.\textsuperscript{1079} If the premises of argument move to the efficacy of punishment the issue becomes one of secular epistemology including psychological evidence that corporal punishment is counter-productive. Other Biblical arguments recognise the patriarchal context of parental powers over children including capital punishment\textsuperscript{1080} that are inconsistent with contemporary understandings of children, family and Christian love. Correction of scriptural misinterpretation by re-framing scripture within overall theological principles is illustrated by challenges to those who misused scripture in defending apartheid and slavery.

All the above methods interpret scripture on the basis of internal analysis and consistency with theological metanarratives. \textit{Ijtihad} and similar principles in other traditions focus on developing law for contemporary contexts, grounding modern norms in faith communities’ own terminology. This approach is needed for situations unknown at the time scriptures were written like use of audio-visual and other modern technology in education. An-Na’im does not propose abrogating or overriding religious law, arguing that this is ineffective even counter-productive as believers still believe. Instead the approach focuses on interpretation by analogy, testing of sources and narrow interpretation of punitive provisions, for example rarely implementing laws about adultery as evidential requirements exclude punishment for want of proof. Translating law into religious frameworks enables religious concepts to enter secular debates in search of Habermas’ and Rawls’ search for overlapping consensus.\textsuperscript{1081} An-Na’im’s inculturation does not require religious parties to translate beliefs, norms and laws into secular language but interprets universal or secular norms within religious communities’ terminology and frames of reference. The approach is supported by theologians in several faiths. For example, Christian theologian Herbert states rights must be ‘articulated and legitimated within non-Western cultural milieu, including religious discourses...\textsuperscript{1082}

The translation of secular principles into religious language has wider support amongst religious communities than just their leadership. For example Esposito and

\begin{itemize}
\item \textsuperscript{1079} Matthew 18: 1-10 & 19:13-15
\item \textsuperscript{1080} Deuteronomy 21: 18-21; Exodus 21: 15 & 17
\item \textsuperscript{1081} J Habermas op cit pp.114-148; J Rawls Political Liberalism (Columbia University Press 1996)
\item \textsuperscript{1082} D Herbert Religion & Civil Society: Rethinking public religion in the contemporary world(Surrey: Ashgate 2003) p.119
\end{itemize}
Mogaded’s research indicates significant Muslim support for human rights mediated into an Islamic framework. The process already happens in some spheres for example through Shari’a Councils’ advice about equitable divorce and the Beth Din’s declarations on the compatibility with Jewish law of newly developed foods. However, most mediative and interpretive voices currently recognised as authoritative reflect the male bias of theological and juridical leadership in religious communities. This bias may be corrected to a degree by greater openness to women as textual scholars and religious lawyers. However, unless religious communities collectively recognise the revelatory power of each member’s relationship with God, whether through Muslim theology of the ummah or spirit-inspired community, the collective theology is not given full voice. A defensive authoritarian religious community is unable to recognise or respond to the insights of members with different life experience and less able to allow the tradition to live and develop. More worryingly in terms of human rights weaker, less articulate minorities within such communities particularly children and young people, remain at risk of harm. Inculturation and recognising members’ graced autonomy within the community provides a theological means to engage religious belief with societal developments and protective norms, seeking consensus without losing religious distinctiveness.

Translation through inculturation also enables engagement between secular concepts, religious traditions and authority across a variety of theologies including engagement with science. As indicated earlier, engagement between theological traditions and the secular varies with stances towards scripture, authority and the locus of revelation. Hermeneutic variation operates both between faith groups and within each tradition. The following comparison of natural law, liberation theology and exclusive approaches to revelation illustrates the variety of interpretive engagement between theology and secular science. Natural law theology argues that knowledge and reason allow all human beings a means of knowing God irrespective of confessional revelation. Such theology owes much to Greek philosophy and humanist rationality which assumes a pre-determined, divinely-ordained cosmos in which everything has a telos which shapes ethical goodness. Christian natural law theology is most notably expounded by

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1083 J Esposito & D Mogaded op cit pp.29-64
Aquinas but natural law approaches to theology are found in the work of Jewish philosopher Maimonides and the Muslim Averroes. Contemporary theologian John Finnis adopts natural law in outlining a theological code of human rights. Secular theorists like Rawls also appeal to ‘the natural’ to ground beliefs in the universality of human rights. Although they reject human rights virtue ethicists also rely on right-ordered understandings of the world ordered according to natural law. Prima facie therefore natural law theology should overlap sufficiently with secular natural science to provide common ground for seeking consensus on human protection if not rights.

Yet difficulties with natural law theology arise when religious principles are asserted which ignore contemporary natural science. For example classic challenges to natural law theology arise in the area of sexuality and gender where foundational understandings of nature derived from Greek philosophy are imported into Catholic Thomism and virtue ethics. This has led to constructions of gender that reduce women to second class men, limit sexual intercourse to procreation, restrict understandings of sex and relationships and demean female intellect and spirituality. It has also led to rejection of contraception and definition of homosexuality as disordered and unethical. Natural law theology’s over-reductionist essentialism denies the reality of many peoples’ experience, enforcing a rigid moral order which can be oppressive. Oppression is seen not only in relation to sexuality but also to racism which perpetuated slavery, segregation, apartheid and class hierarchy, all claiming divine order at various points. Yet essentialist scientific determinism is not only religious but also seen in the dehumanising rigidity of Freud and others’ ‘scientific’ rationalisations of gender difference and Nazi Germany’s eugenics. Natural law whether secular or theological is therefore just as socially constructed as negotiated legal positivism.

Liberation theology rejects the essentialism of natural law, secular knowledge and science by engaging first with scientific method and knowledge but assessing it through theological reflection on experience. This method challenges assumed certainties and the power which constructs knowledge. Liberation theology is relied on

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1085 J Finnis *Natural law and natural rights* (Oxford: Clarendon 1979)
1086 J Rawls *A theory of justice* (Camb/Mass: Belknap 1971)
1087 A McIntyre *op cit* pp.36-61
1088 G Moore (2001) *op cit* pp.182-208
by Christian feminist and black theologians, Ramadan and Dabashi in Islam\textsuperscript{1090} and Marc Ellis in Judaism.\textsuperscript{1091} Science is not the final arbiter of ethics but is subject to theological belief through considering the implications and contingency of secular epistemology. For example, as regards sexual ethics a wider range of goods than procreation is recognised validating the experience of those who cannot conceive or are naturally homosexual. Scientific understandings are considered in the light of scriptural sources about relationships, God and creation to derive an ethic that recognises greater diversity than natural law theology.

By contrast for those who regard revelatory authority as limited to scripture and revealed sources of their tradition\textsuperscript{1092} both natural law and personal experience are suspect as reducing God’s revelation to human knowledge. Those who reject natural theology’s essentialism do not necessarily reject science but recognise that human knowledge remains limited, contingent and subject to ongoing revelation. This is particularly clear in Barth’s rejection of natural law which emphasises that human systems of knowledge cannot bind God or fully know Him.\textsuperscript{1093} Yet even those who limit their understanding of revelation to particular religious texts engage with assumptions about nature in such texts. There is therefore engagement with science but the essentialism of scientific theory and natural law are rejected in the light of the particularity and diversity of ongoing revelation. The extent to which religious premises are amenable to secular premises or recognise the naturalism of their own epistemology, depends on religious constructs and suspicion of prevailing culture.

Where modern knowledge calls into question religious assumptions like those based on revealed texts or natural law theology there are two options open to religion. One is the counter-cultural response of refusing to accept scientific method and conclusions, maintaining the religious paradigm in the face of modernity. The other is to accept and accommodate some modern scientific truth within the religious paradigm. This necessitates a process of going back to theological sources and re-evaluating them in


\textsuperscript{1091} M Ellis & J Neuberger \textit{Towards a Jewish theology of liberation} (London: SCM Press 2003); D Cohn-Sherbok & Others \textit{World religions and human liberation} (Maryknoll: Orbis 1992)


the context of more contemporary knowledge and understandings of the world. The reality is that few religions are purist about their approach to this hermeneutic. For example, the Catholic Church rejects modern understandings of sexuality that view sexual orientation as a spectrum but accepts science about gestational development to oppose abortion. Similar diversity of approaches to theological interpretation, scientific modernity and the secular are found in Islam and Judaism.

Standard approaches to secularism argue that scientific knowledge should be the arbiter of decision-making, with religious belief a matter of private discretion where it is less divisive. However, secular thinking shows a diversity of scientific understandings undermining its possibilities as an automatic arbiter of disputes about human ontology or functioning. The fact that acceptance of scientific truth is disputed not only within religious but also secular circles, means that other bases for consensus are needed. It is here that the concept of an expanded and graced autonomy in relationship as the paradigm for what is most human and worthy of protection may have advantages as a basis for interpretive consensus for human rights.

The fact that all the monotheistic Abrahamic religious traditions views each person as created by God with an individual soul, being and relationship with God and fellow human beings, supports the expanded understanding of autonomy. This then provides a basis for interpretive consensus which also transcends religious difference. The acceptance of autonomy in secular circles means that the paradigm can also provide criteria for assessment of scientific and secular understandings of children and their protection. What this means in specific terms depends on the issue concerned and the process of positivist negotiation involved in applying the interpretive paradigm. Whilst scientific epistemology is challenged insofar as some research simply justifies initial prejudices, this is no argument for dispensing with all empirical and quantitative research. As most religious constructs make some reference to nature and science such evidence is also validly incorporated into discourse about particular aspects of rights and what is good for children within the framework of graced autonomy. Although some secular understandings interpret autonomy as self-possession rather than...
than the gift of graced autonomy proposed by this thesis, in practice issues of self-possession arise largely in relation to euthanasia and abortion. This distinction is less critical when considering harm falling short of end of life issues and protection of others such as children.

As discussed above autonomy is neither confined to decision-making nor alien to religion or children. Religious communities as well as secular society and law recognise maturing capacity for independent decision-making and the changing nature of parental guidance as children mature. However reactions to children’s maturing autonomy vary depending on whether they act in accordance with or react against family expectations and religious traditions. As identified when considering specific concerns it is conflicts of religious expectations and young people’s experience and integrity that can lead to harm for young people through coercion, manipulation, denigrating reputation, use of violence and exclusion from family and community. If children can make major religious commitments at puberty they should also be seen as capable of decisions about how that commitment is lived and affects their lives whether wearing the veil or jeans, agreeing to arranged marriage or seeking their own partner. Similar respect and if necessary protection is needed for all aspects of children’s uniquely graced autonomy and giftedness from God, not only in relation to specific decisions but in general approaches to children’s upbringing and education.

If the paradigm of graced autonomy is accepted then some consensus over construction of rights, and therefore harm as the breach of rights can be negotiated. The principle applies both to protecting religious teenagers’ genuine freedom of decision about religious observance and to the pressures facing non-religious teenagers such as studies, fashion, appearance or relationships. In all cases capacity for autonomy in all its aspects relies not only on age but adequate information and genuine freedom. The difficulty with harm arising from religious and other forms of coercion is that it is often emotional, long-term and not readily evidenced. Recognising breaches of rights as harmful per se, without needing to evidence children’s emotional reactions to establish harm would tackle some forms of harm more effectively. Locating protection in safeguarding autonomy and integrity shields children from over-controlling communities as well as over-zealous parental control.

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1098 Gillick v West Norfolk AHA [1986] AC 112
Religious laws which exclude children from community and rights related to community membership like marriage, religious schooling and inheritance also infringe the autonomy and integrity of children through visiting the sins of parents on their children. Religious education with narrow curricula that fails to prepare children for full participation and decision-making as they mature and make decisions about adult life, is harmful through impairing life opportunities, preventing the realisation of children’s gifts. Breaches of educational rights are most notable in education that indoctrinates and disables informed decision-making. Harm is constituted as a breach of these aspects of autonomy and the rights that protect them. Insofar as English law is inconsistent for example about the goals and methods of education with implications for autonomy and foreclosure this understanding allows greater uniformity of discourse. It also allows a more unified ontology for educational norms and ensuring minimum standards for education which can address methods and skills as well as curriculum content.

Forced marriage and cliterodectomy are readily recognised by the courts as breaches of human rights. Recognition of such breaches as infringing rights to bodily and affective integrity both identifies the problem and has wider application than extreme examples like forced marriage. These aspects of autonomy cover matters amenable to decision-making autonomy about long-term issues concerning relationships and sexuality but are also applicable to younger children’s expression of preference about who touches them or cares for them. They allow for protection of subjective experiences like young people’s sense of their sexuality as an aspect of their humanity which is prior to more cognitive choices like consent and ethical discernment. Rights recognising these aspects of autonomy enable protection of the essence of a person just as ethical and cognitive integrity expressed in rights to freedom of conscience and religion. It is these deeply personal matters of integrity that form human autonomy and relationship with God, just as much as decision-making capacity.

To the extent that autonomy and rights understood in relational context have theological as well as secular foundation there is a common basis for negotiation about harm and application of rights. Genuine exploration of Rawls’ notion of overlapping consensus for norms is made possible. The advantage of substantive contexts for

autonomy provided by the framework of UNCRC rights is that they provide a consistent framework for defining harm. Consideration of harm as related to failure to respect autonomy has application across a range of ages and not just those with decision-making capacity. Protection of autonomy in its fullness safeguards the exercise of such rights as children are capable of exercising. Younger children are more vulnerable to physical harm and most require protection of bodily integrity, identity and familial security. For older children these aspects of autonomy remain important but are complemented by greater exercise of autonomy through voice, education and decision-making.

Emphasis on graced autonomy as relational means that human finitude is also recognised through the constraints of physical and communal limits necessary for formation of identity. Identity needs to be sufficiently robust for growth and development in negotiating life as children mature. However, such robustness can only genuinely be developed in knowledge of the alternatives and openness to the other. Thus children in communities with more isolationist outlooks are most vulnerable to being unable to access a sufficiently broad curriculum and other sources of information to develop and exercise autonomy, protect themselves from abusive practices and negotiate wider society. The strength of early conditioning is seen in forced marriage where seventy percent of victims are adults still sufficiently conditioned by their upbringing and familial loyalty to undertake non-consensual marriages. Conditioning which can lead to such consequences needs to be tackled as harmful not just at the point where it results in forced marriage. The harm involved is not simply the overriding of autonomy through pressure to contract a non-consensual ‘marriage’ but also the failure to develop sufficient autonomy in all its aspects in the first place. This is a denial not only of educational and autonomy rights but also of the fullness of God’s gift.

Conclusions:

Having identified scepticism about autonomy as a significant factor in differential understandings of children and their protection understandings of autonomy as graced
and relational were proposed for developing consensus in protecting children. The challenge was to discover whether religious paradigms in Christianity, Islam and Judaism could accept the expanded and graced understanding of autonomy proposed. It is argued that far from being alien to theological or religious conceptions of life autonomy is grounded in concepts of gift, creation by God, the uniqueness of the human soul, the mystery of each person, their life and the integrity of personhood all of which are consistent with theological conceptions of life. From a theological perspective this uniqueness of each created person in relationship with God grounds relationships with neighbour and community. The unique giftedness of each party to I-thou relationships denotes the ‘concrete other’ which grounds human rights, rather than the deontological subject of traditional human rights theory.

The protective, interpretive paradigm of graced autonomy as a grounding for rights is compatible with and applicable in the three monotheistic faiths of Christianity, Judaism and Islam precisely because it recognises the diversity of interpretation within each tradition. Whilst it takes some of its inspiration from a particular Christian theology the concept is also compatible with secular liberal thought which is generally seen as more individualistic but can be redeemed by reference to the importance to human identity of relationship, reciprocal respect and the protective imperative. It is this context that can ground application of rights within particular religious communities against a normative interpretive framework that is cross-cultural. Far from being inapplicable to children rights are vital to protect their vulnerable growing autonomy in all its facets.

However, rights like those contained in the UNCRC also provide important insights into the most uniquely distinct aspects of our human mystery. The focus on core aspects of human autonomy and personhood as opposed to property rights recognises important dimensions of human subjectivity, giftedness and ontological essence in diversity. The highlighting of guidance but not control or exploitation emphasises human autonomy as the distinctive personal gift within interdependent relationship. Substantive provision for all aspects of human need, from the material to emotion and identity provides some consensus about human ontology. It is these factors that provide the potential to ground meaningful discourse about what it is to be most human, to transcend our particularities in seeking consensus to protect the most
vulnerable collectively. The final task is to consider the effectiveness and wider implications of the paradigm of graced autonomy in concrete situations. This is the task of the following, concluding chapter.
Chapter 7: Conclusions: Implications and further work to be done...

To go back to the beginning; the aim of this thesis is to explore the possibility of developing ethical and legal norms which enhance cross-cultural consensus about the content and application of child protection standards. The research responds to particular concerns about children’s safety and rights raised in the public squares of the media and legal system. For several reasons the focus of the thesis is engagement with multicultural difference grounded in religious worldviews. The nature of religious belief is perceived in secular circles as intractable because the ultimate source of authority is divine and therefore not amenable to secular critique. However, the application of religious belief and its lived reality requires some level of engagement by all religious communities with wider society. This requires that engagement with religion is taken seriously as the basis for examining and negotiating agreed standards, particularly for the protection of children as the most vulnerable members of society. The core of the debate is how to balance religious freedom with common standards for safeguarding children.

The opening issue addressed is whether religion is a factor at all in child protection. Far from being unimportant or insignificant as suggested by Brophy, religious difference arises as a factor in a diversity of cases concerning children. These include both public and private childcare cases, education law and extreme incidents like forced marriage, cliterodectomy and deaths from ‘honour’ killing or exorcism. In many instances it can be difficult to disentangle religion from culture but religion is a factor where religious paradigms or scriptures are the motivational belief for action, even if minority or misguided beliefs. The consideration of particular instances of concern like forced marriage and exorcism illustrates the lack of consensus between traditional religious and secular liberal worldviews about what is problematic or harmful for children. Analysis of earlier approaches to legal norms for safeguarding children through universal rights identified the fact that a core difficulty has been the failure to recognise differential understandings of what is harmful. Exploration of English law as well as the UNCRC revealed conflicting paradigms for children’s ontology and

protection even within the English legal system, particularly as between tests based on welfare, education or rights law.

Assessing the extent and nature of religious versus secular difference through extreme cases resulting in death and significant physical harm demonstrated the role of socialisation and education in forming constructs that lead to such practices. The analysis also revealed other longer-term, less obvious or less readily evidenced concerns arising from differential education and the confused approach of English law to religious education and its consequences. Further analysis found that a core difference in the formation of differences between traditional religious and liberal secular worldviews were attitudes towards personal as opposed to communal autonomy. This is particularly noticeable in the context of situations involving ‘honour’ codes, where persons are constructed as symbolic of the whole community or possession where the person is constructed as taken over by another and alienated from self. The consequence is different understandings of human ontology, emphasised in attitudes towards children and their upbringing as members of collectives at the expense of those elements of graced autonomy that they bring to relationships and communities. Where traditional or religious upbringing is defended on the basis of protecting the freedoms of religious minorities, for example through exemptions from educational norms, there is a conflict between protecting religious rights as opposed to minorities within religions, particularly women and children. This leads to differential interpretation and application of apparently agreed norms such as those in the UNCRC.

This process of analysis therefore demonstrates that religion is a concern to the extent that supposedly universal norms for child protection are not universally applied. Delays in recognising forced marriage and failure to recognise exorcism are the most obvious illustrations of the fact that differential child protection standards develop. The analysis also reveals that different approaches to children through education, welfare and rights-based law give rise to potentially conflicting legal frameworks again with consequences for safeguarding children. Slipping through the net of these differential standards are practices which may have consequences seen as harmful within dominant culture but contested by those who practice them. It is this exercise which illustrates the need for common criteria to assess what is problematic, what constitutes a
safeguarding concern, harm, impairment of welfare or breach of rights. The criteria relied on by dominant culture are generally grounded in modern scientific epistemology and a human ontology of autonomy which are not accepted, or not accepted with the same authority, in religious worldviews. The solution proposed is to develop understandings of autonomy and the human person that also have grounding in religious worldviews and structures.

The concept of graced autonomy is therefore proposed as a theologically grounded understanding of human ontology that makes sense in religious terms, can be applied to children and is compatible with a relational understanding of rights. It expands the understanding of human autonomy from the simply rational and addresses the difficult tension between the individual and collective at personal level and the particular and universal at societal level. The concept of graced autonomy recognises those elements of the human that are distinctive to the individual, which gives them their integrity and makes them whole. They are those elements of being in which human distinctiveness one from the other is grounded. Cognitive integrity is seen most markedly in exercises of conscience but is at play in each aspect of decision-making. Affective integrity is most obvious when falling in love but is also present in other forms of relationship and relational preference. Bodily integrity is, as McFadyen and Williams argue the locus of the person and all other dimensions of integrity but is also a precious given aspect of creation in all its different colours, shapes and particularities. The collection of these integrities, combined with personal and collective histories and other aspects of life which sediment identity, constitutes the distinctive human being created by God and co-created by human response to God. The integrity of graced autonomy is not essentially or statically determined but is a dynamic identity which lives and grows in relationship both with God and with fellow humanity. It is this graced autonomy which needs protection against the risks of totalitarian oppression or inter-relational abuse.

Although grounded in Christian theology primarily that of Barth, there is evidence that the paradigm of graced autonomy can be applied within other religious traditions, particularly Islam and Judaism. The range of theology considered illustrates that the tension between personal and collective arises in all traditions both within communities and between the community and wider society. Within each tradition

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1103 From A.I. McFadyen Call to personhood (Cambridge: CUP 1990) pp.40-42, pp.72-3 & pp.86-9
there is theological variation from liberal engagement with contemporary culture to understandings of religious tradition in opposition to modernity. This variety of interpretation means that in all traditions discernment about how to live faith and negotiate relationships with family and community is necessary. This in itself requires personal autonomy as well as familial and communal allegiance and authority. Locating the authority of the paradigm in theological understandings of different traditions enables genuine norms as opposed to forms of words. It is a contextual example that shows the possibility of norms grounded not in uniformity or forms of words but of genuine overlapping consensus.

This has several implications. As McFadyen states ‘consensus cannot be normative in itself’\^1104 because consensus can be distorted and oppressive. However, grounding overlapping consensus in human dignity understood as the graced autonomy that gives rise to the diversity of God’s creation provides underlying values to guide consensus over particular concerns, rights and protection. McFadyen’s argument that consensus-building requires open dialogue, realising the communicative nature of autonomous personhood, reflects strands of political philosophy like Habermasian theories of ‘ideal speech’ and ‘communicative reasoning’.\^1105 This process is needed to determine contextual definitions of harm or welfare and particular application of rights and safeguarding law. For only by such open processes of dialogue can distortions and misperceptions of opposing viewpoints be corrected and mutual understanding reached. Such dialogue and mutual search for understanding is needed in a cross-disciplinary variety of settings given the range of issues affecting children and their upbringing. It is only thus that greater consistency can be achieved not only across different worldviews but also across areas of English law which contain inconsistent approaches to children’s welfare and the conflicts within rights themselves.

It is partly in the interests of legal and ethical consistency that the interpretive paradigm of graced autonomy is proposed to interpret and develop the UNCRC framework for children’s rights. Rights as legal tools provide common benchmarks derived from the process of dialogue to date in the search for child protection norms that have universal acceptance in protecting what is most human. Yet the interpretive paradigm enables not only more consistency in relation to interpreting what has

\^1104 A.I. McFadyen op cit p.210
\^1105 J Habermas op cit pp.77-98
already prima facie been agreed but also further exploration of varying contexts and developments as both communities and societies change. As noted earlier in relation to autonomy deriving common values and interpretive tools for rights from the different ‘tongues’ of communities’ worldviews enables greater ownership of the consensus by all communities.

Through engaging the particularity of religious insight and tradition in the debate there is a possibility of negotiating genuinely universal norms transcending communal boundaries and difference. The field of engagement and negotiation is not only the institutions of the societal public square implied by McFadyen\textsuperscript{1106} but also the many and varied communities and groupings in which individuals belong, owe allegiance and accept authority. However, the implications of this process require individuals within communities who are capable of such discernment, engagement and negotiation of difference. This means that communities also need to respect, protect and develop personal autonomy and contribution to the collective in all its forms through their own processes for normative development. This is particularly so for communities seeking a degree of communal autonomy from wider society as the risks of oppressive communication are increased by insularity and closure to relationship with the new or the other. In negotiating consensus over rights as wide a range of perspectives as possible need to be considered because stifling voices within any community or relationship silences or obscures the diversity of graced autonomy gifted to creation.

Besides seeking universality the discursive cross-cultural application of rights and safeguarding norms introduces varied epistemology and insights which enhance the possibility of comprehensive rather than narrowly essentialist understandings of children’s and human ontology. Theology and science, history and philosophy, sociology and social research can be called on within the same discourse to illuminate human complexity. The weight and priority accorded to these disciplines varies within different worldviews. However the common search to agree what needs to be protected in children and humanity provides sufficient common ground to examine these disciplines and differences within the same dialogue. If human beings are created in their multiple diversity, within a colourfully varied creation then seeking to recognise

\footnote{\textsuperscript{1106} A.I. McFadyen op cit pp.231-270}
and thereby safeguard the complexity and diversity of human giftedness is more likely to protect what is most human than otherwise.

A major implication of such dialogue in developing rights is the need to enable as many participants as possible to engage in the discourse. This means developing the capacity not only to speak from one’s own position but also being sufficiently informed about other participants’ arguments to engage with the opposing viewpoint or defend a position. The need for such engagement again points to the importance of education oriented to negotiating life in the context of a multicultural society not only for economic participation but also as individuals and discursive communities within the public square. Yet the implications of the paradigm of graced autonomy are not confined to the need for such education for societal benefit. A shortcoming of McFadyen’s paradigm and its focus on bodies as the locus of the ‘individual as subject of communication’ is the reduction of understandings of autonomy to right-ordered, rational communication. 1107 Although, unlike Wolterstorff, McFadyen’s understanding of right order is non-essentialist the focus on rational communication again fails to include those without full reasoning faculty behind their communication. It also overlooks the fact that God’s greatest communication with humanity was motivated by love not reason. Relational autonomy and the communication that flows from it cannot therefore be confined to a test only of rationality.

The paradigm of graced autonomy which includes affective and bodily integrity and identity not just cognitive faculties is more universal in its inclusion of all humans of whatever reasoning capacity and in recognising and embracing all aspects of divinely created human capacity. McFadyen’s resort to reason and his emphasis on mutuality in his explanation of communication limits those who can participate and risks confirming the critique of those who argue against rights on the basis that they privilege, and are thus restricted to autonomous adults. Recognising graced autonomy in all human beings acknowledges that even those without full rational capacity nonetheless have some communicative capacity, even if non-verbal. Such recognition highlights the fact that discourse in the public square needs to be oriented especially to the protection of those with lesser degrees of autonomy or communicative faculty whether small children or those with learning disabilities. This does not mean acting

1107 A.I. McFadyen op cit pp.162-190
solely as advocates on behalf of such persons but gathering evidence of the needs, aspirations and human rights of those who are less able to enter the discussion on equal terms with fully rational adults. This also means accepting that, even if they cannot sit around the negotiating table or in the court room, out of the mouths of ‘babes and sucklings’ greater truths can come than the merely rational.¹¹⁰⁸

The paradigm of graced autonomy can thus be applied to all human beings regardless of their rational capacity through viewing human dignity, grounded in all human faculties as worthy of protection whatever their stage of development. Autonomy is understood as the creative call of God to a graced distinctiveness that is the unique gift of each life to and in relationship with the rest of God’s creation, not the rational power of self-possessed, self-disposal posited by earlier explorations of rights. This understanding of what is most human and most worthy of protection is a more appropriate paradigm for children’s protection precisely because it does not require full adult reason. It reflects more closely than theories based on self-possession the motivation that led to the UN Declaration on Human Rights which was to protect human particularity, diversity and dignity against totalitarian genocide. It also mirrors prohibitions in English law which protect adults as well as children through prohibiting suicide, self-harm, cliterodectomy and other forms of bodily self-destruction such as sado-masochism.¹¹⁰⁹ This understanding protects the distinctiveness of all human life, viewing children and other dependents as human beings in their own right, legally distinct from though relationally bound to their parents or carers and entitled to legal and other protection if necessary.

As noted above much writing specifically about rights, theology and human ontology is grounded in Christian theology. Examples include McFadyen’s ontology of other-oriented bodily, communicative autonomy, Williams’, Wolterstorff, Forrester, Finnis and others’ defences of rights generally and defences of children’s rights by Marshall and Parvis and other child theologians. However, none of these writers considers how the paradigms they develop within Christian theology can apply within other traditions. The difficulty is that neither McFadyen’s Barthian grounding of personhood in relationship with Christ nor defences of human dignity based in concepts of imago dei can be readily universalised to other faiths or secular worldviews. By contrast

¹¹⁰⁸ Harper Lee To kill a mockingbird (London: Arrow 1989)
¹¹⁰⁹ R v Brown [1994] 1 AC 212; [1993] 2 All ER 75
whilst graced autonomy is inspired by and grounded in Christian theology of relationship, trinity, grace and creation its greater substantive content means that it can be applied more readily in other world faiths. Its content means that the paradigm of graced autonomy can be generalised to and grounded in theology and philosophy from worldviews other than the Christianity which inspires the paradigm’s origins.

The cross-cultural application of the thesis is tested in other traditions by reference to particular Muslim and Jewish writers and consideration of religious differences in each tradition, albeit largely in western settings. There are understandings of scripture, tradition and practice in those faiths which affirm an understanding of human ontology consistent with graced autonomy, particularly through bodily care, consent to marriage and intimate relationships and the non-coercion of faith. The relational approach of the paradigm is also consistent with other faiths’ sense of the human being in relationship both with a transcendent God and fellow humanity. However, the hypothesis needs fuller exploration by members of those communities themselves in both western and non-western legal contexts. The application of the thesis to other religious traditions such as Buddhism, Hinduism and Sikhism, which have high levels of communal heteronomy and different attitudes to theism would also be interesting. Exploration of other religious and customary practices would be a further way to test the thesis’ application. The applicability of the thesis within secular constructs is assumed insofar as secular law affirms not only autonomy but an understanding of autonomy that restrains acts of self-destruction and protects the vulnerable. Although a secular worldview does not accept theist understandings of the origins of autonomy or the specific concept of grace, nonetheless there is sufficient recognition of the distinctiveness of the individual, the importance of preserving life and dignity to allow for an overlapping consensus between theist and non-theist understandings of the paradigm.

The process of inculturating the paradigm as concerns both autonomy and rights within the traditions and values of various faiths addresses the criticisms of MacIntyre and Hauерwas about the abandonment of reasoned traditions and virtues. Inculturation enables a universalism based on overlapping consensus that both affirms and yet transcends religious particularity. The common ethic and overlapping consensus about human ontology as autonomy in relation provides a boundary enabling diversity but
preventing laissez faire libertarianism or relativism. Rights specify particular areas of human need that require protection. Grounding discourse about application of the paradigm within a rights-based framework provides a basis for discussion which already has some preliminary consensus through UN instruments. Common acceptance of rights as an ethical framework underpinned by the paradigm of graced and relational autonomy provides a normative starting point for developing even greater universal protection.

The thesis does not seek to cover or answer all the issues about child protection which arise in a multicultural society and which involve a wide range of disciplines and practical contexts. It does however suggest that a common ethic in terms of human ontology can provide an interpretive paradigm to enable development of greater consensus around protective standards and norms. The paradigm addresses the problems of lack of consensus about harm and misplaced assumption that human rights alone are normative without considering differential interpretations. Although a limited proposal in relation to the extensive issues arising from child protection and safeguarding, the paradigm of graced autonomy provides an additional tool in assessing and interpreting harm which particularly addresses gaps in understanding between religious and secular perspectives. It addresses underlying differences and engages with the language and authority of a variety of communities with a view to preventing harm in all sections of the community before enforcement is required. Such prevention is based on engagement with core differences of worldview, epistemology and authority rather than assuming common liberal understandings with minor variations or objective standards based in the status quo.

Graced and relational autonomy is therefore posited not as a definitive, static or absolute human ontology but is intended as a practical, applied ethic for protecting what is most human through rights. The benefits of the paradigm are that it rehabilitates human rights within an ethical framework and re-orientates them from self to other-focused, from self-defence to other-protection. It also recognises and values the fullness of humanity not just the rational faculty and recognises and protects all the aspects encompassed by integrity and autonomy of those whose cognitive autonomy may be more limited than average. Those with limited cognitive autonomy,
whether through age or disability, are recognised as fully human and valuable in their own right not just imperfect departures from the ideal as suggested by Wolterstorff.\textsuperscript{1110}

Some might argue that an understanding of autonomy which can be applied to those incapable of its independent or self-possessed exercise is not really autonomy. However, the understanding of graced autonomy consists neither in autonomous self-possession nor rational and independent decision-making but rather in those aspects of each person that are truly unique. This includes conscious, conscientious and cognate exercises of free will and discernment whether exercised for or against the predominant ethic but also includes those uniquely innate aspects of our diversity that precede or operate independently of cognition. This reflects both Barth’s understanding of human autonomy as given solely within the context of God’s creation and grace\textsuperscript{1111} and Newman’s understanding of conscience as arising from pre-rational grace.\textsuperscript{1112} The quality of autonomy consists in the distinctively determined nature of personal integrity that is seen in the subjective elements of graced existence. These elements of graced existence reflect the very personal nature of each person’s responses and motivations whether the product of rational discernment, affective emotion, intuition, sheer physical need or as is most common, a combination of such faculties.

Whether obvious or not, such autonomy is exercised in a wide variety of circumstances throughout life from the infant’s instinctive, physically and affectively driven cry for food to the rationally and reflectively ordered defence of a conscientious position within adult discourse and policy-making. Some of these decisions may be foregone conclusions because of set patterns and habits of life although exercise of autonomy which encompasses cognitive, affective and identity-based integrity is required in simply maintaining commitment to particular traditions and religious observance. Yet even in such an ordered life new events and situations arise that require some decision-making. For example the need to accommodate within strict observance of Shabbat the medical science required to treat an illness which required use of an electric pump.\textsuperscript{1113}

In the case in question factors to be weighed by the family in discerning their ethical

\textsuperscript{1111} J Macken SJ \textit{The autonomy theme in the Church Dogmatics} (Cambridge: CUP 1990)
\textsuperscript{1112} J.H. Newman \textit{An Essay in aid of a grammar of assent} (1870) & \textit{Letter to the Duke of Norfolk}
\texttt{www.newmanreader.org.uk/controversies/guides/topics} (accessed 16.08.2010)
\textsuperscript{1113} A 2008 case in the High Court sitting in Manchester concerning a Hassidic Jewish family
response included religious resignation to God’s will and the obligation to observe religious law set against instinctive human love for the child, feelings and duties towards the rest of the family and recognition of the secular medical and legal authorities.

The court prioritised the child’s bodily integrity by ordering co-operation with and monitoring of the medical treatment he needed but so as not to impinge too greatly on the family’s observance of Shabbat. It is in this balancing of the medical imperative and bodily integrity with the family’s religious obligations that the protection of different facets of the child’s integrity is seen. However, the fact that it required court intervention to ensure co-operation with medical necessity and overcome objections based on religious observance illustrates the need in some communities for negotiation of the interface between religion and science. It is clear that in more strictly observant and counter-cultural religious communities the need for ethical discernment is greater than for the liberal, western Christian who can incorporate scientific developments into their life without causing competing demands or conflicts of religious observance. Yet the imperative of graced autonomy is to preserve the gift to creation of each life which requires respect for their bodily integrity as the location of all other facets of autonomous integrity and gift. It is the same rationale applied in preserving life in the case of blood transfusions for Jehovah’s Witnesses, restricting parental rights to punish children and tackling exorcism.

Interpretation of priorities where religious worldviews appear to conflict with the secular must be understood in the light of the protective imperative of the paradigm. As observed when reviewing English law, state intervention in response to concerns about physical harm and preservation of bodily integrity is less contested because physical harm is more easily evidenced. Reports, statistics and cases indicate that more difficult and contested judgements arise in establishing minimum educational norms and affective protection to enable young people to negotiate conflicts between their worldview and wider society. Yet, if some Orthodox religious schools can balance religious perspectives with information about wider society it seems that the balance of priorities between affirmation of religious tradition and a sufficiently broad education can be achieved. This is particularly so where a significant factor in restrictive education is lack of the dominant language rather than theological difference. It is thus
important to ensure adequate education and sufficient information to negotiate multiculturalism and enable self-protection for those children most likely to be affected by cultural conflict. The overriding principle is ensuring that in whichever community a child is raised their needs and autonomous integrity are respected through capacity for discernment and negotiating difference, values and relationships. In the case of children with limited capacity for such discernment the protection of bodily integrity has to be prioritised before the religious imperative, although accommodating religion where possible. This is the logical consequence of the primary protective purpose of the paradigm and the law. What this means in practice is determined by reference to the rights which protect all these aspects of graced autonomy.

The ethics entailed in the paradigm of graced autonomy are also instructive for adults in reflecting on their own lives not just protection of others and raising their children. The fact that the emphasis is on the complex gift of autonomous integrity lived in relation to others is an important prompt to discernment of vocation, how that is a gift to wider society, restraint on abuse of limitations and affirmation of roles in the world within the dynamic relationships which sustain them. Such an ethic is also a prompt to resist the temptation to avoid particular callings or the right thing to do in a situation by hiding or failing to use the gifts given. The relational dimension of the paradigm fosters a co-operative ethic and inter-dependence with the emphasis on enabling all to realise their vocation and gifts rather than a competitive individualism. Co-operation and inter-dependence also requires the fostering of participation in developing society, policy and the public square recognising its crucial relationship with what has been hidden in the private spheres of family and religion. Such an ethic is not the simple affirmation or product of liberal values and polity, nor simply an affirmation of virtuous discernment; it seeks to be a way to affirm the value of each individual within the context of their particular contribution individually and communally to the whole society.

Nor is it simply a response to the multicultural nature of our society and its increasingly global nature because societies have been multicultural for centuries. It is rather an approach to the negotiating of the particular and universal, the individual and collective which emphasises the need to protect the diversity of gift at the heart of creation. If, as all major religions and secular philosophy affirm, each individual has a
distinct soul or moral identity for which they are accountable to their maker and/or fellow humanity, then the emphasis on protecting the individual and their graced contribution to the collective has universal resonance and application. It is the tendency of collectives, whether families, communities or states to concentrate power in ways that jeopardise or oppress individuals, which necessitates protection of each graced contribution to the collective. It is a similar imperative that requires the protection of children and all aspects of their developing autonomy as a corrective restraint to the risk of abuse of autonomous authority, whether parental or communal. Far from being alien to religion the restraints and protective oversight contained in rights-based instruments, particularly within the UNCRC, recognise the possibility of human failure and the need for inter-dependent checks and balances against misuse or exploitation of power.

The risk in continued use of rights is that the need to interrogate their content, interpretation and application may continue to be overlooked by a dominant liberal society which takes rights and their epistemological and ontological assumptions for granted. The consequence could be failures to recognise new developments and contexts which raise concerns about the application of normative protective standards. There is a contrasting danger that in engaging with religious difference dominant society remains blind to the implications of the paradigm for aspects of its own culture and parenting. For example, excessive parental ambition for children’s sporting, musical or academic success which causes distress also threatens children’s integrity and well-being, not just extremes perceived as religious like forced marriage. By contrast the under-ambitious parent who fails to support children’s education and development of their full gifts also undermines their integrity and capacity for autonomy and fullness of life. Although this paradigm for interpreting rights has greater practical application than paradigms of personhood, children’s vulnerability or mystery its full application requires further exploration. Whilst it is a paradigm that has general ethical application it is in the context of policy development and frontline work of safeguarding that it will be most tested. The implications for theological literacy in social work and court proceedings need further exploration. Some theological literacy is already available in courts through use of culturally appropriate assessors and expert evidence. However, the adequacy of such expertise at all levels and amongst all
agencies involved in safeguarding needs to be monitored and the consistent application of the paradigm of graced autonomy assessed.

A further important issue, also identified by McFadyen and discussed earlier is the implications of the paradigm for education. Education that enables full ethical, affective and bodily integrity so as to negotiate multiculturalism personally and communally also teaches respect for self and others in the light of the preciousness of God and of their own and others’ creation. Such self-respect and information is needed to enable self-protection from practices made illegal like forced marriage, cliterodectomy or exorcism. However, parents, teachers and community leaders within all communities also need an awareness of the necessity and benefit of such education. This has implications not only for raising children and the religious practices of particular communities but also for theological and religious development within such communities. It does not prescribe a particular faith, branch of faith, way of interpreting scripture or scriptural source but does require openness from faith communities, indeed all communities, to children and young people negotiating new situations in each generation. It also requires communities’ openness to each other in a common search to protect the next generation and what is most human.

The paradigm of graced autonomy also has implications for understandings and sources of ethical and epistemological authority. It does not undermine traditional sources of authority but makes clearer the personal component in interpreting and confirming allegiance to particular authorities and epistemology. Personal autonomy in relation, recognition of the fullness of integrity and education to that end does not abandon communal authority and development of faith traditions. However, it does realise more fully the fact that communities are constituted of graced and diverse individuals called to live together and that unless a community and society protects its people it will lose or overlook some of its communal grace and life. Religious communities have had to negotiate engagement with other worldviews, traditions and generations throughout history, whether as dominant political powers like the Christian Holy Roman Empire and Ottoman Islam or minorities like the Jews dispersed within various non-Jewish states. The resolution of such engagement has varied from protection of religious particularity through the Ottoman millet courts and customary courts in British India to imposition of uniformity through conversion or expulsion.
The difference in contemporary models of multiculturalism and state is the search for universal standards with preservation of religious diversity on an international basis. Child protection and children’s rights are one area of this search for universality with diversity.

Like McFadyen’s thesis of the call to personhood there is the danger that affirmation of subjectivity in contexts from discourse to development of societal policies could lead to distortion, atomism or relativism. However, the affirmation of subjective integrity is constrained by both the limits of others in dialectic and communal relation and the objectivity of relationship in God including human finitude. This means that affective impulses that would use or exploit another are prohibited rather than affirmed by the paradigm. The protective intervention of prohibiting abuse and exploitation grounds the autonomy and integrity of those whose capacity to protect themselves through consent is limited due to youth, learning disability or inhibition by communal pressure. Similarly preservation of life and bodily integrity through legal prohibition of cliterodectomy and sado-masochism or medical intervention to restrain self-harm and suicide sets limits to subjective impulses towards self-disposal or self-destruction. Prohibition of euthanasia has a similar function in setting limits which reduce the risks of manipulation or pressure that could prompt someone to self-disposal.

A further dimension that reduces the risks of affirming a distorted subjectivity is the necessity of openness to the other through the relational dimension of the paradigm. This operates within both intimate relational settings for example in families and between parent and child but also on a communal level. Openness reduces the risks of distortion both in terms of capacity for personal discernment and access to informed judgement about one’s own tradition and in understanding of and engagement with other traditions. The paradigm can therefore operate so as to reduce risks of distortion through an over-subjective understanding of autonomy at either the personal or communal level. The affirmation of the subjective autonomy that each individual brings to diverse relationships has consequences not only for protecting individuals, particularly those who are most vulnerable, but also for the realisation of community cohesion based on affirmation of difference in dialogue rather than uniformity. This also has consequences for understandings of identity within particular communities and between the diversity of communities that make up wider society. Any relational
setting, whether individual persons in familial relations or individuals in a communal
context, carries dangers of exploitation or manipulation through withholding
information, playing on vulnerabilities or misplaced loyalties. The explicit
inclusion within the UNCRC of provisions prohibiting exploitation is an addition to
human rights that is not seen in other rights-based instruments and acknowledges
tendencies to power imbalances behind the protective imperative.

By affirming the individual as part of wider relational contexts the paradigm of graced
autonomy recognises the interplay of relationships within human ontology and
development. However, by affirming the protection of personal autonomy as
distinctively graced, priority is given to protecting the individual over the collective
against the risks of oppressive or totalitarian collectivism. This protection operates
through the legal priority of intervening to protect those whose limited capacity to
exercise autonomy makes them vulnerable to the power of others. However, it also
operates to distribute power by enabling the capacity of individuals to realise their full
autonomy within the context of their collective allegiances. Prioritising the individual
within the collective also enables an ordering of priorities as between different rights.
Thus the child’s right to an adequate education to negotiate the fullness of life in their
society as well as their particular community and family takes priority over any
communal desire to restrict education in a defensive separatism. Similarly the child’s
affective integrity and the right to adequately informed cognitive integrity takes
priority over familial marital ambition where the two do not coincide. Thus what is
prioritised is respect for the child’s innate affectivity over others’ ambitions for
relationships, the child’s right to physical safety and bodily integrity over religious
imperatives and traditions, the child’s right to know enough and learn enough to make
up own minds and the child’s communal identity based on their life and practice not
punishment for parental misconduct or communal and cultural purity in genetic terms.

Prioritising the individual’s graced autonomy against the collective is one aspect of the
paradigm. In the case of a conflict of priorities as between individuals for example
between children and parents the paradigm protects as a priority the needs of the more
vulnerable party when considered in the fullness of what is needed to protect their

1114 A critique of relational understanding highlighted by J Herring “Relational autonomy and rape” Eds.
S Day Sclater, E Jackson, M Richards, F Ebtehaj Regulating autonomy (Oxford: Hart Publishing 2009)
pp.53-72
graced autonomy. This does not mean that what the child wants will automatically be prioritised over parental wishes but that the interests of the child will be considered in the fullness of their integrity and graced autonomy. This may mean prioritising the protective paradigm to restrain activity, for example protecting the child vulnerable to manipulation from a damaging or abusive parent, carer or other adult relationship. However, the protective priority can never give way to a competing priority that would be coercive for example an alternative relationship, as happens in forced marriage or submission to a medical or physical procedure that will be harmful. Similarly parental rights to discipline children are constrained by the imperative of their use for protection, with limits to the use of physical force and the note on guidance not coercion. The potential for conflicting interests and risks of abusive power are therefore recognised and the paradigm provides a normative focus to resolve them that can be applied in various worldviews rather than imposing an assumed secular norm.

Summary:

In summary therefore it is proposed that the paradigm of graced autonomy, which affirms the importance of all dimensions of personal integrity within the diversity of relationships to which human beings are called, provides an interpretive tool to enhance consensus over the application of children’s rights. Although inspired by and grounded in Christian theology the paradigm can be grounded in the theology of other faith traditions and in secular philosophy, giving it greater scope for cross-cultural application than purely secular norms. The paradigm lends itself better to the framework of the United Nations Convention on the Rights of the Child than those of adult rights conventions as the rights protected include integrity and autonomy rights, material provision and freedom from exploitation, focussing on the most human qualities rather than property rights. However, it is a paradigm that can also be applied more widely to protection of adults through understanding autonomy not as self-possession but as distinctive and inter-dependent gift to community and society.

Similarly, although commencing with a search for universally accepted norms for protecting children, the paradigm has implications for a wider range of policy development in society. These include not only protection of adult rights but also the necessity for education that enables personal discernment and multicultural
engagement. The paradigm affirms individuals in a range of relationships not just those of their family and particular community. It affirms the autonomy of individuals as persons with particular affiliations but enabled to negotiate those affiliations and commitments in true freedom rather than defensive ignorance. This enhances self-protection as well as participative development within minority communities. The paradigm also challenges assumptions of western society concerning commonality of worldviews and demonstrates that engagement with religious difference is possible. It may also challenge double standards in thinking about secular versus religious practices, prompting interrogation of practices like plastic surgery alongside cliterodectomy. The affirmation of community allegiances and recognition of and engagement with religious difference can also enhance positive development of community cohesion based on overlapping consensus rather than imposition of secular or dominant norms.

Some aspects of the defence of personal autonomy reflect McFadyen’s exploration of personhood. Similarly some aspects of the defence of rights build on work by Wolterstorff, Forrester and Marshall and Parvis which locate human rights to protection in the theologies of *imago dei* and equality. However, the paradigm offers a contribution that adds to their analyses by providing a more detailed and comprehensive analysis of human distinctiveness, seeking to overcome the particularity of Christian theology used in other Christian defences of rights. It also overcomes the lack of detail in child theologies that defend children’s vulnerability and mystery without linking it to their protection. More detailed analysis of human distinctiveness enables the paradigm to be applied to and inculturated within other traditions, adding to earlier research by overcoming weaknesses in protective norms which fail to recognise core differences between religious and secular ontology. Much in the paradigm remains to be explored and applied in a range of contexts but the paradigm provides at least a platform to begin that exploration and the dialogue needed for wider application.
APPENDICES

Appendix 1

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Adoption Act 1976

s.6 Duty to promote welfare of child.
In reaching any decision relating to the adoption of a child a court or adoption agency shall have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.

s.7 Religious upbringing of adopted child.
An adoption agency shall in placing a child for adoption have regard (so far as is practicable) to any wishes of a child’s parents and guardians as to the religious upbringing of the child.

Adoption and Children Act 2002

s.1 Considerations applying to the exercise of powers
(1) This section applies whenever a court or adoption agency is coming to a decision relating to the adoption of a child.

(2) The paramount consideration of the court or adoption agency must be the child’s welfare, throughout his life.

(3) The court or adoption agency must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child’s welfare.

(4) The court or adoption agency must have regard to the following matters (among others)—

(a) The child’s ascertainable wishes and feelings regarding the decision (considered in the light of the child’s age and understanding),

(b) The child’s particular needs,

(c) The likely effect on the child (throughout his life) of having ceased to be a member of the original family and become an adopted person,

(d) The child’s age, sex, background and any of the child’s characteristics which the court or agency considers relevant,

(e) Any harm (within the meaning of the Children Act 1989 (c. 41)) which the child has suffered or is at risk of suffering,
(f) The relationship which the child has with relatives, and with any other person in relation to whom the court or agency considers the relationship to be relevant, including—

(i) The likelihood of any such relationship continuing & the value to the child of its doing so,

(ii) The ability and willingness of any of the child’s relatives, or of any such person, to provide the child with a secure environment in which the child can develop, and otherwise to meet the child’s needs,

(iii) The wishes and feelings of any of the child’s relatives, or of any such person, regarding the child.

(5) In placing the child for adoption, the adoption agency must give due consideration to the child’s religious persuasion, racial origin and cultural and linguistic background.

(6) The court or adoption agency must always consider the whole range of powers available to it in the child’s case (whether under this Act or the Children Act 1989); and the court must not make any order under this Act unless it considers that making the order would be better for the child than not doing so.

(8) For the purposes of this section—

(a) References to relationships are not confined to legal relationships,

(b) References to a relative, in relation to a child, include the child’s mother and father.

Meaning of “harm” Children Act 1989 Act
(Inserted by s.120 Adoption & Children Act 2002)
In section 31 of the 1989 Act (care and supervision orders), at the end of the definition of “harm” in subsection (9) there is inserted “including, for example, impairment suffered from seeing or hearing the ill-treatment of another”.

Children Act 1989

s.1 Welfare of the child.
(1) When a court determines any question with respect to—

(a) The upbringing of a child; or

(b) The administration of a child’s property or the application of any income arising from it, the child’s welfare shall be the court’s paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

(3) In the circumstances mentioned in subsection (4), a court shall have regard in particular to—
(a) The ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);

(b) His physical, emotional and educational needs;

(c) The likely effect on him of any change in his circumstances;

(d) His age, sex, background and any characteristics of his which the court considers relevant;

(e) Any harm which he has suffered or is at risk of suffering;

(f) How capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;

(g) The range of powers available to the court under this Act in the proceedings in question.

(4) The circumstances are that—

(a) The court is considering whether to make, vary or discharge a section 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or

(b) The court is considering whether to make, vary or discharge a special guardianship order or an order under Part IV.

(5) Where a court is considering whether or not to make one or more orders under this Act with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.

s.2 Parental responsibility for children.

(1) Where a child’s father and mother were married to each other at the time of his birth, they shall each have parental responsibility for the child.

(2) Where a child’s father and mother were not married to each other at the time of his birth—

(a) The mother shall have parental responsibility for the child;

(b) The father shall have parental responsibility for the child if he has acquired it (and has not ceased to have it) in accordance with the provisions of this Act.

(3) References in this Act to a child whose father and mother were, or (as the case may be) were not, married to each other at the time of his birth must be read with section 1 of the Family Law Reform Act 1987 (which extends their meaning).

(4) The rule of law that a father is the natural guardian of his legitimate child is abolished.

(5) More than one person may have parental responsibility for the same child at the same time.
(6) A person who has parental responsibility for a child at any time shall not cease to have that responsibility solely because some other person subsequently acquires parental responsibility for the child.

(7) Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility; but nothing in this Part shall be taken to affect the operation of any enactment which requires the consent of more than one person in a matter affecting the child.

(8) The fact that a person has parental responsibility for a child shall not entitle him to act in any way which would be incompatible with any order made with respect to the child under this Act.

(9) A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf.

(10) The person with whom any such arrangement is made may himself be a person who already has parental responsibility for the child concerned.

(11) The making of any such arrangement shall not affect any liability of the person making it which may arise from any failure to meet any part of his parental responsibility for the child concerned.

s.3 Meaning of “parental responsibility”.

(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.

(2) It also includes the rights, powers and duties which a guardian of the child’s estate (appointed, before the commencement of section 5, to act generally) would have had in relation to the child and his property.

(3) The rights referred to in subsection (2) include, in particular, the right of the guardian to receive or recover in his own name, for the benefit of the child, property of whatever description and wherever situated which the child is entitled to receive or recover.

(4) The fact that a person has, or does not have, parental responsibility for a child shall not affect—

(a) Any obligation which he may have in relation to the child (such as a statutory duty to maintain the child); or

(b) Any rights which, in the event of the child’s death, he (or any other person) may have in relation to the child’s property.

(5) A person who—

(a) Does not have parental responsibility for a particular child; but
(b) Has care of the child, may (subject to the provisions of this Act) do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child’s welfare.

**s.14 Children Act 1989 (Inserted by s.115 Adoption & Children Act 2002)**

**s.14A Special Guardianship Orders: making**

(1) Before making a special guardianship order, the court must consider whether, if the order were made—

(a) A contact order should also be made with respect to the child

(b) Any section 8 order in force with respect to the child should be varied or discharged.

(c) Where a contact order made with respect to the child is not discharged, any enforcement order relating to that contact order should be revoked, and

(d) Where a contact activity direction has been made as regards contact with the child and is in force, that contact activity direction should be discharged.

(2) On making a special guardianship order, the court may also—

(a) Give leave for the child to be known by a new surname;

(b) Grant the leave required by section 14C(3)(b), either generally or for specified purposes.

**s.14B Special guardianship orders: effect**

(1) The effect of a special guardianship order is that while the order remains in force—

(a) A special guardian appointed by the order has parental responsibility for the child in respect of whom it is made; and

(b) Subject to any other order in force with respect to the child under this Act, a special guardian is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child (apart from another special guardian).

(2) Subsection (1) does not affect—

(a) The operation of any enactment or rule of law which requires the consent of more than one person with parental responsibility in a matter affecting the child; or

(b) Any rights which a parent of the child has in relation to the child’s adoption or placement for adoption.

(3) While a special guardianship order is in force with respect to a child, no person may—

(a) Cause the child to be known by a new surname; or

(b) Remove him from the United Kingdom,

without either the written consent of every person who has parental responsibility for the child or the leave of the court.
(4) Subsection (3)(b) does not prevent the removal of a child, for a period of less than three months, by a special guardian of his.

(5) If the child with respect to whom a special guardianship order is in force dies, his special guardian must take reasonable steps to give notice of that fact to—

(a) Each parent of the child with parental responsibility; and

(b) Each guardian of the child,

but if the child has more than one special guardian, and one of them has taken such steps in relation to a particular parent or guardian, any other special guardian need not do so as respects that parent or guardian.

(6) This section is subject to section 29(7) of the Adoption and Children Act 2002.

s.17 Children Act 1989
Provision of services for children in need, their families and others.

(1) It shall be the general duty of every local authority (in addition to the other duties imposed on them by this Part)—

(a) To safeguard and promote the welfare of children within their area who are in need; and

(b) So far as is consistent with that duty, to promote the upbringing of such children by their families, by providing a range and level of services appropriate to those children’s needs.

(2) For the purpose principally of facilitating the discharge of their general duty under this section, every local authority shall have the specific duties and powers set out in Part 1 of Schedule 2.

(3) Any service provided by an authority in the exercise of functions conferred on them by this section may be provided for the family of a particular child in need or for any member of his family, if it is provided with a view to safeguarding or promoting the child’s welfare.

(4) The “appropriate national authority” may by order amend any provision of Part I of Schedule 2 or add any further duty or power to those for the time being mentioned there.

(4A) Before determining what (if any) services to provide for a particular child in need in the exercise of functions conferred on them by this section, a local authority shall, so far as is reasonably practicable and consistent with the child’s welfare—

(a) Ascertain the child’s wishes and feelings regarding the provision of those services; and

(b) Give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain.

(5) Every local authority—
(a) Shall facilitate the provision by others (including in particular voluntary organisations) of services which the authority have power to provide by virtue of this section, or section 18, 20, 23, 23B to 23D, 24A or 24B; and

(b) May make such arrangements as they see fit for any person to act on their behalf in the provision of any such service.

(6) The services provided by a local authority in the exercise of functions conferred on them by this section may include [providing accommodation and] giving assistance in kind or, in exceptional circumstances, in cash.

(7) Assistance may be unconditional or subject to conditions as to the repayment of the assistance or of its value (in whole or in part).

(8) Before giving any assistance or imposing any conditions, a local authority shall have regard to the means of the child concerned and of each of his parents.

(9) No person shall be liable to make any repayment of assistance or of its value at any time when he is in receipt of income support under Part VII of the Social Security Contributions and Benefits Act 1992 of any element of child tax credit other than the family element, of working tax credit of an income-based jobseeker's allowance or of an income-related employment and support allowance.

(10) For the purposes of this Part a child shall be taken to be in need if—

(a) He is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by a local authority under this Part;

(b) His health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or

(c) He is disabled, and “family”, in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.

(11) For the purposes of this Part, a child is disabled if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this Part—

“development” means physical, intellectual, emotional, social or behavioural development; and

“health” means physical or mental health.

s.22 Children Act 1989
General duty of local authority in relation to children looked after by them.
(1) In this Act, any reference to a child who is looked after by a local authority is a reference to a child who is—

(a) In their care; or
(b) Provided with accommodation by the authority in the exercise of any functions (in particular those under this Act) which are social services functions within the meaning of the Local Authority Social Services Act 1970 apart from functions under sections 23B and 24B.

(2) In subsection (1) “accommodation” means accommodation which is provided for a continuous period of more than 24 hours.

(3) It shall be the duty of a local authority looking after any child—

(a) To safeguard and promote his welfare; and

(b) To make such use of services available for children cared for by their own parents as appears to the authority reasonable in his case.

(3A) The duty of a local authority under subsection (3)(a) to safeguard and promote the welfare of a child looked after by them includes in particular a duty to promote the child’s educational achievement.

(4) Before making any decision with respect to a child whom they are looking after, or proposing to look after, a local authority shall, so far as is reasonably practicable, ascertain the wishes and feelings of—

(a) The child;

(b) His parents;

(c) Any person who is not a parent of his but who has parental responsibility for him; and

(d) Any other person whose wishes and feelings the authority consider to be relevant, regarding the matter to be decided.

(5) In making any such decision a local authority shall give due consideration—

(a) Having regard to his age and understanding, to such wishes and feelings of the child as they have been able to ascertain;

(b) To such wishes and feelings of any person mentioned in subsection (4)(b) to (d) as they have been able to ascertain; and

(c) To the child’s religious persuasion, racial origin and cultural and linguistic background.

(6) If it appears to a local authority that it is necessary, for the purpose of protecting members of the public from serious injury, to exercise their powers with respect to a child whom they are looking after in a manner which may not be consistent with their duties under this section, they may do so.

(7) If the appropriate national authority considers it necessary, for the purpose of protecting members of the public from serious injury, to give directions to a local authority with respect to the exercise of their powers with respect to a child whom they are looking after the appropriate national authority may give such directions to the local authority.
(8) Where any such directions are given to an authority they shall comply with them even though doing so is inconsistent with their duties under this section.

s.31 Children Act 1989
Care and Supervision
(1) On the application of any local authority or authorised person, the court may make an order—
(a) Placing the child with respect to whom the application is made in the care of a designated local authority; or
(b) Putting him under the supervision of a designated local authority
(2) A court may only make a care order or supervision order if it is satisfied—
(a) That the child concerned is suffering, or is likely to suffer, significant harm; and
(b) That the harm, or likelihood of harm, is attributable to—
(i) The care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
(ii) The child’s being beyond parental control.
(3) No care order or supervision order may be made with respect to a child who has reached the age of seventeen (or sixteen, in the case of a child who is married).
(9) In this section—
“authorised person” means— (a) the National Society for the Prevention of Cruelty to Children and any of its officers; and (b) any person authorised by order of the Secretary of State to bring proceedings under this section and any officer of a body which is so authorised;
“harm” means ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another;
“development” means physical, intellectual, emotional, social or behavioural development;
“health” means physical or mental health; and
“ill-treatment” includes sexual abuse and forms of ill-treatment which are not physical.
(10) Where the question of whether harm suffered by a child is significant turns on the child’s health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.

Children Act 2004
s.10 Co-operation to improve well-being
(1) Each children’s services authority in England must make arrangements to promote co-operation between - (a) the authority; (b) each of the authority’s relevant partners; and (c) such other persons or bodies as the authority consider appropriate, being persons
or bodies of any nature who exercise functions or are engaged in activities in relation to children in the authority’s area.

(2) The arrangements are to be made with a view to improving the well-being of children in the authority’s area so far as relating to—

(a) Physical and mental health and emotional well-being;
(b) Protection from harm and neglect;
(c) Education, training and recreation;
(d) The contribution made by them to society;
(e) Social and economic well-being.

(3) In making arrangements under this section a children’s services authority in England must have regard to the importance of parents and other persons caring for children in improving the well-being of children.

s. 53 Children Act 2004 - Ascertaining children’s wishes

(1) In section 17 of the Children Act 1989 (provision of services to children), after subsection (4) insert—

“(4A) Before determining what (if any) services to provide for a particular child in need in the exercise of functions conferred on them by this section, a local authority shall, so far as is reasonably practicable and consistent with the child’s welfare—

(a) Ascertain the child’s wishes and feelings regarding the provision of those services; and

(b) Give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain.”

(2) In section 20 of that Act (provision of accommodation for children: general), in subsection (6)(a) and (b), after “wishes” insert “and feelings”.

(3) In section 47 of that Act (local authority’s duty to investigate), after subsection (5) insert—

“(5A) For the purposes of making a determination under this section as to the action to be taken with respect to a child, a local authority shall, so far as is reasonably practicable and consistent with the child’s welfare—

(a) Ascertain the child’s wishes and feelings regarding the action to be taken with respect to him; and

(b) Give due consideration (having regard to his age and understanding) to such wishes and feelings of the child as they have been able to ascertain.”

s.58 Children Act 2004 - Reasonable punishment

(1) In relation to any offence specified in subsection (2), battery of a child cannot be justified on the ground that it constituted reasonable punishment.
The offences referred to in subsection (1) are—

(a) An offence under section 18 or 20 of the Offences against the Person Act 1861 (c. 100) (wounding and causing grievous bodily harm);

(b) An offence under section 47 of that Act (assault occasioning actual bodily harm);

(c) An offence under section 1 of the Children and Young Persons Act 1933 (c. 12) (cruelty to persons under 16).

(3) Battery of a child causing actual bodily harm to the child cannot be justified in any civil proceedings on the ground that it constituted reasonable punishment.

(4) For the purposes of subsection (3) “actual bodily harm” has the same meaning as it has for the purposes of section 47 of the Offences against the Person Act 1861.

Childcare Act 2006
s.1 General duties of local authority in relation to well-being of young children
(1) An English local authority must—

(a) Improve the well-being of young children in their area, and

(b) Reduce inequalities between young children in their area in relation to the matters mentioned in subsection (2).

(2) In this Act “well-being”, in relation to children, means their well-being so far as relating to—

(a) Physical and mental health and emotional well-being;

(b) Protection from harm and neglect;

(c) Education, training and recreation;

(d) The contribution made by them to society;

(e) Social and economic well-being.

(3) The Secretary of State may, in accordance with regulations, set targets for—

(a) The improvement of the well-being of young children in the area of an English local authority;

(b) The reduction of inequalities between young children in the area of an English local authority in relation to the matters mentioned in subsection (2).

Human Rights Act 1998
s.1 The Convention Rights.
(1) In this Act “the Convention rights” means the rights and fundamental freedoms set out in—

(a) Articles 2 to 12 and 14 of the Convention,

(b) Articles 1 to 3 of the First Protocol, and
(c) Article 1 of the Thirteenth Protocol, read with Articles 16 to 18 of the Convention.

**Equality Act 2006**

**s.8 Equality and diversity**

(1) The Commission shall, by exercising the powers conferred by this Part—

(a) Promote understanding of the importance of equality and diversity,

(b) Encourage good practice in relation to equality and diversity,

(c) Promote equality of opportunity,

(d) Promote awareness and understanding of rights under the equality enactments,

(e) Enforce the equality enactments,

(f) Work towards the elimination of unlawful discrimination, and

(g) Work towards the elimination of unlawful harassment.

(2) In subsection (1)—

“diversity” means the fact that individuals are different,

“equality” means equality between individuals, and

“unlawful” is to be construed in accordance with section 34.

**s.9 Human rights**

(1) The Commission shall, by exercising the powers conferred by this Part—

(a) Promote understanding of the importance of human rights,

(b) Encourage good practice in relation to human rights,

(c) Promote awareness, understanding and protection of human rights, and

(d) Encourage public authorities to comply with section 6 of the Human Rights Act 1998 (c. 42) (compliance with Convention rights).

(2) In this Part “human rights” means—

(a) The Convention rights within the meaning given by section 1 of the Human Rights Act 1998, and

(b) Other human rights.

**s.10 Groups**

(1) The Commission shall, by exercising the powers conferred by this Part—

(a) Promote understanding of the importance of good relations—

(i) Between members of different groups, and

(ii) Between members of groups and others,
(b) Encourage good practice in relation to relations—
(i) Between members of different groups, and
(ii) Between members of groups and others,
(c) Work towards the elimination of prejudice against, hatred of and hostility towards members of groups, and
(d) Work towards enabling members of groups to participate in society.

(2) In this Part “group” means a group or class of persons who share a common attribute in respect of any of the following matters—
(a) Age, (b) Disability, (c) Gender, (d) Proposed, commenced or completed reassignment of gender (within the meaning given by section 82(1) of the Sex Discrimination Act 1975 (c. 65), (e) Race, (f) Religion or belief, and
(g) sexual orientation.

(4) In determining what action to take in pursuance of this section the Commission shall have particular regard to the importance of exercising the powers conferred by this Part in relation to groups defined by reference to race, religion or belief.

(5) The Commission may, in taking action in pursuance of subsection (1) in respect of groups defined by reference to disability and others, promote or encourage the favourable treatment of disabled persons.

(6) The Minister may by order amend the list in subsection (2) so as to—
(a) Add an entry, or (b) vary an entry.

(7) This section is without prejudice to the generality of section 8.

s.44 Religion and belief
In this Part—
(a) “religion” means any religion,
(b) “belief” means any religious or philosophical belief,
(c) A reference to religion includes a reference to lack of religion, and
(d) A reference to belief includes a reference to lack of belief.

s.57 Organisations relating to religion or belief
(1) This section applies to an organisation the purpose of which is—
(a) To practice a religion or belief,
(b) To advance a religion or belief,
(c) To teach the practice or principles of a religion or belief,
(d) To enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief, or
(e) To improve relations, or maintain good relations, between persons of different religions or beliefs.

(2) But this section does not apply to an organisation whose sole or main purpose is commercial.

(3) Nothing in this Part shall make it unlawful for an organisation to which this section applies or anyone acting on behalf of or under the auspices of an organisation to which this section applies—

(a) To restrict membership of the organisation,
(b) To restrict participation in activities undertaken by the organisation or on its behalf or under its auspices,
(c) To restrict the provision of goods, facilities or services in the course of activities undertaken by the organisation or on its behalf or under its auspices, or
(d) To restrict the use or disposal of premises owned or controlled by the organisation.

(4) Nothing in this Part shall make it unlawful for a minister—

(a) To restrict participation in activities carried on in the performance of his functions in connection with or in respect of an organisation to which this section relates, or
(b) To restrict the provision of goods, facilities or services in the course of activities carried on in the performance of his functions in connection with or in respect of an organisation to which this section relates.

(5) But subsections (3) and (4) permit a restriction only if imposed—

(a) By reason of or on the grounds of the purpose of the organisation, or
(b) In order to avoid causing offence, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief.

(6) In subsection (4) the reference to a minister is a reference to a minister of religion, or other person, who—

(a) Performs functions in connection with a religion or belief to which an organisation, to which this section applies, relates, and
(b) Holds an office or appointment in, or is accredited, approved or recognised for purposes of, an organisation to which this section applies.

s.58 Charities relating to religion or belief
(1) Nothing in this Part shall make it unlawful for a person to provide benefits only to persons of a particular religion or belief, if—

(a) He acts in pursuance of a charitable instrument, and

(b) The restriction of benefits to persons of that religion or belief is imposed by reason of or on the grounds of the provisions of the charitable instrument.

Equality Act 2010
Schedule 23

Organisations relating to religion or belief
2(1) This paragraph applies to an organisation the purpose of which is—

(a) to practise a religion or belief,

(b) to advance a religion or belief,

(c) to teach the practice or principles of a religion or belief,

(d) to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief, or

(e) to foster or maintain good relations between persons of different religions or beliefs.

(2) This paragraph does not apply to an organisation whose sole or main purpose is commercial.

(3) The organisation does not contravene Part 3, 4 or 7, so far as relating to religion or belief or sexual orientation, only by restricting—

(a) membership of the organisation;

(b) participation in activities undertaken by the organisation or on its behalf or under its auspices;

(c) the provision of goods, facilities or services in the course of activities undertaken by the organisation or on its behalf or under its auspices;

(d) the use or disposal of premises owned or controlled by the organisation.

(4) A person does not contravene Part 3, 4 or 7, so far as relating to religion or belief or sexual orientation, only by doing anything mentioned in sub-paragraph (3) on behalf of or under the auspices of the organisation.
(5) A minister does not contravene Part 3, 4 or 7, so far as relating to religion or belief or sexual orientation, only by restricting—

(a) participation in activities carried on in the performance of the minister's functions in connection with or in respect of the organisation;

(b) the provision of goods, facilities or services in the course of activities carried on in the performance of the minister's functions in connection with or in respect of the organisation.

(6) Sub-paragraphs (3) to (5) permit a restriction relating to religion or belief only if it is imposed—

(a) because of the purpose of the organisation, or

(b) to avoid causing offence, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief.

(7) Sub-paragraphs (3) to (5) permit a restriction relating to sexual orientation only if it is imposed—

(a) because it is necessary to comply with the doctrine of the organisation, or

(b) to avoid conflict with strongly held convictions within sub-paragraph (9).

(8) In sub-paragraph (5), the reference to a minister is a reference to a minister of religion, or other person, who—

(a) performs functions in connection with a religion or belief to which the organisation relates, and

(b) holds an office or appointment in, or is accredited, approved or recognised for the purposes of the organisation.

(9) The strongly held convictions are—

(a) in the case of a religion, the strongly held religious convictions of a significant number of the religion's followers;

(b) in the case of a belief, the strongly held convictions relating to the belief of a significant number of the belief's followers.

(10) This paragraph does not permit anything which is prohibited by section 29, so far as relating to sexual orientation, if it is done—

(a) on behalf of a public authority, and

(b) under the terms of a contract between the organisation and the public authority.

(11) In the application of this paragraph in relation to sexual orientation, sub-paragraph (1)(e) must be ignored.
(12) In the application of this paragraph in relation to sexual orientation, in sub-
paragraph (3)(d), “disposal” does not include disposal of an interest in premises by
way of sale if the interest being disposed of is—

(a) the entirety of the organisation's interest in the premises, or

(b) the entirety of the interest in respect of which the organisation has power of
disposal.

(13) In this paragraph—

(a) “disposal” is to be construed in accordance with section 38;

(b) “public authority” has the meaning given in section 150(1).

Prohibition of Female Circumcision Act 1985

s.1 Prohibition of female circumcision.

(1) Subject to section 2 below, it shall be an offence for any person—

(a) To excise, infibulate or otherwise mutilate the whole or any part of the labia majora
or labia minora or clitoris of another person; or

(b) To aid, abet, counsel or procure the performance by another person of any of those
acts on that other person’s own body.

(2) A person guilty of an offence under this section shall be liable—

(a) On conviction on indictment, to a fine or to imprisonment for a term not exceeding
five years or to both; or

(b) On summary conviction, to a fine not exceeding the statutory maximum $\text{F1} \ldots$ or
to imprisonment for a term not exceeding six months, or to both.

Female Genital Mutilation Act 2003

s.1 Offence of female genital mutilation

(1) A person is guilty of an offence if he excises, infibulates or otherwise mutilates the
whole or any part of a girl’s labia majora, labia minora or clitoris.

(2) But no offence is committed by an approved person who performs—

(a) A surgical operation on a girl which is necessary for her physical or mental health,
or

(b) A surgical operation on a girl who is in any stage of labour, or has just given birth,
for purposes connected with the labour or birth.

(3) The following are approved persons—
(a) In relation to an operation falling within subsection (2)(a), a registered medical practitioner,

(b) In relation to an operation falling within subsection (2)(b), a registered medical practitioner, a registered midwife or a person undergoing a course of training with a view to becoming such a practitioner or midwife.

(4) There is also no offence committed by a person who—

(a) Performs a surgical operation falling within subsection (2)(a) or (b) outside the United Kingdom, and

(b) In relation to such an operation exercises functions corresponding to those of an approved person.

(5) For the purpose of determining whether an operation is necessary for the mental health of a girl it is immaterial whether she or any other person believes that the operation is required as a matter of custom or ritual.

**Forced Marriage (Civil Protection) Act 2007**

s.1 Protection against forced marriage: England and Wales

After Part 4 of the Family Law Act 1996 (c. 27) insert—

"PART 4A FORCED MARRIAGE

Forced marriage protection orders"

63A Forced marriage protection orders

(1) The court may make an order for the purposes of protecting—

(a) A person from being forced into a marriage or from any attempt to be forced into a marriage; or

(b) A person who has been forced into a marriage.

(2) In deciding whether to exercise its powers under this section and, if so, in what manner, the court must have regard to all the circumstances including the need to secure the health, safety and well-being of the person to be protected.

(3) In ascertaining that person's well-being, the court must, in particular, have such regard to the person's wishes and feelings (so far as they are reasonably ascertainable) as the court considers appropriate in the light of the person's age and understanding.

(4) For the purposes of this Part a person ("A") is forced into a marriage if another person ("B") forces A to enter into a marriage (whether with B or another person) without A's free and full consent.

(5) For the purposes of subsection (4) it does not matter whether the conduct of B which forces A to enter into a marriage is directed against A, B or another person.
(6) In this Part—

“force” includes coerce by threats or other psychological means (and related expressions are to be read accordingly); and

“forced marriage protection order” means an order under this section.
HUMAN RIGHTS INSTRUMENTS:

European Convention on Human Rights

Article 1 – Obligation to respect Human Rights
Article 2 – Right to Life
Article 3 – Prohibition of Torture and inhuman and degrading treatment
Article 4 – Prohibition of slavery and forced labour
Article 5 – Right to liberty and security
Article 6 – Right to Fair Trial
Article 7 – No punishment without law
Article 8 – Right to privacy
Article 9 – Right to freedom of religion
Article 10 – Right to free speech
Article 11 – Right to free association
Article 12 – Right to marry
Article 13 – Right to compensation for breach of rights
Article 14 – Freedom from discrimination

United Nations Convention on the Rights of the Child

Article 1 – definition of child
For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2 – Non-discrimination
1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent’s or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3 – Best interests of child
1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

**Article 4 - Implementation**
States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

**Article 5 – Parental Guidance**
States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, 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.

**Article 6 – Right to life**
1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

**Article 7 – Registration, nationality and parental care**
1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

**Article 8 – identity through name, nationality and family**
1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

**Article 9 – Not to be separated from parents**

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

**Article 10 – Family reunification**

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are
prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11 – Prohibition of illicit transfer abroad
1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12 – Right to express views
1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13 – Freedom of expression
1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   (a) For respect of the rights or reputations of others; or
   (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14 – Right to freedom of thought, conscience and religion
1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.
Article 15 – Right to freedom of association
1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16 – Right to privacy and reputation
1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17 – Right to information
States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:
(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;
(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;
(c) Encourage the production and dissemination of children’s books;
(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;
(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18 – Right to parental care
1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.
2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

**Article 19 – Protection from abuse and neglect**

1. 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.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

**Article 20 – Right to state protection in absence of familial care**

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

**Article 21 - Adoption**

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the
persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22 – Refugees
1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, cooperation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23 – Children with disabilities
1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made
and which is appropriate to the child’s condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

**Article 24 – Right to health care**

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:
   (a) To diminish infant and child mortality;
   (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
   (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;
   (d) To ensure appropriate pre-natal and post-natal health care for mothers;
   (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;
   (f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.
4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

**Article 25 – Review of care**
States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

**Article 26 – Social Security**
1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

**Article 27 – Right to standard of living**
1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.
Article 28 – Right to education
1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:
   (a) Make primary education compulsory and available free to all;
   (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
   (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
   (d) Make educational and vocational information and guidance available and accessible to all children;
   (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29 – Definition of education
1. States Parties agree that the education of the child shall be directed to:
   (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
   (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
   (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;
   (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
   (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present
article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

**Article 30 – Right to minority education**
In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

**Article 31 – Right to recreation**
1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

**Article 32 – Right to protection from exploitation**
1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:
   (a) Provide for a minimum age or minimum ages for admission to employment;
   (b) Provide for appropriate regulation of the hours and conditions of employment;
   (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

**Article 33 – Protection from narcotics**
States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

**Article 34 – Protection from sexual exploitation**
States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
(a) The inducement or coercion of a child to engage in any unlawful sexual activity;
(b) The exploitative use of children in prostitution or other unlawful sexual practices;
(c) The exploitative use of children in pornographic performances and materials.

**Article 35 – Prevention of trafficking**
States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

**Article 36 – Protection from all exploitation**
States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

**Article 37 – Protection from cruel, inhuman or degrading treatment**
States Parties shall ensure that:
(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

**Article 38 – Protection during armed conflict**
1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

**Article 39 – Reintegration following abuse**
States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

**Article 40 – Protection of children before penal law**

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
   (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
   (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
      (i) To be presumed innocent until proven guilty according to law;
      (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
      (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
      (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
      (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
      (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
      (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41 – Minimum provisions
Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:
(a) The law of a State party; or
(b) International law in force for that State.

United Nations Declaration on Human Rights

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3: Everyone has the right to life, liberty and security of person.

Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6: Everyone has the right to recognition everywhere as a person before the law.
Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9: No one shall be subjected to arbitrary arrest, detention or exile.

Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13: (1) Everyone has the right to freedom of movement and residence within the borders of each state.
(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14: (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15: (1) Everyone has the right to a nationality.
(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16: (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
(2) Marriage shall be entered into only with the free and full consent of the intending spouses.
(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17: (1) Everyone has the right to own property alone as well as in association with others.
(2) No one shall be arbitrarily deprived of his property.

Article 18: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20: (1) Everyone has the right to freedom of peaceful assembly and association.
(2) No one may be compelled to belong to an association.

Article 21: (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
(2) Everyone has the right of equal access to public service in his country.
(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22: Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23: (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
(2) Everyone, without any discrimination, has the right to equal pay for equal work.
(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
(4) Everyone has the right to form and to join trade unions for the protection of his interests.
**Article 24:** Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**Article 25:** (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
   (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26:** (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
   (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
   (3) Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27:** (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
   (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28:** Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**Article 29:** (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
   (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
   (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

**Article 30:** Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.
Glossary:

Abbreviations:

CAFCASS  Children and Family Courts Advisory Services
CEDAW  Convention on the Elimination of Discrimination Against Women
CIMEL  Centre of Islamic and Middle Eastern Law – based at School of Oriental & African Studies, London
CUP  Cambridge University Press
DCA  Department for constitutional affairs
ECHR  European Convention on Human Rights
IJFL  International Journal of Family Law
IJFLP  International Journal of Family Law and Policy
OFSTED  Office for Standards in Education
OUP  Oxford University Press
SACRE  Standing Advisory Committee on Religious Education
UN  United Nations
UNCRC  United Nations Convention on the Rights of the Child
UNDHR  United Nations Declaration on Human Rights

Terminology:

Mores  customs
Telos  purpose, end
Ndoki  witchcraft

Muslim terms:

Adhan  prayer beginning ‘Allah u akbar’

adl  worthy of merit.
<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
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<tbody>
<tr>
<td>Alim</td>
<td>jurist</td>
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<tr>
<td>Amal</td>
<td>good action</td>
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<tr>
<td>Aquiqa</td>
<td>Sweet food eg honey, held to the child’s lips to make sweet</td>
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<tr>
<td>Bismillah</td>
<td>Basic Muslim prayers eg ‘Allah u akbar’</td>
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<tr>
<td>Fiqh</td>
<td>Muslim law based on four legal schools – Hanafi, Maliki, Shafi and Hanbali</td>
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<tr>
<td>Ghush</td>
<td>greater ritual cleansing</td>
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<tr>
<td>Hadith</td>
<td>sayings of the Prophet</td>
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<tr>
<td>Halal</td>
<td>permitted, lawful</td>
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<tr>
<td>Haram</td>
<td>forbidden, unlawful</td>
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<tr>
<td>Harami</td>
<td>illegitimate</td>
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<tr>
<td>Hijab</td>
<td>headscarf</td>
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<tr>
<td>Ihsan</td>
<td>excellence, personal perfection, to do beautiful things</td>
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<td>Iman</td>
<td>good belief</td>
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<tr>
<td>Iqhama</td>
<td>Command to rise and worship</td>
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<td>Izzat</td>
<td>‘honour’</td>
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<tr>
<td>Jilbab/burqa</td>
<td>types of fully-covering dress</td>
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<tr>
<td>Kefala</td>
<td>Muslim alternative to adoption</td>
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<tr>
<td>Makrama</td>
<td>nobility</td>
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<td>Muharram</td>
<td>period of mourning</td>
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<td>Muhrim</td>
<td>prohibited degrees of blood relation for marriage</td>
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<tr>
<td>Niqab</td>
<td>full face-veil</td>
</tr>
<tr>
<td>Nushuz</td>
<td>punishment for disobedience</td>
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<tr>
<td>Quiyamma</td>
<td>male duty to provide and protect</td>
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<tr>
<td>Raham</td>
<td>compassion</td>
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<tr>
<td>Rahim</td>
<td>love</td>
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<tr>
<td>Ruqya</td>
<td>prayers for healing</td>
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**Salafi**  
Returning to the sources

**Shari’a**  
Generic term for Muslim law derived from Qu’ran and Hadith

**Sunnah**  
Ways and practices of the prophet Mohammed

**talaq**  
male unilateral divorce

**tanika**  
ceremony of shaving head, naming and gifts of money

**ulama**  
body of jurists

**Umma**  
Muslim community

**Wali**  
guardian

**wilaya**  
sovereignty

**Wudu**  
Ritual cleansing

**zanjeer zani**  
Shia self-flagellation

**Zina**  
adultery

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**Jewish terms:**

**Bar Mitzvah**  
ceremony of commitment at puberty

**Bat Mitzvah**  
female version of Bar Mitzvah

**ben Avraham Avinu**  
son of Abraham

**Brit Bat/Simchat Bat**  
welcoming ceremony for daughters in lieu of circumcision

**Brit Millah**  
males circumcision

**Get**  
unilateral divorce

**Halakah**  
Jewish law

**Kaddish**  
prayers for the dead

**Ketubah**  
maintenance contract

**Kosher**  
clean according to Jewish food laws

**Mamzer**  
illegitimate

**Minyan**  
minimum congregation for prayers

**Mikvah**  
ritual bath
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<tr>
<th>Term</th>
<th>Definition</th>
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<td>Mishnah</td>
<td>written law</td>
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<tr>
<td>Mitzvah</td>
<td>commandment</td>
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<td>Niddah</td>
<td>ritual segregation during and after menstruation and childbirth</td>
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<td>Sucot</td>
<td>festival of the tents</td>
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<td>Tallit</td>
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<td>Tefillin</td>
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<td>Torah</td>
<td>core body of Jewish law</td>
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<td>Zeved Habat</td>
<td>Sephardic welcoming ceremony for daughters</td>
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