

The Exclusive Brethren: Separatism and Human Rights in England and Wales

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1. Introduction.

This paper develops the following linked propositions:-

- (i) That for the European Convention for Human Rights and Fundamental Liberties (ECHR) and the Human Rights Act 1998 (HRA) to be interpreted correctly and in a manner consistent with the Convention's origins, it should be applied so as to protect religious diversity and expressions of conscience, including orthodoxy and fundamentalism, rather than imposing homogeneity;
- (ii) That the family court process is not at present meeting the needs of Brethren families, and as an established religious minority, the Brethren should be better understood as part of broader diversity training;
- (iii) That the Brethren have interests and concerns in common with other religious orthodox communities, but as an indigenous fundamentalist and separated community they have tended to be overlooked. There are no linked racial or linguistic minority issues

to bring their interests into any public debate about social and religious diversity, or what might broadly be called “multiculturalism”. The Brethren belief in the doctrine of a divine requirement to maintain a state of separation is as central to the faith practice of the Brethren as the strict observance of food laws is for an observant Jew or Muslim. Without it, Brethren in Fellowship cannot follow their conscience and practice their faith.

2. The Brethren Belief System: Strait is the Gate.

The origins of the modern Brethren lie in the rejection of the established Anglican Church and its claims to divine authority by several small evangelical groups in England and Ireland during the early 19th Century. In common with other Christian movements, the Brethren doctrine was formed by a series of schisms, the most significant of which took place in 1848, at the instigation of arguably the most influential Brethren member and writer, JN Darby. The split in the community was provoked by the perception that a small community at Bethesda in the West Country was following unacceptable religious practises. Darby wrote an open letter, expressing the view that, not only were the Bethesda Brethren at moral and spiritual risk, but that other Brethren must withdraw from the Bethesda community both collectively and individually, in order that they should not be tainted by their activities. This division between “open” Brethren, as Bethesda and others became, and “closed” or Exclusive Brethren, is fundamental to the beliefs of the Brethren today. (There are believed to be a few surviving communities of Open Brethren, but they tend to become assimilated by other low-church evangelical movements, particularly Methodism, given that their beliefs are similar and they do not practise doctrinal separatism.) The other, linked principle established by JN Darby in this period concerned the Millennialist belief in the physical reality of the Last Judgment. A debate had developed concerning the apparently conflicting texts concerning the Second Coming of Christ, in particular whether it would be a sudden, secret event (“coming like a thief in the night”), or if there would be an obvious, public and visible return. Darby

believed that those who rejected the doctrine of a secret return were rejecting the essential moral challenge of Christianity, namely that they must live moment by moment according to strict religious principles. Darby and the remaining Brethren adopted a doctrine consistent with both scriptural approaches, namely that there would be two Comings: the first a sudden, secret “rapture of the saints”, when all the truly faithful will be instantly removed from the Earth into the presence of God, and the second a public return of Christ and his saints for the Last Judgment. (Darbyite Millennialism is the predominant “End-Time” belief of the modern American Christian Evangelical movement, and so has many millions of followers today outside the Brethren community.) The development of this fundamental belief within the Brethren led to doctrinal debates about what would or would not expose the individual to moral risk, in the context of an imminent return without notice: the Brethren experienced further schism in the early to mid 20th Century, under the influence of James Taylor (senior) and James Taylor (junior), giving rise to the label “Taylorite Brethren”; the doctrines of separation and day to day moral rectitude were interpreted over time to include rejection of many modern social influences.

The modern Brethren have been described as:

“...hyper-Calvinist, rigidly puritan, and highly centralised in its ecclesiastical organisation. ... Although the hope cherished in all sections of the Brethren of the imminent personal return of Christ in the Second Advent tends to foster a world-renouncing outlook, among the Taylorite Exclusives it takes the extreme form of rejection of newspapers, radio and television, ..., and minimal social contact with non-members of the community.”¹

(i) Divine Law.

All scripture is given by inspiration of God, and is profitable for doctrine, for reproof, for correction, for instruction in righteousness.” (2 Timothy 3, v. 16).

¹ Peter Embley, “The Origins and Early Development of the Plymouth Brethren”.

The Brethren believe that the Christian principles set out in the Bible are the unalterable word of God. Interpretations of various passages have been passed down in tracts and dialogues, most notably in the case of the Taylorite Brethren, by James Taylor Snr. and James Taylor Jnr., as well as the seminal work of JN Darby; later, FE Raven's work has been said in the Brethren Fellowship to have 'set in order' the earlier teaching, and in recent times the community has had guidance from JH Symington , JS Hales and Bruce Hales (the most esteemed member of the community in this generation²). These texts deal with the close interpretation of the bible and the community's response to changing circumstances (for example, the introduction of radio broadcasting; the expansion of University education).

(ii) Separatism.

Enter ye in at the strait gate: for wide is the gate, and broad is the way that leadeth to destruction, and many there be which go in thereat: because strait is the gate and narrow is the way, which leadeth unto life, and few there be that find it. [Matthew 7, v. 13-14]

The Brethren believe that the practice of Christian faith requires separation from that which is "worldly", and thereby potentially corrupt and corrupting. This quotation, from the Sermon on the Mount, is one of a number that are central to the Brethren belief in separation, and cannot be interpreted by them as having any other meaning. The identification and destruction of the malign, in other words, what should be separated from and the consequences of association with such influences, is a significant theme in the Sermon on the Mount, including: the "salt of the earth", which is trodden underfoot when it has lost its savour; "if thy right eye offend thee, pluck it out, and cast it from thee; for it is profitable for thee that one of thy members should perish and not that thy whole body should be cast into Hell"; "Give not that which is holy unto the dogs, neither cast ye your pearls before swine"; "Every tree that bringeth not forth good fruit is hewn down, and cast into the fire"; "Not every one that saith unto me Lord, Lord shall enter into the Kingdom of Heaven ... then I will profess unto them, I never knew you: depart from me"; the house

² Sometimes referred to as the Minister of the Lord in the Recovery.

built on sand, “and it fell: and great was the fall of it”. Mainstream Anglicanism as it is practised in the UK today adopts a generally inclusive interpretation of Christian teaching (from the Brethren perspective, a latitudinarian approach), placing great emphasis on repentance and forgiveness but without the clear textual corollary of punishment, destruction and damnation. Whilst Christian love, repentance and forgiveness are of central importance in the Brethren Fellowship, the reduced significance of divine judgment in the lives and beliefs of the majority of modern Christians is perhaps the most important way in which the modern mainstream has diverged from a set of Christian principles that were more widely-held before the twentieth century. Whilst separation has always been a minority practice (a notable example being the Plymouth Rock pilgrims who departed for America on the basis of a Christian Separatist doctrine), belief in divine punishment as a direct and personal consequence of sin was once universal amongst Christians. For the Brethren, separation engages with a central belief that the community must be prepared in faithfulness for Christ’s “Appearing”, ie. a public coming from Heaven as described in 2 Timothy 4, vv 7-10:

For I am already being poured out, and the time of my release is come. I have combated the good combat, I have finished the race, I have kept the faith. Henceforth the crown of righteousness is laid up for me, which the Lord the righteous Judge, will render to me in that day; but not only to me but also to all who love His appearing. Use diligence to come to me quickly;...

Separation is therefore as fundamental and significant a belief as the Jewish doctrine of the Covenant with Israel (and, in fact, stemming in part from the same texts), as, for example, expressed in 2 Corinthians 6, v. 14-18:-

Be ye not unequally yoked together with unbelievers: for what fellowship hath righteousness with unrighteousness? ... For ye are the temple of the living God: as God hath said, I will dwell in them, and walk in them; and I will be their God, and they shall be my people. Wherefore come out from among them, and be ye separate, saith the Lord, and touch not the unclean thing; and I will receive you. And will be a father unto you, and ye shall be my sons and daughters, saith the Lord Almighty.

(iii) Personal Responsibility: Unmediated communication with the divine.

The Brethren do not have priests or other intermediaries in the individual's relationship with God. It is sometimes said, occasionally by members of the Brethren community, that there are "Elders", which has been wrongly interpreted by journalists, judges and others engaging with the community as suggesting that there are leaders that direct the thinking of the group. In fact, the term is used to refer to older members of the community, who may be socially influential or otherwise provide spiritual and practical help and guidance where required. Spiritual and moral responsibility lies ultimately with the individual, although the Brethren place a high value on the successful functioning of the Fellowship as a whole:

Nevertheless the foundation of God standeth sure, having this seal. The Lord knoweth them that are his. And, let every one that nameth the name of Christ departeth from iniquity. But in a great house there are not only vessels of gold and silver, but also of wood and of earth; and some to honour and some to dishonour. If a man therefore purge himself from these he shall be a vessel unto honour, sanctified, and meet for the master's use, and prepared unto every good work. Flee also youthful lusts: but follow righteousness, faith, charity, peace, with them that call on the Lord out of a pure heart. (2 Timothy 2, v. 19-22)

1 Corinthians 11 v. 23-29

For I have received of the Lord that which also I delivered unto you, that the Lord Jesus the same night in which he was betrayed took bread: and when he had given thanks, he brake it and said Take, eat: this is my body, which is broken for you: this do in remembrance of me. After the same manner also He took the cup, when he had supped, saying This cup is the new Testament in my blood: this do ye, as oft as ye drink it, in remembrance of me. For as often as ye eat this bread, and drink this cup, ye do shew the Lord's death till he come. Wherefore whosoever shall eat this bread and drink this cup of the Lord, unworthily, shall be guilty of the body and blood of the Lord. But let a man examine himself, and so let him eat of that bread and drink of that cup. For he that eateth and

drinketh unworthily eateth and drinketh damnation to himself, not discerning the Lord's body.

And Galatians 6, v. 14:

But God forbid that I should glory, save in the cross of our Lord Jesus Christ, by whom the world is crucified unto me and I unto the world.

And Numbers 23, v.9:

For from the top of the rocks I see him, and from the hills I behold him: lo, the people shall dwell alone, and shall not be reckoned among the nations.

(iv) Traditional Social Practices.

The Brethren maintain traditional Christian values in their day-to-day lives, an approach that is reinforced by very limited exposure to modern social and cultural influences. For example, women keep their hair long and cover their heads with a headscarf (often with a characteristic, small triangular scarf on a band), and they do not wear trousers. Men are always clean-shaven, and do not usually wear ties. Families maintain traditional gender roles, for scriptural reasons (see 1 Corinthians 11, v. 3-13).

3. Religion, Separatism and the Law.

Article 18(1) of the United Nations Universal Declaration of Human Rights 1948 states that:-

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.

The Canadian Supreme Court arrived at the following definition in *R. v. Big M Drug Mart Ltd.* [1985] 18 DLR (4th) 321:

The essence of the concept of freedom of religion is the right to entertain such religious beliefs as a person chooses, the right to declare religious

beliefs openly and without fear of hindrance or reprisal, and the right to manifest belief by worship and practice or by teaching and dissemination. But the concept means more than that. Freedom can be primarily characterised by the absence of coercion or constraint. If a person is compelled by the State or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and he cannot be said to be truly free.

Article 9 provides that:

- 1) **Everyone has the right to freedom of thought, conscience and religion; this right includes... freedom, either alone or in community with others and in public or private, to manifest his religion or belief in worship, teaching, practice and observance.**
- 2) **Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.**

There is a further, subsidiary right in Article 14, which provides that:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.³

In addition, s. 13 of the 1998 Act reinforces the Article 9 entitlement to freedom of thought, conscience and religion, and provides that:

If a court's determination of any question arising under this Act might affect the exercise by any religious organisation (itself or its members collectively) of the Convention right to freedom of thought, conscience and religion, it must have particular regard to the importance of that right.

³ See, for example, the finding of discrimination against a Jehovah's Witness mother in a placement decision concerning children: *Hoffman v. Austria* [1992] Series A, No.222.

Since the passing of the 1998 Act, the Equality Bill has been put before Parliament. It contains a definition of “religion or belief” for the purpose of provisions making discrimination on grounds of religious belief unlawful, being:

...any religious belief or similar philosophical belief (including agnosticism).⁴

The interpretation of Article 9 ECHR in *Kokkinakis v. Greece* [1993] 17 EHRR 397, para. 31 underlines the significance of positive protection of freedom of religion under domestic law:

As enshrined in Article 9, freedom of thought, conscience and religion is one of the foundations of a ‘democratic society’ within the meaning of the Convention. It is, in its religious dimension, one of the most vital elements that go to make up the identity of believers and their conception of life, but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism, indissociable from a democratic society, which has been dearly won over the centuries, depends on it.

Taken together, Articles 9 and 14 should act to prevent any form of discrimination on religious grounds. In addition, the HRA s.9 imposes a positive duty on any court to have regard to the interests of the faith practices of any affected group, in determining an issue between individuals. This point is of great significance in the family law context. It is also the case that religious organisations cannot be prevented from adopting the status of a legal person, which means that the organisation as a whole, independently of its individual members, is entitled as a person to the protection of the rights set out in HRA (see *Canea Catholic Church v. Greece* [1999] 27 EHRR 521). In any event, by the combination of European jurisprudence and domestic decisions as to the human rights status of religious organisations, the Brethren Fellowship as a whole or as discrete communities are also capable of being a victim of infringement of any of the Convention rights for the purposes of s. 7

⁴ The Employment Equality (Religion or Belief) Regulations (EE(RB Regs) 2003 SI No 1660 illustrate the degree of congruence with EU discrimination law required to protect the rights and interests of faith groups. Since the coming into force of the Regulations, practising Christians have successfully challenged Sunday working decisions (see, for example, *Williams-Drabble v. Pathway Care Solutions Ltd.* [2005] 10th January, ET/2601718). There is a current attempt being made by Andrew McClintock JP, a family court magistrate, to use the same regulations in order to be permitted to withdraw as an act of Christian conscience from cases involving same-sex couples as carers.

of the 1998 Act, in addition to the s.9 duty to have regard to their faith interests in connected court determinations: *Parochial Church Council of the Parish of Aston Cantlow and Wilmcote with Billesley, Warwickshire v. Wallbank and Another* HL [2003]UKHL 37.

4. The Brethren and the Law.

For the purposes of the Irish Adoption Act 1952, s.12, the Brethren form part of the ordinary spectrum of Christian churches⁵. The English Court of Appeal has held in a case concerning a Plymouth Brethren child that it is no part of the court's function to comment on the tenets, doctrines or rules of any section of society provided that these were legally and socially acceptable; it is clearly the *obiter* finding of the court that the Plymouth Brethren as a faith group falls into this category (*Re. R (A Minor)(Residence; Religion)* [1993] 2 FLR 163). The Exclusive Brethren are comparable in their faith practices with the Plymouth Brethren, and trace their origins to common roots. The judgment given by Pauffley J. in *Re: X* [2005] is indicative of the careful case management that is required to deal fairly with members of the Brethren in family court disputes.

Recent cases decided by the higher courts in England concerning the right to manifest religious faith have tended to recognise a right or interest, only to limit, restrict or prevent the protection of the manifestation of that interest as a necessary and proportionate interference: see *R. (on the application of X, by her father and litigation friend) v. Headteachers and Governors of Y School* [2008] 1 AllER 249 regarding the wearing of a niqab; *R (on the application of Swami Suryananda (as representative of the Community of the Many Names of God) v. Welsh Ministers* [2007] LTL 23.7.07, regarding the slaughtering of a sacred animal; and *R. (on the application of Williamson and others) v. Secretary of State for Education and Employment and others* [2005] 2 AC 246, concerning the use of corporal punishment in school. There has yet to be a case in this country dealing with a faith practice as central as separatism is to

⁵ Differences in Christian faith and upbringing predominate in the laws of Eire for historic reasons, a feature not shared by the law in England and Wales. It is nonetheless of interest that s.1(3) of this Act indicates that the Adoption Board can treat individuals as being of the same religion "... provided that each of them is a member of one of the following religious denominations, namely the Church of Ireland, the Presbyterian Church of Ireland, the Methodist Church of Ireland, the Religious Society of Friends of Ireland, and the Brethren, commonly known as the Plymouth Brethren."

the Brethren community: clearly such an issue would require a far greater weight of necessity for restriction to be proportionate than has been the case so far in cases dealing with faith practices which are to a greater or lesser extent peripheral to the expression of religious belief.

5. Practical Conclusion – What could be done?

- (1) A Practice Direction could be issued in England and Wales concerning HRA s.13, giving guidance as to the nature and extent of any court's duty to consider the impact of a decision on the interests of religious groups, particularly separatist faith groups.
- (2) Senior Judges need to support religious diversity training of CAFCASS officers, Children's Guardians, senior Police officers, and forensic psychological, psychiatric and social work experts, so as to support fundamental religious difference as opposed to liberal homogeneity, and that, where such issues arise, witnesses be required to disclose (i) that they have had such diversity training; and (ii) that separatist beliefs are not viewed either negatively or as inferior to modern liberal lifestyle practices.