

**OPINIONS**  
**OF THE LORDS OF APPEAL**  
**FOR JUDGMENT IN THE CAUSE**

**Regina**

**v.**

**Secretary of State for Education and Employment and others**  
**(Respondents) *ex parte* Williamson (Appellant) and others**

**ON**  
**THURSDAY 24 FEBRUARY 2005**

The Appellate Committee comprised:

Lord Bingham of Cornhill  
Lord Nicholls of Birkenhead  
Lord Walker of Gestingthorpe  
Baroness Hale of Richmond  
Lord Brown of Eaton-under-Heywood

**HOUSE OF LORDS**

**OPINIONS OF THE LORDS OF APPEAL FOR JUDGMENT  
IN THE CAUSE**

**Regina v. Secretary of State for Education and Employment and  
others (Respondents) *ex parte* Williamson (Appellant) and others**

**[2005] UKHL 15**

**LORD BINGHAM OF CORNHILL**

My Lords,

1. I have had the benefit of reading the opinions of my noble and learned friends Lord Nicholls of Birkenhead and Lady Hale of Richmond. I agree with them both, and for the reasons they give I would dismiss this appeal.

**LORD NICHOLLS OF BIRKENHEAD**

My Lords,

2. Corporal punishment of children is a controversial subject. It arouses strong feelings, both for and against. In this country there is now a total ban on the use of corporal punishment in all schools. The claimants in these proceedings contend this ban is incompatible with their Convention rights under the Human Rights Act 1998.

3. The present state of the law has developed in stages over the last 20 years. In the 1970s two mothers, Mrs Campbell from Strathclyde and Mrs Cosans from Fife, objected to their children being subjected to corporal punishment in state schools. Their complaint to the European Court of Human Rights was upheld. The state had failed to respect their 'philosophical convictions' on this subject, contrary to article 2 of the

First Protocol to the European Convention on Human Rights: *Campbell and Cosans v United Kingdom* (1982) 4 EHRR 293. That was in 1982. Parliament then changed the law, by the Education (No 2) Act 1986, section 47. Since 1987 school teachers in maintained schools (state schools) have had no right to administer corporal punishment to school pupils. This ban applied also to children attending non-maintained schools (independent schools) who received public funding, for instance, under the assisted places scheme.

4. In 1993, in response to the decision of the European Court of Human Rights in *Costello-Roberts v United Kingdom* (1993) 19 EHRR 112, Parliament intervened again. This time the intervention was aimed at the severity with which corporal punishment could be administered at school to children outside the scope of the 1986 Act, that is, privately-funded children at independent schools. Article 3 of the European Convention imposes on states a positive obligation to take steps to ensure individuals are not subjected to inhuman or degrading punishment. The steps taken by the state should provide effective protection, in particular, for children and other vulnerable individuals: *Z v United Kingdom* (2001) 34 EHRR 97, 131, para 73. In order to comply with this obligation Parliament enacted that corporal punishment of children could not be justified if it was ‘inhuman or degrading’: section 293 of the Education Act 1993. In deciding whether punishment is inhuman or degrading regard should be had to all the circumstances, including the reason for giving the corporal punishment, how soon after the event it was given, its nature, the manner and circumstances in which it was given, the persons involved, and its mental and physical effects.

5. The next stage in the development of the law was the extension of the ban on the use of corporal punishment to all pupils attending all types of school. That was in 1998. So now the ban applies to privately-funded children attending independent schools. It is this extension of the ban which is under challenge in these proceedings. Unlike Mrs Campbell and Mrs Cosans, the claimants in the present proceedings do not *object* to the use of corporal punishment. Quite the contrary: they *support* the use of corporal punishment and object to the statutory ban. So the present case raises the converse of the issue raised in the *Campbell and Cosans* case.

6. The statutory ban imposed in 1986 and extended in 1998 applies to corporal punishment given by school teachers and other members of staff at a school. It does not apply to corporal punishment given by a

child's parent. Very recently Parliament intervened in this field as well. Parliament has now strictly limited the severity of the corporal punishment a parent may lawfully give his child. Punishment of a child which caused 'actual bodily harm' cannot be justified, either in civil proceedings or in respect of certain criminal offences, on the ground that it constituted reasonable punishment: section 58 of the Children Act 2004. Thus, to be lawful, corporal punishment administered by a parent must stop short of causing actual bodily harm. This further provision does not directly affect these proceedings, although it forms part of the present-day background.

7. Additionally, it should be noted that in 2003 a ban was introduced on child minders smacking children ('shall not give corporal punishment to a child for whom he acts as a child minder or provides day care'): see the Day Care and Child Minding (National Standards) (England) Regulations 2003, SI 2003/1996, para 5.

#### *The claimants*

8. The claimants in these proceedings are head teachers, teachers and parents of children at four independent schools. The schools are the Christian Fellowship School at Edge Hill, Liverpool, Bradford Christian School at Idle, Bradford, Cornerstone School at Epsom, Surrey, and King's School at Eastleigh, Hampshire. The claimants' principal claim is that the extended statutory ban is incompatible with their Convention right to freedom of religion and freedom to manifest their religion in practice, a right guaranteed under article 9 of the Convention on Human Rights. The proceedings failed in both courts below: see Elias J [2002] ELR 214 and the Court of Appeal, comprising Buxton, Rix and Arden LJJ, [2003] QB 1300. Although the judges differed somewhat in their reasons, each judgment contains a valuable discussion of the underlying principles of human rights law.

9. The claimants claim to speak on behalf of a 'large body of the Christian community' in this country whose 'fundamental beliefs' include a belief that 'part of the duty of education in the Christian context is that teachers should be able to stand in the place of parents and administer physical punishment to children who are guilty of indiscipline'. They reject the general standards of state education available in this country as not fitting their religious and moral beliefs. They believe that, correctly used, 'discipline of this type is an effective deterrent against behaviour that is unacceptable in the community'. The

object is 'not to injure but to give an unequivocal message of unacceptable behaviour that will not be tolerated'. The aim is 'to help form godly character'. The claimants are reticent about the name, organisation and other particular beliefs of the group of which they are members, stating only they are all 'practising Christians' and that there are 40 schools conducted in accordance with these beliefs.

10. The claimants' beliefs regarding the use of corporal punishment by both parents and teachers are based on their interpretation of certain passages in the Bible. For instance, 'He who spares the rod hates his son, but he who loves him is diligent to discipline him': Proverbs 13:24. They say the use of 'loving corporal correction' in the upbringing of children is an essential of their faith. They believe these biblical sources justify, and require, their practices. Religious liberty, they say, requires that parents should be able to delegate to schools the ability to train children according to biblical principles. In practice the corporal punishment of boys takes the form of administering a thin, broad flat 'paddle' to both buttocks simultaneously in a firm controlled manner. Girls may be strapped upon the hand. The child is then comforted by a member of the staff and encouraged to pray. The child is given time to compose himself before returning to class. There is no question of 'beating' in the traditional sense. 'Smacking' would be closer to the mark: see Elias J [2002] ELR 214, 216-217, para 4. In practice the schools rarely resort to corporal punishment.

*Section 548 of the Education Act 1996*

11. The statutory provision under challenge is section 548(1) of the Education Act 1996, as amended by the School Standards and Framework Act 1998. The first issue in these proceedings concerns the proper interpretation of this provision. Section 548(1) provides:

'Corporal punishment given by, or on the authority of, a member of staff to a child-

- (a) for whom education is provided at any school....

cannot be justified in any proceedings on the ground that it was given in pursuance of a right exercisable by the member of staff by virtue of his position as such.'

Corporal punishment means punishment which, justification apart, constitutes battery: section 548(4). Member of staff includes a teacher at the school in control or charge of the child: section 548(6). Child means a person under the age of 18: section 548(7).

12. The claimants contend this statutory provision does not apply where parents, having the common law right to discipline their child, expressly delegate this right to a teacher. Then the teacher is exercising an expressly delegated power, not acting as a teacher 'as such'. This interpretation of section 548 would, it is said, accord proper respect to the deliberate decision of parents in respect of the education and disciplining of their children.

13. I consider this interpretation of section 548 is not tenable. It is unnecessary to consider the origins of a teacher's disciplinary powers in relation to school pupils or the extent to which a parent's disciplinary powers are expressly delegable. Suffice to say, the plain purpose of section 548(1) was to prohibit the use of corporal punishment by all teachers in all schools. The claimants' interpretation, if right, would defeat this purpose. The claimants' interpretation would mean the ban on the use of corporal punishment by teachers could be side-stepped by parents expressly giving their consent to the infliction of corporal punishment on their child. Thus the ban would not be mandatory in its operation. It would be optional, at the choice of the parents.

14. In my view the phrase 'by virtue of his position as such' in section 548(1)(a) is apt to limit the application of section 548(1) to corporal punishment given by a teacher while acting as a teacher, that is, while discharging his functions as a teacher. It excludes cases where, for example, a teacher is himself a parent and is acting in that capacity when punishing a child. Read in context, this phrase is not apt to draw a distinction between cases where the teacher has been expressly authorised by the parents and cases where he has not. In the former case as much as the latter administration of corporal punishment by a teacher derives from a right exercisable by him by virtue of his position as a teacher within the meaning of section 548.

#### *Freedom of belief and the Convention rights*

15. I turn to the claims based on the claimants' Convention rights. Religious and other beliefs and convictions are part of the humanity of

every individual. They are an integral part of his personality and individuality. In a civilised society individuals respect each other's beliefs. This enables them to live in harmony. This is one of the hallmarks of a civilised society. Unhappily, all too often this hallmark has been noticeable by its absence. Mutual tolerance has had a chequered history even in recent times. The history of most countries, if not all, has been marred by the evil consequences of religious and other intolerance.

16. It is against this background that article 9 of the European Convention on Human Rights safeguards freedom of religion. This freedom is not confined to freedom to hold a religious belief. It includes the right to express and practise one's beliefs. Without this, freedom of religion would be emasculated. Invariably religious faiths call for more than belief. To a greater or lesser extent adherents are required or encouraged to act in certain ways, most obviously and directly in forms of communal or personal worship, supplication and meditation. But under article 9 there is a difference between freedom to hold a belief and freedom to express or 'manifest' a belief. The former right, freedom of belief, is absolute. The latter right, freedom to manifest belief, is qualified.

17. This is to be expected, because the way a belief is expressed in practice may impact on others. Familiar instances of conduct shaped by particular religious beliefs are the days or times when worship is prescribed or encouraged, the need to abstain from work on certain days, forms of dress, rituals connected with the preparation of food, the need for total abstinence from certain types of food or drink, and the need for abstinence from all or some types of food at certain times. In a more generalised and non-specific form the tenets of a religion may affect the entirety of a believer's way of life: for example, 'thou shalt love thy neighbour as thyself'. The manner in which children should be brought up is another subject on which religious teachings are not silent. So in a pluralist society a balance has to be held between freedom to practise one's own beliefs and the interests of others affected by those practices.

18. Article 9 provides:

'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.'

19. The importance of this right is emphasised in the Human Rights Act 1998. It is one of the two Convention rights singled out for special mention, the other being freedom of expression. Section 13(1) of the Act provides:

'If a court's determination of any question arising under this Act might affect the exercise by a 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.'

20. Article 2 of the First Protocol to the European Convention on Human Rights is also material in the present case in so far as it requires the state to respect the right of parents to ensure their children's education conforms to the parents' religious and philosophical convictions:

'No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.'

21. In the present case there is no reason to doubt the claimants hold the beliefs they profess. That is not challenged. But the Secretary of State has mounted a root-and-branch attack on almost every other aspect of the claimants' case. The claimants' rights under article 9 and article 2 of the First Protocol, it is said, are not engaged. It is said that the claimants' beliefs are not sufficiently cogent, serious, cohesive or important to attract the protection of either of these Convention articles.

Even if they are, neither the claimant parents nor the claimant teachers are exercising a right to ‘manifest’ a religious belief under article 9. Nor can the infliction of corporal punishment be regarded as part of the claimant parents’ religious convictions within the meaning of article 2 of the First Protocol. Further, in any event there has been no interference with the claimants’ rights under those articles. If there has been any interference, it is justified.

### *The claimants’ beliefs*

22. It is necessary first to clarify the court’s role in identifying a religious belief calling for protection under article 9. When the genuineness of a claimant’s professed belief is an issue in the proceedings the court will inquire into and decide this issue as a question of fact. This is a limited inquiry. The court is concerned to ensure an assertion of religious belief is made in good faith: ‘neither fictitious, nor capricious, and that it is not an artifice’, to adopt the felicitous phrase of Iacobucci J in the decision of the Supreme Court of Canada in *Syndicat Northcrest v Amselem* (2004) 241 DLR (4<sup>th</sup>) 1, 27, para 52. But, emphatically, it is not for the court to embark on an inquiry into the asserted belief and judge its ‘validity’ by some objective standard such as the source material upon which the claimant founds his belief or the orthodox teaching of the religion in question or the extent to which the claimant’s belief conforms to or differs from the views of others professing the same religion. Freedom of religion protects the subjective belief of an individual. As Iacobucci J also noted, at page 28, para 54, religious belief is intensely personal and can easily vary from one individual to another. Each individual is at liberty to hold his own religious beliefs, however irrational or inconsistent they may seem to some, however surprising. The European Court of Human Rights has rightly noted that ‘in principle, the right to freedom of religion as understood in the Convention rules out any appreciation by the state of the legitimacy of religious beliefs or of the manner in which these are expressed’: *Metropolitan Church of Bessarabia v Moldova* (2002) 35 EHRR 306, 335, para 117. The relevance of objective factors such as source material is, at most, that they may throw light on whether the professed belief is genuinely held.

23. Everyone, therefore, is entitled to hold whatever beliefs he wishes. But when questions of ‘manifestation’ arise, as they usually do in this type of case, a belief must satisfy some modest, objective minimum requirements. These threshold requirements are implicit in article 9 of the European Convention and comparable guarantees in

other human rights instruments. The belief must be consistent with basic standards of human dignity or integrity. Manifestation of a religious belief, for instance, which involved subjecting others to torture or inhuman punishment would not qualify for protection. The belief must relate to matters more than merely trivial. It must possess an adequate degree of seriousness and importance. As has been said, it must be a belief on a fundamental problem. With religious belief this requisite is readily satisfied. The belief must also be coherent in the sense of being intelligible and capable of being understood. But, again, too much should not be demanded in this regard. Typically, religion involves belief in the supernatural. It is not always susceptible to lucid exposition or, still less, rational justification. The language used is often the language of allegory, symbol and metaphor. Depending on the subject matter, individuals cannot always be expected to express themselves with cogency or precision. Nor are an individual's beliefs fixed and static. The beliefs of every individual are prone to change over his lifetime. Overall, these threshold requirements should not be set at a level which would deprive minority beliefs of the protection they are intended to have under the Convention: see Arden LJ [2003] QB 1300, 1371, para 258.

24. This leaves on one side the difficult question of the criteria to be applied in deciding whether a belief is to be characterised as religious. This question will seldom, if ever, arise under the European Convention. It does not arise in the present case. In the present case it does not matter whether the claimants' beliefs regarding the corporal punishment of children are categorised as religious. Article 9 embraces freedom of thought, conscience and religion. The atheist, the agnostic, and the sceptic are as much entitled to freedom to hold and manifest their beliefs as the theist. These beliefs are placed on an equal footing for the purpose of this guaranteed freedom. Thus, if its manifestation is to attract protection under article 9 a non-religious belief, as much as a religious belief, must satisfy the modest threshold requirements implicit in this article. In particular, for its manifestation to be protected by article 9 a non-religious belief must relate to an aspect of human life or behaviour of comparable importance to that normally found with religious beliefs. Article 9 is apt, therefore, to include a belief such as pacifism: *Arrowsmith v United Kingdom* (1978) 3 EHRR 218. The position is much the same with regard to the respect guaranteed to a parent's 'religious and philosophical convictions' under article 2 of the First Protocol: see *Campbell and Cosans v United Kingdom* 4 EHRR 293.

25. I turn to apply this approach in the present case. Here, different claimants express their beliefs with different emphases. This is to be

expected. The underlying rationale is expressed in different terms. In practice the circumstances in which corporal punishment is administered differ. These individual variations do not mean each individual cannot hold what is, to him or her, a coherent belief on a matter of importance.

26. More difficult is the question whether the claimants' beliefs are compatible with today's standards of human integrity. Clearly, corporal punishment can be inflicted on a child in a way which would be incompatible with those standards. Belief in the use of corporal punishment of that nature would not be protected by article 9. But corporal punishment need not be administered with such severity or in such circumstances that it will significantly impair a child's physical or moral integrity. In *Costello-Roberts v United Kingdom* (1993) 19 EHRR 112 the corporal punishment administered to the claimant boy by the headmaster of an independent school comprised three 'whacks' on his bottom through his shorts with a rubber-soled gym shoe in private. The European Court of Human Rights rejected the claim based on article 3. The court also rejected the claim based on article 8 (respect for private life). The court left open the possibility there may be circumstances where article 8 could afford, in respect of disciplinary measures, protection going beyond article 3. But the court considered the boy's treatment in that case 'did not entail adverse effects for his physical or moral integrity sufficient to bring it within the scope of the prohibition contained in Article 8': para 36.

27. The particular relevance of this decision for present purposes is this. Corporal punishment, even corporal punishment administered by teachers at school, can be administered in widely differing circumstances, in widely differing ways and with widely differing degrees of severity. Not surprisingly, in the *Costello-Roberts* case the European Court of Human Rights confirmed that not every act of corporal punishment of a child at school violates article 3 or article 8, even though to some extent it may adversely affect a child's physical and moral integrity. Not every act of corporal punishment will adversely affect a child's physical and moral integrity to an extent sufficient to constitute a violation of those articles. This being so, it is difficult to see how all corporal punishment of children, however mildly administered, is of its nature so contrary to a child's integrity that a belief in its infliction is necessarily excluded from the protection of article 9. It is difficult to see how corporal punishment, administered in circumstances and in a way which does not violate articles 3 or 8, can at the same time be so contrary to personal integrity that belief in its administration is ipso facto excluded from the scope of article 9.

28. The Secretary of State did not submit that all forms of corporal punishment necessarily constitute a violation of article 3. But the Secretary of State submitted that corporal punishment administered by teachers is contrary to human dignity. However lovingly intended, corporal punishment by teachers at school involves the intentional and formalised infliction of violence by an adult on a child in an institutional setting.

29. This is a forceful submission. But, for the reason just given, it is too wide. In recent years the standard of what is an acceptable form of discipline for children has changed markedly. Personal and professional opinions on the desirability of corporal punishment of children have shifted. This trend is reflected by the recent amendment in the law, made by section 58 of the Children Act 2004, restricting the extent to which parents may punish their own children in this way. But to say that a belief in the desirability of even a mild degree of corporal punishment by a teacher ('smacking', to adopt Elias J's description in the present case) violates a child's integrity to such an extent that manifestation of this belief is outside article 9 and article 2 of the First Protocol seems to me unwarranted. That would go too far. I proceed on this footing.

*Manifesting the claimants' beliefs in practice*

30. In the present case a further prerequisite must be satisfied before article 9 is engaged. Article 9 is not engaged unless the complainants' activity under consideration is within the scope of the protection the article affords to the complainants' beliefs. As to this, the Strasbourg jurisprudence has consistently held that article 9 does not protect every act motivated or inspired by a religion or belief. Article 9 does not 'in all cases' guarantee the right to behave in public in a way 'dictated by a belief': see, most recently, the decision of the European Court of Human Rights regarding the wearing of an Islam headscarf in *Sahin v Turkey* Application No 44774/98 (29 June 2004), para 66.

31. Clearly this is right. Miss Arrowsmith distributed leaflets to soldiers, urging them to decline service in Northern Ireland. This was dictated by her pacifist views. But the contents of the leaflets did not express pacifist views, nor did the act of distributing the leaflets do so. She was not thereby manifesting her pacifism: *Arrowsmith v United Kingdom* 3 EHRR 218.

32. Thus, in deciding whether the claimants' conduct constitutes manifesting a belief in practice for the purposes of article 9 one must first identify the nature and scope of the belief. If, as here, the belief takes the form of a perceived obligation to act in a specific way, then, in principle, doing that act pursuant to that belief is itself a manifestation of that belief in practice. In such cases the act is 'intimately linked' to the belief, in the Strasbourg phraseology: see *Application 10295/82 v United Kingdom* (1983) 6 EHRR 558. This is so whether the perceived obligation is of a religious, ethical or social character. If this were not so, and if acting pursuant to such a perceived obligation did not suffice to constitute manifestation of that belief in practice, it would be difficult to see what in principle suffices to constitute manifestation of such a belief in practice. I do not read the examples of acts of worship and devotion given by the European Commission in *Application 10295/82 v United Kingdom* as exhaustive of the scope of manifestation of a belief in practice.

33. This is not to say that a perceived obligation is a prerequisite to manifestation of a belief in practice. It is not: see, for instance, *Syndicat Northcrest v Amselem* 241 DLR (4<sup>th</sup>) 1, esp at 25-26, paras 46-50. I am concerned only to identify what, in principle, is sufficient to constitute manifestation in a case where the belief is one of perceived obligation.

34. Take corporal punishment as an example. Taken by itself the act of inflicting corporal punishment says little, if anything, about the belief of the person administering the punishment. He may have no particular views about the desirability of corporal punishment, or he may have momentarily lost his self-control, or he may be acting pursuant to a deeply-held conviction that this form of punishment is divinely-ordained in the best interests of the child. In the latter instance the act of administering corporal punishment on a child is, for that person, an expression of his conviction in practice.

35. In the present case the essence of the parents' beliefs is that, as part of their proper upbringing, when necessary children should be disciplined in a particular way at home and at school. It follows that when parents administer corporal punishment to their children in accordance with these beliefs they are manifesting these beliefs. Similarly, they are manifesting their beliefs when they authorise a child's school to administer corporal punishment. Or, put more broadly, the claimant parents manifest their beliefs on corporal punishment when they place their children in a school where corporal punishment is

practised. Article 9 is therefore engaged in the present case in respect of the claimant parents.

36. Similarly, and contrary to the Secretary of State's submissions, the claimant parents' rights under article 2 of the First Protocol are also engaged in this case. 'Education' in this article is wide enough to include the manner in which discipline is maintained in a school.

37. Thus far under this head I have been considering the position of the claimant parents. I turn to the position of the claimant teachers. The right protected by the second sentence of article 2 of the First Protocol is, expressly, a right of the parents, not the teachers. Thus the claimant teachers have no claim under this article. As to article 9, the teachers' beliefs in this case are ancillary to those of the parents, in that their beliefs concern the role of schools in furthering the parents' obligations in respect of the upbringing of their children. The teachers do not assert a belief in the administration of corporal punishment irrespective of the wishes of the parents. They do not assert a belief to be obliged to administer corporal punishment separate from, or independently of, the parental obligations in this regard. So the teachers' beliefs do not call for separate consideration from those of the parents. The beliefs of the parents and the teachers stand or fall together under article 9.

### *Interference*

38. The next step is to consider whether section 548 constitutes an interference with the claimant parents' manifestation of their beliefs. What constitutes interference depends on all the circumstances of the case, including the extent to which in the circumstances an individual can reasonably expect to be at liberty to manifest his beliefs in practice. In the language of the Strasbourg jurisprudence, in exercising his freedom to manifest his beliefs an individual 'may need to take his specific situation into account': see *Kalaç v Turkey* (1997) 27 EHRR 552, 564, para 28. There a judge advocate in the air force was subjected to compulsory retirement on the ground he was known to have 'unlawful fundamentalist tendencies' which infringed the principle of secularism on which the Turkish nation was founded. The court held this did not amount to an interference with his rights guaranteed by article 9. In choosing to pursue a military career Kalaç accepted of his own accord a system of military discipline which by its nature implied the possibility of limitations incapable of being placed on civilians.

39. In the present case there is no comparable special feature affecting the position of the claimant parents. Until section 548 of the Education Act 1996 was amended in 1998 the parents were at liberty to manifest their belief in corporal punishment as described above. Until then corporal punishment by parents and by teachers in private schools was a lawful activity. Thus the question is whether the 1998 amendment of the law interfered materially, that is, to an extent which was significant in practice, with the claimants' freedom to manifest their beliefs in this way. (In passing, I doubt whether by the use of the word 'impossible' in *Jewish Liturgical Association Cha'are Shalom Ve Tsedek v France* (2000) 9 BHRC 29, 46, para 80, the European Court of Human Rights was intending to enunciate a standard which is less protective. That would be inconsistent with the bedrock principle that human rights conventions are intended to afford practical and effective protection to human rights. The court's decision in that case was based on the apparent ease with which the applicant association could obtain supplies of 'glatt' kosher meat elsewhere, as noted in paragraphs 81-83 of its judgment.)

40. In the present case the Secretary of State contended that section 548 did not interfere materially with the claimant parents' manifestation of their beliefs. He submitted that section 548 left open to the parents several adequate, alternative courses of action: the parents could attend school on request and themselves administer the corporal punishment to the child; or the parents could administer the desired corporal punishment when the child comes home after school; or, if the need for immediate punishment is part of the claimants' beliefs, they could educate their children at home.

41. I cannot accept these suggested alternatives would be adequate. That a parent should make himself available on call to attend school to administer corporal punishment should his child be guilty of indiscipline deserving of such punishment strikes me as unrealistic for many parents. Parental administration of corporal punishment at home at the end of the day would be significantly different from immediate teacher administration of corporal punishment at school. As to home education, there is no reason to suppose that in general the claimant parents, or other parents with like beliefs, have the personal skills needed to educate their children at home or the financial means needed to employ home tutors. I consider section 548 does interfere materially with the claimant parents' rights under article 9 and article 2 of the First Protocol.

*'Justification'*

42. The final step is to consider whether this interference is justified. In the case of article 9 the issue is whether the Secretary of State can show that section 548 satisfies the requirements of article 9(2). Here there is a procedural complication. This issue was raised at first instance. Elias J dismissed the Secretary of State's submissions with a degree of briskness: [2002] 2 ELR 214, 229, para 59. He said this is not one of those exceptional cases where the potential harm resulting from the manifestation of a belief is so plain that it is obvious on what ground the state has banned it. Not all corporal punishment is being treated as unlawful, only that practised in schools. There is no evidence it was appreciated that banning corporal punishment might conflict with the parents' human rights or, if appreciated, why it was felt justifiable to interfere with such rights. Without such evidence it was impossible to say whether the response was proportionate.

43. In the Court of Appeal the Secretary of State did not raise this issue again. This was a considered and deliberate decision. Rix LJ expressed his 'unhappiness' that, in consequence, the submissions before the Court of Appeal did not include argument that a government ought to be entitled to legislate against all corporal punishment in schools, on an ultimate balance of the competing rights and interests involved: [2003] QB 1300, 1332-1335, paras 110-116. Buxton LJ also made plain his reservations, at page 1328, para 85.

44. Before your Lordships' House the Secretary of State in his written case sought to resurrect this point. Mr Dingemans QC objected to this. He submitted that if the Secretary of State were given leave to raise the justification issue again, the hearing should be adjourned to enable the claimants to bring forward evidence on this issue.

45. Without expressing any view on this procedural point the appellate committee invited both parties' counsel to present any oral arguments they wished, additional to their written arguments, on this justification issue. Counsel did so.

46. I am in no doubt that, despite having abandoned the justification defence in the Court of Appeal, the Secretary of State should be at liberty to raise this point again. Clearly it would be unfortunate if this important issue were left unresolved. I am also satisfied the claimants

have not made out a case for an adjournment. The justification issue was raised before the judge. The claimants have therefore already had due opportunity to bring forward their evidence on this issue. The Secretary of State's case on this issue before this House did not involve reliance on any new evidence.

47. Moreover, and importantly, I am wholly unpersuaded that the evidence the claimants wish to adduce would assist in deciding the justification issue. The proposed new material would comprise psychiatric and other research evidence on the effect of corporal punishment, including in particular the effect of corporal punishment in an environment where 'the relationship between school and home is a crucial issue in the progress and development of each child', and parental evidence on the effect the ban on corporal punishment has had on their children since section 548 came into effect. But this evidence would resolve nothing. It is well known that different views are held on the desirability of the corporal punishment of children. Evidence by parents, experts and others that in their opinion corporal punishment has an overall beneficial effect, or that it may do so in certain circumstances, would be no more than evidence in support of one view on a much discussed social issue affecting every family.

48. So I turn to the substance of this defence. The interference with the manifestation of the claimants' beliefs effected by section 548 readily meets the criterion that it must be prescribed by law. The ban has been prescribed by primary legislation in clear terms.

49. Equally I am in no doubt this interference is, within the meaning of article 9, 'necessary in a democratic society ... for the protection of the rights and freedoms of others'. The statutory ban pursues a legitimate aim: children are vulnerable, and the aim of the legislation is to protect them and promote their wellbeing. Corporal punishment involves deliberately inflicting physical violence. The legislation is intended to protect children against the distress, pain and other harmful effects this infliction of physical violence may cause. That corporal punishment *may* have these harmful effects is self-evident.

50. Further, the means chosen to achieve this aim are appropriate and not disproportionate in their adverse impact on parents who believe that carefully-controlled administration of corporal punishment to a mild degree can be beneficial, for this reason: the legislature was entitled to take the view that, overall and balancing the conflicting considerations,

all corporal punishment of children at school is undesirable and unnecessary and that other, non-violent means of discipline are available and preferable. On this Parliament was entitled, if it saw fit, to lead and guide public opinion. Parliament was further entitled to take the view that a universal ban was the appropriate way to achieve the desired end. Parliament was entitled to decide that, contrary to the claimants' submissions, a universal ban is preferable to a selective ban which exempts schools where the parents or teachers have an ideological belief in the efficacy and desirability of a mild degree of carefully-controlled corporal punishment.

51. Parliament was entitled to take this course because this issue is one of broad social policy. As such it is pre-eminently well suited for decision by Parliament. The legislature is to be accorded a considerable degree of latitude in deciding which course should be selected as the best course in the interests of school children as a whole. The subject has been investigated and considered by several committees, including the Plowden report 'Children and their Primary Schools' (1967, Central Advisory Council for Education (England)), the Elton report 'Discipline in Schools' (1989) and the Williams report 'Childhood Matters' (1996, the National Commission of Inquiry into the Prevention of Child Abuse). The issue was fully debated in Parliament. As mentioned in *Wilson v First County Trust (No 2)* [2004] 1 AC 816, 842-844, paras 62-67, the proportionality of a statutory measure is to be judged objectively and not by the quality of the reasons advanced in support of the measure in the course of parliamentary debate. But it can just be noted that the desirability or otherwise of overriding parental choice was a matter mentioned in the course of debate in both Houses of Parliament. In both Houses specific mention was made of the Convention rights of parents under article 2 of the First Protocol.

52. For these reasons I am satisfied section 548 does not violate the rights of the claimants, either parents or teachers, under article 9. For the same reasons there has been no violation of the claimant parents' rights under article 2 of the First Protocol. I am fortified in these conclusions by the additional considerations mentioned by my noble and learned friends Lord Walker of Gestingthorpe and Baroness Hale of Richmond. The present case cannot be regarded as comparable to *Campbell and Cosans v United Kingdom* 4 EHRR 293. In the present case, unlike in the *Campbell* case, the claimants' beliefs involve inflicting physical violence on children in an institutional setting. Parliament was bound to respect the claimants' beliefs in this regard, but was entitled to decide that manifestation of these beliefs in practice was not in the best interests of children. I would dismiss this appeal.

## LORD WALKER OF GESTINGTHORPE

My Lords,

53. I have had the privilege of reading in draft the opinions of my noble and learned friends Lord Nicholls of Birkenhead and Baroness Hale of Richmond. I agree with them that this appeal should be dismissed, and I agree with their reasoning. But on some points I would, at least as a matter of emphasis, express my views a little differently. I shall therefore add a few observations of my own, although I am conscious that it may not be particularly helpful to multiply opinions in a case which has already produced such a variety of routes of reasoning by which to arrive at the same conclusion.

54. In his written and oral submissions Mr Dingemans QC (for the appellants) devoted quite a lot of time to the meaning of “religion” in article 9. In my opinion it is certainly not necessary, and is probably not useful, for your Lordships to try to reach a precise definition. Courts in different jurisdictions have on several occasions had to attempt the task, often in the context of exemptions or reliefs from rates and taxes, and have almost always remarked on its difficulty. Two illuminating cases are the decisions of Dillon J in *In re South Place Ethical Society* [1980] 1 WLR 1565 and that of the High Court of Australia in *Church of the New Faith v Commissioner of Pay-Roll Tax (Victoria)* (1983) 154 CLR 120, both of which contain valuable reviews of earlier authority. The trend of authority (unsurprisingly in an age of increasingly multicultural societies and increasing respect for human rights) is towards a “newer, more expansive, reading” of religion (Wilson and Deane JJ in the *Church of the New Faith* case at p174, commenting on a similar trend in United States jurisprudence).

55. There are two reasons why it is unnecessary for the House to grapple with the definition of religion. One is that article 9 protects, not just the *forum internum* of religious belief, but “freedom of thought, conscience and religion.” This is coupled with the individual’s (qualified) freedom “to manifest his religion or belief, in worship, teaching, practice and observance.” Similarly article 2 of the First Protocol refers not just to religious beliefs but to “religious and philosophical convictions.” Plainly these expressions cover a wider field than even the most expansive notion of religion. Pacifism, vegetarianism and total abstinence from alcohol are uncontroversial examples of beliefs which would fall within article 9 (of course pacifism

or any comparable belief may be based on religious convictions, but equally it may be based on ethical convictions which are not religious but humanist: this was the sort of problem which confronted the United States Supreme Court in *United States v Seeger* 380 US 163 (1965), where the relevant statute recognised conscientious objection to military service only if it arose from “religious training and belief”, which was elaborately defined as requiring belief in a Supreme Being and not including “essentially political, sociological, or philosophical views or a merely personal moral code.”) It is to be noted that section 13 of the Human Rights Act 1998 is more restricted, referring to the exercise of article 9 rights “by a religious organisation (itself or its members collectively).” But little reliance was placed, in argument, on section 13.

56. The other reason why the House need not grapple with the problem of definition is that it is not in dispute that Christianity is a religion, and that the appellants are sincere, practising Christians. Those who profess the Christian religion are divided among many different churches and sects, sometimes hostile to each other, which is a cause of both sadness and scandal. That some Christians should believe that the Bible not merely permits but enjoins them to have corporal punishment administered to their children may be surprising to many, but it is by no means an extreme instance. Some sects claiming to be Christian believed that polygamy was not merely permitted but actually enjoined by the Bible: see *Reynolds v United States* 98 US 145 (1879); *Mormon Church v United States* 136 US 1 (1890). Others believe that medical treatment by blood transfusion is forbidden by the Bible and is sinful, even if it is the only means of saving life: see *Re O (A minor) (Medical Treatment)* [1993] 2 FLR 149; *Re R (A minor) (Blood Transfusion)* [1993] 2 FLR 757. Countless thousands have suffered cruel deaths because at different periods during the last two thousand years parts of the Christian Church thought that the Bible not merely permitted but enjoined them to torture and kill apostates, heretics and witches. In *Bowman v Secular Society* [1917] AC 406, 456 Lord Sumner referred to “the last persons to go to the stake in this country *pro salute animae*” (that was in 1612 or thereabouts). By comparison with these horrors a belief in a scriptural basis for smacking children is fairly small beer.

57. In the Court of Appeal Arden LJ said [2003] QB 1300, 1371, para 258,

“ . . . to be protected by article 9, a religious belief, like a philosophical belief, must be consistent with the ideals of

a democratic society, and that it must be compatible with human dignity, serious, important, and (to the extent that a religious belief can reasonably be required so to be) cogent and coherent.”

Later in this opinion I shall suggest that it may be unwise to take a rigidly analytical approach to the application of article 9. But assuming for the moment that the issue is to be analysed in terms of (i) the existence of a belief, (ii) its manifestation, (iii) interference with the manifested belief and (iv) justification of the interference, I doubt whether it is right for the court (except in extreme cases such as the “Wicca” case mentioned below) to impose an evaluative filter at the first stage, especially when religious beliefs are involved. For the Court to adjudicate on the seriousness, cogency and coherence of theological beliefs is (as Richards J put it in *R (Amicus) v Secretary of State for Trade & Industry* [2004] IRLR 430, 436-7, para 36) to take the Court beyond its legitimate role. The High Court of Australia expressed similar views in the *Church of the New Faith* case, especially at pp129-30 (Mason ACJ and Brennan J) and at p174 (Wilson and Deane JJ). So did the Supreme Court of Canada in *Syndicat Northcrest v Amselem* [2004] 241 DLR 4th 1, especially at p24, para 43 (Iacobucci J giving the judgment in which the majority concurred). So did the United States Supreme Court in *Employment Division, Department of Human Resources of Oregon v Smith* 494 US 872 (1990), especially at pp. 886-7 (Scalia J giving the majority opinion); the case contains a full discussion of the Free Exercise Clause of the First Amendment. Only in clear and extreme cases can a claim to religious belief be disregarded entirely, as in *X v United Kingdom*, Application No. 7291/75, admissibility decision of 4 October 1977 (no evidence of the existence of the “Wicca” religion).

58. A filter is certainly needed, because it is quite clear (as Mason ACJ and Brennan J put it crisply in the *Church of the New Faith* case at p136) that “Religious conviction is not a solvent of legal obligation.” In my opinion the filters are to be found (first) in the concept of *manifestation* of religion or belief and (second) in Article 9 (2), which qualifies an individual’s freedom to manifest his religion or beliefs (in the four ways mentioned in article 9 (1): worship, teaching, practice and observance) by:

“. . . 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.”

59. I must recognise that the views of Arden LJ quoted above are not without some support in the jurisprudence of the Strasbourg Court. In *Campbell and Cosans v United Kingdom* (1982) 4 EHRR 293 (in which parents objected, but not on religious grounds, to their children receiving corporal punishment) the European Court of Human Rights stated (p304, para 36) that ‘convictions’,

“denotes views that attain a certain level of cogency, seriousness, cohesion and importance.”

It added (p305, para 36) that ‘philosophical convictions’,

“denotes, in the Court’s opinion, such convictions as are worthy of respect in a ‘democratic society’ and are not incompatible with human dignity.”

The latter passage refers back to the Court’s decision in *Young, James & Webster v United Kingdom* (1981) 4 EHRR 38 (para 63), a case on an employee who had conscientious objections to a “closed shop” policy.

60. I have to say that I find these qualifications rather alarming, especially if they are to be applied to religious beliefs. For the reasons already noted, the court is not equipped to weigh the cogency, seriousness and coherence of theological doctrines. Anyone who feels in any doubt about that might refer to the hundreds of pages of the law reports devoted to 16 years of litigation, in mid-Victorian times, as to the allegedly “Romish” beliefs and devotions of the incumbent of St Alban’s, Holborn (the litigation, entitled *Martin v Mackonochie*, starts with (1866) LR2 A & E 116 (Court of Arches) and terminates at (1882) 7 PD 94 (Privy Council sitting with Ecclesiastical Assessors)). Moreover, the requirement that an opinion should be “worthy of respect in a ‘democratic society’” begs too many questions. As Mr Diamond (following Mr Dingemans) pointed out, in matters of human rights the court should not show liberal tolerance only to tolerant liberals.

61. *Campbell and Cosans* was concerned with the meaning of “philosophical convictions” in article 2 of the First Protocol, not with the meaning of ‘religion’ or ‘belief’. The reference to a ‘democratic society’ in the passage quoted from para 36 of the judgment suggests that so far as it may be relevant to article 9 also, it must be looking at the article as a whole, including article 9 (2). Much of the Strasbourg jurisprudence takes a flexible approach, summarised by *Clayton and Tomlinson, The Law of Human Rights* (2000) para 14.40:

“In the majority of cases, the Court has avoided making any express determination as to whether the subject matter comes within the scope of Article 9. In other cases, the Court has either assumed the existence of a religious belief without question, or has found against the existence of a manifestation of religious belief without determining whether there was a religion in issue.”

The footnotes to this passage refer to *X v Italy* (1976) 5 DR 83 (complaints under articles 9, 10 and 11 by persons convicted of reorganising the Fascist Party in Italy); *Hoffman v Austria* (1993) 17 EHRR 293 (refusal of blood transfusions by a Jehovah’s Witness); and *X and Church of Scientology v Sweden* (1979) 16 DR 68 (Scientology advertisement which was in any event commercial in nature).

62. The first necessary filter, I suggest, in order to prevent article 9 becoming unmanageably diffuse and unpredictable in its operation, is the notion of manifestation of a belief. Although freedom of thought and conscience is “also a precious asset for atheists, agnostics, sceptics and the unconcerned” (*Kokkinakis v Greece* (1993) 17 EHRR 397,418, para 31), the notion of manifesting a belief is particularly appropriate to the area of religious belief. Most religions require or encourage communal acts of worship of various sorts, preaching, public professions of faith and practices and observances of various sorts (including habits of dress and diet). There will usually be a central core of required belief and observance and relatively peripheral matters observed by only the most devout. These can all be called manifestations of a religious belief. By contrast the manifestation or promotion of secular beliefs (or “causes”) tends to be focused on articles 10 and 11, although reliance may be placed on article 9 also.

63. It is clear that not every act which is in some way motivated or inspired by religious belief is to be regarded as the manifestation of

religious belief: see *Hasan and Chaush v Bulgaria* (2002) 34 EHRR 1339, 1358, para 60. Article 9 protects (as well as the *forum internum*)

“...acts which are intimately linked to [personal convictions and religious beliefs], such as acts of worship or devotion which are aspects of the practice of a religion or belief in a generally recognised form.”

See *Kalac v Turkey* (1997) 27 EHRR 552, 558 (para 34 of the Commission’s opinion) and 564 (para 27 of the judgment of the Court); the admissibility proceedings in *Konttinen v Finland* Application No. 24949/94; and *Sahin v Turkey* Application No. 44774/98, judgment given 29 June 2004, para 66. Richards J made a similar point, in the *Amicus* case, [2004] IRLR 430, 438, para 44, when he observed that:

“the weight to be given to religious rights may depend upon how close the subject-matter is to the core of the religion’s values or organisation.”

In the *Oregon* case 494 US 872, 888, footnote 4, Scalia J gave a particularly vivid example:

“...dispensing with a ‘centrality’ inquiry is utterly unworkable. It would require, for example, the same degree of ‘compelling state interest’ to impede the practice of throwing rice at church weddings as to impede the practice of getting married in church.”

64. I am therefore in respectful agreement with Lord Nicholls that, at any rate by the time that the court has reached the stage of considering the *manifestation* of a belief, it must have regard to the implicit (and not over-demanding) threshold requirements of seriousness, coherence and consistency with human dignity which Lord Nicholls mentions.

65. The second filter is article 9 (2), on which (as on the issue of interference) I have very little to add to what has been said by Lord Nicholls and Baroness Hale. It is regrettable that Mr Dingemans felt pressed for time in dealing with this aspect of the appeal. But justification was an issue at first instance, and both sides had the

opportunity of putting in evidence on that issue. The respondent gave ample notice of his wish to raise the issue again before the House. It would have been unsatisfactory not to have considered such a major issue on this important appeal.

66. It would have been particularly unsatisfactory on this appeal because in a case of this sort the issues of engagement, interference and justification are in truth closely linked together. At the beginning of his oral submissions Mr Dingemans (perhaps having in mind the Strasbourg Court's rather inconclusive approach as described in the passage which I have quoted from *Clayton and Tomlinson*) suggested that the Strasbourg jurisprudence on article 9 lacks a principled and consistent approach. I would not give much weight to that criticism. This is an area in which a rigidly analytical approach, dividing the case into watertight issues, to be decided *seriatim*, may not always be the best way forward. The court may conclude that a claimant has a sincere opinion which could just about be described as a religious belief, and that the claimant's conduct in accordance with that belief could just about be described as a manifestation of it. But the fact that the claimant may have only just scraped over those two thresholds should not be disregarded in determining the issue of interference or in the exercise of balancing interests and testing proportionality which is required under article 9 (2) if (perhaps by giving the claimant the benefit of the doubt) the court gets that far.

67. Your Lordships were referred to a recent case before the Constitutional Court of South Africa, *Christian Education South Africa v Minister of Education* (2000) 9 BHRC 53, which raised essentially the same issue as is now before the House, but in a rather different context. The context was different because of the different terms of the South African Constitution (see especially section 36 set out at p.67, para 30) and the different historical and social background, to which the Constitutional Court attached particular importance (see pp 75-76, paras 50-51). Nevertheless I have found the judgment of the Court, delivered by Sachs J, very helpful, especially the general discussion at pp 68-70, paras 33-35. Sachs J said at para 35:

“The underlying problem in any open and democratic society based on human dignity, equality and freedom in which conscientious and religious freedom has to be regarded with appropriate seriousness, is how far such democracy can and must go in allowing members of religious communities to define for themselves which laws

they will obey and which not. Such a society can cohere only if all its participants accept that certain basic norms and standards are binding. Accordingly, believers cannot claim an automatic right to be exempted by their beliefs from the laws of the land. At the same time, the state should, wherever reasonably possible, seek to avoid putting believers to extremely painful and intensely burdensome choices of either being true to their faith or else respectful of the law.”

68. Earlier, at para 31, Sachs J had said:

“Though there might be special problems attendant on undertaking the limitations analysis in respect of religious practices, the standard to be applied is the nuanced and contextual one required by s36 and not the rigid one of strict scrutiny.”

Section 36 spells out the nature of the balancing exercise more fully than the corresponding provisions of the Convention. Nevertheless I consider that a nuanced and contextual approach is required also in applying article 9 of the Convention and article 2 of the First Protocol, even if that sort of approach has some tendency to blur rigid distinctions between the issues of engagement, interference, and justification.

69. I would give the appellants the benefit of the doubt in getting to article 9 (2), but for the reasons given by Lord Nicholls and Baroness Hale they must fail at that stage. Nor does article 2 of the First Protocol assist them, since it is aimed at preventing state indoctrination, and must be applied in conformity with other articles of the Convention: *Kjeldsen, Busk Madsen and Pedersen v Denmark* (1976) 1 EHRR 711, 730-731, para 53.

70. For these reasons, as well as for those given by my noble and learned friends Lord Nicholls and Baroness Hale, I would dismiss this appeal.

## BARONESS HALE OF RICHMOND

My Lords,

71. This is, and has always been, a case about children, their rights and the rights of their parents and teachers. Yet there has been no-one here or in the courts below to speak on behalf of the children. No litigation friend has been appointed to consider the rights of the pupils involved separately from those of the adults. No non-governmental organisation, such as the Children's Rights Alliance, has intervened to argue a case on behalf of children as a whole. The battle has been fought on ground selected by the adults. This has clouded and over-complicated what should have been a simple issue. For the sake of the children, therefore, I would like to add a few further comments to those of my noble and learned friends, Lord Nicholls of Birkenhead and Lord Walker of Gestingthorpe, with whose opinions I agree.

72. Children have the right to be properly cared for and brought up so that they can fulfil their potential and play their part in society. Their parents have both the primary responsibility and the primary right to do this. The state steps in to regulate the exercise of that responsibility in the interests of children and society as a whole. But 'the child is not the child of the state' and it is important in a free society that parents should be allowed a large measure of autonomy in the way in which they discharge their parental responsibilities. A free society is premised on the fact that people are different from one another. A free society respects individual differences. 'Only the worst dictatorships try to eradicate those differences': see *El Al Israeli Airlines Ltd v Danielowitz* [1992]4 Isrl LR 478, para 14, Justice Barak. Often they try to do this by intervening between parent and child. That is one reason why the European Convention on Human Rights restricts the power of the state to interfere in family life (article 8) or to limit the manifestation of religious or other beliefs (article 9) and requires it to respect the religious or philosophical convictions of parents in the education of their children (First Protocol, article 2).

73. The simple issue in this case is whether Parliament was entitled to legislate to ban corporal punishment in all schools. The ban covers schools where the parents and teachers believe that it is their Christian duty to employ mild physical correction as a last resort in order to bring up their children properly. No doubt they also sincerely believe that this is in the children's best interests. They therefore claim that the ban is an

interference with their right to manifest their religion, guaranteed by article 9.1 of the European Convention on Human Rights:

“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 in private, to manifest his religion or belief, in worship, teaching, practice and observance.”

They also claim that it is in breach of the right to education protected by article 2 of the First Protocol:

“No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions.”

74. The practice of corporal punishment involves what would otherwise be an assault upon another person. The essential question, therefore, has always been whether the legislation achieves a fair balance between the rights and freedoms of the parents and teachers and the rights, freedoms and interests, not only of their children, but also of any other children who might be affected by the persistence of corporal punishment in some schools. The mechanism for achieving that balance lies in article 9.2:

“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.”

It is common ground that the respect due to the parents’ religious and philosophical convictions in the education of their children under article 2 of the First Protocol may be similarly limited. That is where the debate in this case should always have been concentrated. Instead, the argument

in the High Court focussed mainly on whether the beliefs of the parents and teachers qualified for protection, whether this practice was a manifestation of those beliefs, and whether the ban was an interference with their manifestation. The possible justification for the ban was dismissed in a single paragraph of the judgment. In the Court of Appeal it did not feature at all. As Rix LJ explained at [2003] QB 1300, 1334, para 113:

“It follows that the real battleground both below and in this court has not been the important and wide-ranging argument which might have been advanced, to the effect that, whatever might be said of, for or against, the mild and loving application of physical punishment to children in an institutionalised setting, a government ought to be entitled to legislate against all corporal punishment in schools, on an ultimate balance of the competing rights and interests involved. Such an argument would be prepared to take account, on the one side of the rights and interests of parents in passing to the next generation the beliefs, religious and philosophical, which help to guide their lives, and, on the other side of the rights and interests of children to be free of the dangers that can stem from the permission of any leeway at all in the matter of corporal punishment; and on a third side, of the rights and interests of the democratic state, as the representative of all the competing values and interests in society to legislate in a way that it believes best, most safely, justly and proportionately preserves the rights and interests of all concerned.”

75. Instead the argument was about “the nature of religious belief itself”. That is, of course, a most important question, but it is not the question in this case. Article 9 protects “freedom of thought, conscience and religion”. This includes the freedom to manifest one’s “religion or belief”. Those of us who hold religious beliefs may feel that they are in some way different not only in kind but also in importance from other beliefs. But those who do not hold religious beliefs may profoundly disagree. Both article 9 and the first Protocol are careful not to distinguish between religious and other beliefs or philosophical convictions, nor do they elevate religious beliefs above others. The court is not required to consider the nature of religion, still less is it required to consider whether a particular belief is soundly based in religious texts. The court’s concern is with what the belief is, whether it is

sincerely held, and whether it qualifies for protection under the Convention.

76. Convention jurisprudence suggests that beliefs must have certain qualities before they qualify for protection. I suspect that this only arises when the belief begins to have an impact upon other people, in article 9 terms, when it is manifested or put into practice. Otherwise people are free to believe what they like. The European Court in *Campbell v Cosans v United Kingdom* (1982) 4 EHRR 293, 303, para 36, equated the parental convictions which were worthy of respect under the first Protocol with the beliefs protected under Article 9: they must attain a certain level of cogency, seriousness, cohesion and importance; be worthy of respect in a democratic society; and not incompatible with human dignity. No distinction was drawn between religious and other beliefs. In practice, of course, it may be easier to show that some religious beliefs have the required level of cogency, seriousness, cohesion and importance.

77. Some people believe so strongly that all corporal punishment of children is wrong that they may find it hard to accept that a belief that it is right can in any circumstances be worthy of respect in a democratic society or compatible with the human dignity of either the punished or the punisher. That must sometimes be so. The sort of punishment in which Victoria Climbié's murderers apparently believed is not worthy of any respect at all. But in this case we are concerned with carefully controlled, mild and loving discipline administered in the context of a clear moral code. Many people in this country still believe that it is right. The rightness or wrongness of either belief is not a scientifically provable fact. Nor does either necessarily depend upon the practical efficacy of corporal punishment in developing character and behaviour. Many would believe it to be wrong even if it was proven to work. Both are essentially moral beliefs, although they may be underpinned with other beliefs about what works best in bringing up children. Both are entitled to respect. A free and plural society must expect to tolerate all sorts of views which many, even most, find completely unacceptable.

78. Respect is one thing. Allowing them to be practised is another. I am prepared to accept that the practice of corporal punishment in these schools is a manifestation of the parents' and teachers' beliefs: a belief that as a last resort children may need physical correction as part of their education can only be manifested by correcting them in that way. I find it difficult to understand how a ban on that practice is anything other than a limitation of the right to manifest that belief: the belief in

question is not only a belief that parents should be able to punish their children but that such punishment is an essential part of the sort of Christian education in which these parents and teachers believe. I am deeply troubled by the solution adopted in the Court of Appeal, which depended upon the parents' continued right to punish the children themselves. The real question is whether any limits set by the state can be justified under article 9.2.

79. Those limits must fulfil the three well-known criteria: (1) they must be prescribed by law, as this undoubtedly is; (2) they must pursue a legitimate aim; and (3) they must be necessary in a democratic society: the "notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued": see, for example, *Pretty v United Kingdom* (2002) 35 EHRR 1, 38, para 70.

80. There can be no doubt that the ban on corporal punishment in schools pursues the legitimate aim of protecting the rights and freedoms of children. It has long been held that these are not limited to their rights under the European Convention. The appellants were anxious to stress that the corporal punishment in which they believe would not breach the child's rights under either article 3 or article 8. But it can still be legitimate for the state to prohibit it for the sake of the child. A child has the same right as anyone else not to be assaulted; the defence of lawful chastisement is an exception to that right. It has long been held in the context of article 8 that the rights and freedoms of the child include his interests: see *Hendricks v Netherlands* (1983) 5 EHRR 223; *Andersson v Sweden* (1992) 14 EHRR 615; *Johansen v Norway* (1996) 23 EHRR 33. Even if it could be shown that a particular act of corporal punishment was in the interests of the individual child, it is clear that a universal or blanket ban may be justified to protect a vulnerable class: see *Pretty v United Kingdom*, para 74 where a universal ban on assisting suicide could be justified for the protection of vulnerable people generally, even though Mrs Pretty herself was not vulnerable: "it is the vulnerability of the class which provides the rationale for the law in question". Above all, the state is entitled to give children the protection they are given by an international instrument to which the United Kingdom is a party, the United Nations Convention on the Rights of the Child (UNCRC).

81. Article 3.1 of UNCRC requires that:

“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.”

Article 37 requires that:

“States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment . . .”

More significantly in the present context, article 19.1 provides:

“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.”

This is reinforced by article 28.2:

“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.”

82. The United Nations Committee on the Rights of the Child commented, in its consideration of the United Kingdom’s first report on its compliance with the Convention (see *Concluding Observations of the Committee on the Rights of the Child: United Kingdom*, February 1995) that it was

“. . . worried about the national legal provisions dealing with reasonable chastisement within the family. The

imprecise nature of the expression of reasonable chastisement as contained in these legal provisions may pave the way for it to be interpreted in a subjective and arbitrary manner. Thus, the Committee is concerned that legislative and other measures relating to the physical integrity of children do not appear to be compatible with the provisions and principles of the Convention, including those of its articles 3, 19 and 37. The Committee is equally concerned that privately funded and managed schools are still permitted to administer corporal punishment to children in attendance there which does not appear to be compatible with the provisions of the Convention, including those of its article 28, paragraph 2.” (para 16)

The Committee went on to recommend that physical punishment of children in families be prohibited “in the light of the provisions set out in articles 3 and 19 of the Convention” (para 31); further “legislative measures are recommended to prohibit the use of corporal punishment in privately funded and managed schools” (para 32).

83. At its second review in October 2002, the Committee welcomed the abolition of corporal punishment in all schools in England, Wales and Scotland following its 1995 Recommendations (see *Concluding Observations: United Kingdom of Great Britain and Northern Ireland*, 9 October 2002, para 35). It went on (para 38):

“The Committee recommends that the State party:

- (a) with urgency adopt legislation throughout the State party to remove the ‘reasonable chastisement’ defence and prohibit all corporal punishment in the family and in any other contexts not covered by existing legislation;
- (b) promote positive, participatory and non-violent forms of discipline and respect for children’s equal right to human dignity and physical integrity, involving children and parents and all those who work with and for them, and carry out public education programmes on the negative consequences of corporal punishment.”

84. We are not in this case concerned with physical punishment within the family. This raises more complex questions than does

corporal punishment in institutional settings. That is no doubt why the Committee's 1995 recommendations (quoted above) were more nuanced. But in relation to corporal punishment in schools they have been quite unequivocal. The Committee's recommendations have also been endorsed by the United Nations Committee on Economic, Social and Cultural Rights: see *Concluding Observations of the Committee on Economic, Social and Cultural Rights: the United Kingdom of Great Britain and Northern Ireland – Dependent Territories*, 5 June 2002, para 36. How can it not be a legitimate and proportionate limitation on the practice of parents' religious beliefs to heed such a recommendation from the bodies charged with monitoring our compliance with the obligations which we have undertaken to respect the dignity of the individual and the rights of children?

85. There was also a large body of professional educational and child care opinion in support of the ban. In 1967, the Plowden Report recommended that "the infliction of physical pain as a recognised method of punishment in primary schools should be forbidden" in both state and independent schools: see *Children and their Primary Schools: A Report of the Central Advisory Council for Education (England)* (Chairman: Lady Plowden), HMSO 1967, paras 743 - 750. The Committee knew that the recommendation was controversial, but they relied upon the psychological evidence received as well as the almost universal practice in other western countries, particularly in Europe. In 1985, the Committee of Ministers of the Council of Europe, in *Violence in the Family* (Recommendation R85(4)), proposed that member states should review their legislation so as to limit or indeed prohibit corporal punishment. Corporal punishment was banned in all state schools, and for all state funded pupils in independent schools, by the Education (No 2) Act 1986, section 47. Not long after this, the Elton Committee of Enquiry into discipline in schools received few submissions recommending its reintroduction. They also found that there was "little evidence that corporal punishment was in general an effective deterrent either to the pupils punished or to other pupils": see *Discipline in Schools: Report of the Committee of Enquiry chaired by Lord Elton*, 1989, HMSO, paras 4.44, 4.46. In 1990, in *Social Measures concerning Violence in the Family* (Recommendation R(90)2), the Committee of Ministers of the Council of Europe emphasised the importance of the general condemnation of corporal punishment and other forms of degrading treatment as a means of education and of the need for a violence free education. In 1991, Sir William Utting, in *Children in the Public Care, a review of residential child care*, noted that corporal punishment in children's homes had "quite properly" been forbidden under the Children Act 1989 but there was a need for training and guidance on control, restraint and physical contact with children in

residential care. In 1993, in *One scandal too many . . . the case for comprehensive protection for children in all settings*, a distinguished working group convened by the Gulbenkian Foundation recommended the prohibition of corporal punishment in all settings where it was still allowed. This was followed in 1995 by the Report of the Commission on Children and Violence, chaired by Sir William Utting, which recommended the immediate abolition of physical punishment in all schools: see *Children and Violence*, Gulbenkian Foundation 1995, pp133-136; 145-146. In 1996, the National Commission of Inquiry into the Prevention of Child Abuse, chaired by Lord Williams of Mostyn, concluded that corporal punishment was unsatisfactory and ineffective and recommended that the law as it affects the physical punishment of children should be amended to give children the same protection against assault as adults: see *Childhood Matters*, 1996, HMSO, paras 5.42-5.45, recommendation 34. In the debates on the 1998 amendment banning corporal punishment in all schools, Parliament was told that there were no calls from official teachers' bodies for the reintroduction of corporal punishment in state schools. The Independent Schools Council supported the amendment, as did all the teachers' unions. It also had the support of a consortium of children's charities, including the NSPCC.

86. With such an array of international and professional support, it is quite impossible to say that Parliament was not entitled to limit the practice of corporal punishment in all schools in order to protect the rights and freedoms of all children. Furthermore, the state has a positive obligation to protect children from inhuman or degrading punishment which violates their rights under article 3. But prohibiting only such punishment as would violate their rights under article 3 (or possibly article 8) would bring difficult problems of definition, demarcation and enforcement. It would not meet the authoritative international view of what the UNCRC requires. The appellants' solution is that they and other schools which share their views should be exempted from the ban. But this would raise exactly the same problems. How could it be justified in terms of the rights and protection of the child to allow some schools to inflict corporal punishment while prohibiting the rest from doing so? If a child has a right to be brought up without institutional violence, as he does, that right should be respected whether or not his parents and teachers believe otherwise.

87. For very different reasons from those given by the Court of Appeal, therefore, I would dismiss this appeal.

**LORD BROWN OF EATON-UNDER-HEYWOOD**

My Lords,

88. I have had the benefit of reading the opinions of my noble and learned friends Lord Nicholls of Birkenhead, Lord Walker of Gestingthorpe and Lady Hale of Richmond. I agree with them, and for the reasons they give I too would dismiss this appeal.