

One Green Bottle, male circumcision and the law: Healthcare and Secularism Part 4

Video available at: <https://youtu.be/pbu8tO2Ca5g>

0:00:04.890,0:00:06.890

So welcome back everyone.

0:01:01.260,0:01:03.260

Oh, we have got my

0:00:08.340,0:00:10.549

James Chegidden has joined us.

0:01:03.809,0:01:05.640

slides up

0:00:10.549,0:00:16.339

James is a UK barrister, originally from Australia, called to the bar by Lincoln's Inn in 2008

0:01:05.640,0:01:08.419

In front of you. Well, I've named my speech

0:00:16.529,0:00:18.889

and now practicing from Old Square Chambers in London.

0:01:09.150,0:01:16.400

today after a children's rhyme which most people have heard and I hope it's one that has some

0:00:20.070,0:00:24.920

James specializes in equality and discrimination law on public law cases and

0:01:17.580,0:01:19.969

allegorical relevance to my topic.

0:00:25.140,0:00:32.000

formerly worked for the European Court of Human Rights in Strasbourg and was appointed Attorney General's counsel to the crown in

0:01:21.030,0:01:28.280

Now the first thing I'm gonna have to work out is how to use this slide machine. I think I go. There we go. Yes,

0:00:32.640,0:00:34.640

2013 and

0:01:28.920,0:01:31.010

Right. Success. I hope I'll be able to manage that.

0:00:34.890,0:00:40.549

James has been heavily involved in cases relating to non-therapeutic male circumcision.

0:01:31.290,0:01:31.790

Well,

0:00:42.299,0:00:47.239

I will now hand you over to James to speak about one green bottle - male circumcision and the law.

0:01:31.790,0:01:37.699

we all know what one green bottle is about - the song, and I think it is relevant to this topic because

0:00:54.380,0:01:00.180

Thank you very much Anthony and for those very kind words.

0:01:38.010,0:01:40.010

for many

0:01:40.320,0:01:42.589

scholars the 20th century really was

0:01:43.320,0:01:48.919

the century in which the law as it relates to children's rights

0:01:50.490,0:01:57.500
dramatically improved from a legal perspective in which children had virtually no rights at all -

0:01:57.570,0:02:04.010
they were essentially the possession of their parents and to do what they liked with, so long as they didn't murder them,

0:02:05.670,0:02:09.440
Into a world in which their rights were first

0:02:10.110,0:02:15.589
acknowledged and then, in the latter part of the 20th century, even defended.

0:02:17.180,0:02:19.700
It's no accident that it was as late as

0:02:20.730,0:02:22.409
1983

0:02:22.409,0:02:27.739
that the United Nations Convention on the Rights of the Child was passed into international law

0:02:27.739,0:02:30.589
which was the first time that children

0:02:31.439,0:02:36.499
became holders of international legal rights outside of a war zone.

0:02:37.519,0:02:38.269
Very late

0:02:38.269,0:02:44.059
but nonetheless timely and if we see the area of children's law as

0:02:44.519,0:02:48.379
a wall and the obstacles to fair treatment of

0:02:49.139,0:02:51.168

children as the green bottles

0:02:51.510,0:02:59.090
we really have been living in a world in which over the last hundred years one green bottle after another has

0:02:59.549,0:03:01.578
accidentally or not so accidentally

0:03:02.159,0:03:04.159
- been pushed by lawyers like me -

0:03:04.530,0:03:12.379
have been pushed off the wall. So, we have a situation in which, for example, things like child labour -

0:03:14.010,0:03:19.310
abolished, more or less, severe corporal punishment, corporal punishment in schools.....

0:03:20.790,0:03:25.310
what else? barriers to access to education and of course,

0:03:25.949,0:03:27.209
FGM

0:03:27.209,0:03:29.899
have become legally

0:03:32.129,0:03:36.619
Impossible. So, they exist - they haven't been completely

0:03:38.010,0:03:41.689
wiped off the face of the earth, but they have become, in terms of legal

0:03:42.750,0:03:45.919
analysis, something that's unacceptable in our society.

0:03:46.709,0:03:52.128

But there is one bottle left and I'm afraid that's what I'm going to be talking to you about today

0:03:52.319,0:03:59.508

because there is one green bottle that hangs on the wall. It is an absolute anomaly in my opinion, but it does

0:04:00.629,0:04:06.499

hark back to the period 100 years ago when children had no rights and it just hasn't been

0:04:07.049,0:04:08.129

sufficiently

0:04:08.129,0:04:14.298

looked at by our society or those who have have chosen not to take any action.

0:04:15.449,0:04:20.538

That, of course, is the phenomenon of the forcible circumcision of

0:04:21.360,0:04:26.580

minors - in this case male minors - which we are still as a

0:04:27.320,0:04:32.440

society either in favor of or prepared to turn a blind eye to.

0:04:33.320,0:04:38.170

So, I've got a very short time to speak to you, but what I want to do in this short presentation, which really

0:04:38.870,0:04:42.820

cannot cover very much - it's going to be a whistle-stop tour - I'm going to be honest with you.

0:04:43.730,0:04:46.629

What I want to deal with is just three big headings

0:04:47.480,0:04:48.920

in this

0:04:48.920,0:04:50.949

growing area. The first is

0:04:51.620,0:04:54.910

to deal with why I say, as a barrister, that

0:04:55.610,0:04:59.650

the genital cutting which is often - I'm going to have to use the phrase

0:05:00.050,0:05:07.809

that's more commonly used - simply circumcision - of male minors, is a deep anomaly in our legal system. It doesn't fit

0:05:08.330,0:05:10.960

within the legal system we have today

0:05:12.410,0:05:19.210

and it contradicts really every other principle of law from whatever angle you wish to approach it from. That's my position.

0:05:19.670,0:05:21.020

Not everyone would agree with that,

0:05:21.020,0:05:29.020

but that's what I'm going to defend today - that the genital cutting of male minors is an anomaly in our legal system. I

0:05:29.720,0:05:33.790

want to say where the law has got to on this because the law has made

0:05:34.010,0:05:39.219

some improvements in this area over the last century - not nearly enough, but it has made some improvements.

0:05:39.220,0:05:42.820

I want to tell you what those are and I want to tell you why I think we need to do more and

0:05:43.010,0:05:50.260

then lastly I want to just finish with discussing really what we can do about it because I'm here talking mostly not to lawyers

0:05:50.930,0:05:55.930

but to healthcare professionals and of course, I think it's actually in that area that more

0:05:56.780,0:06:00.250

progress possibly can be made than on our side as lawyers.

0:06:01.130,0:06:05.710

So, all right. Well, first of all, I want to talk with, talk to you about what this talk is not about

0:06:07.610,0:06:10.119

because it's important to get a few things out of the way first.

0:06:10.970,0:06:12.530

First of all,

0:06:12.530,0:06:16.660

I hope it's obvious that this topic is not about

0:06:17.300,0:06:20.050

being for or against the

0:06:20.990,0:06:22.990

tradition of

0:06:23.480,0:06:25.480

male circumcision per se.

0:06:26.060,0:06:32.650

That practice clearly has a very venerable tradition, it's gone on for thousands of years in many cultures,

0:06:33.770,0:06:37.449

many people feel very attached to it and

0:06:38.000,0:06:43.010

some people derive a great meaning from their own circumcision status.

0:06:44.490,0:06:51.920

That is not of concern to me. I'm quite happy people to like circumcision as a practice or not to like it

0:06:52.830,0:06:54.830

but what is what is of concern,

0:06:57.060,0:06:59.119

is that this is a practice which

0:06:59.640,0:07:03.049

largely is not imposed upon adults who want it,

0:07:03.600,0:07:04.860

but on

0:07:04.860,0:07:07.220

children who do not consent and

0:07:07.860,0:07:09.860

cannot consent to

0:07:10.170,0:07:12.170

the practice. That is the concern.

0:07:13.200,0:07:20.119

So it's not an objection to circumcision per se - just as much as one can be for or against tattooing

0:07:21.300,0:07:23.300

as an, for adults to

0:07:23.820,0:07:30.140

like tatoos is fine - what they can't do in our law is to tattoo a child just because they happen to like tattooing themselves.

0:07:30.140,0:07:33.919

And it's the same in my, it should be the same in my opinion with circumcision but I'm jumping ahead.

0:07:35.100,0:07:36.810

Second of all,

0:07:36.810,0:07:44.600

while I appreciate that I'm talking at a secular medical conference, and I'm honored to be doing so, this topic isn't really strictly speaking

0:07:45.390,0:07:47.390

about secularism either.

0:07:48.120,0:07:50.810

By that I mean that your approach to this topic

0:07:51.540,0:07:53.540

does not or shouldn't depend on

0:07:54.270,0:07:59.690

whether you have a secular outlook in life, or whether you have a faith-based approach to life

0:08:00.660,0:08:03.320

and I think one problem in this debate and

0:08:03.450,0:08:10.309

I'm afraid I think it's a problem that set us back to a degree in this area is the perception in certain quarters that

0:08:11.250,0:08:15.410

really what's going on in this debate is an underlying debate underneath it

0:08:15.600,0:08:21.950

namely that if you're a religious person you're supposed to be for circumcision of children, if you're a

0:08:22.350,0:08:24.589

secularist or humanist or an atheist

0:08:24.590,0:08:30.830

you're supposed to be against circumcision of minors. Now that's sadly how a number of people do see this debate

0:08:30.830,0:08:35.989

and the reality is I've been in these debates for years and years and years and I can tell you that it's a complete myth

0:08:36.659,0:08:39.139

because I know many devoutly

0:08:39.719,0:08:43.069

committed religious people who are against the forcible

0:08:43.500,0:08:47.750

genital cutting of children, including in communities where it's very common, and

0:08:48.300,0:08:50.419

in my own chambers, I know some very

0:08:50.970,0:08:52.490

ardent secular athiests

0:08:52.490,0:08:58.329

who think I'm appalling for trying to oppose the practice and want it to continue.

0:08:58.329,0:09:05.229

So, this is not a debate about people of faith as opposed to people of a humanist outlook

0:09:05.230,0:09:09.129

and I'd be equally happy to give this talk at say a

0:09:10.790,0:09:13.599

religiously based healthcare conference.

0:09:14.660,0:09:16.660

Thirdly, and perhaps

0:09:17.509,0:09:19.989

surprisingly and this is where I hope to build a little bit

0:09:20.959,0:09:25.058

I'm more and more convinced the more I talk about this subject that actually

0:09:25.939,0:09:33.849

as far as the law goes this whole issue is much less a problem about how the law deals with religion

0:09:34.639,0:09:39.429

it's much more a problem with how the law deals with children and

0:09:40.040,0:09:44.319

I know Brian is actually going to talk about this issue later and probably much better than me

0:09:44.319,0:09:47.649

but I'm going to just mention that because it comes back later

0:09:47.649,0:09:52.628

and the reason why I say that this is more an issue about how the law deals with children

0:09:53.240,0:09:59.019

rather than how the Lord deals with religion is when we compare it to how the law treats a full

0:09:59.329,0:10:02.109

rights holder in this area, namely an adult.

0:10:03.230,0:10:06.219

So, right. That's what this talk's not about.

0:10:06.220,0:10:09.970

What is this talk going to be about? Well, in

0:10:10.309,0:10:11.980

extreme brevity, the position

0:10:11.980,0:10:15.699

- I think I should tell you a little bit about what, where we are with

0:10:15.980,0:10:20.289

genital cutting in this country because it's mainly, this is mainly a conference about the UK.

0:10:21.829,0:10:26.739

In this country, tens of thousands of children every year -

0:10:27.379,0:10:30.099

that's male infants, are genitally cut.

0:10:30.620,0:10:35.019

We don't have accurate statistics because one of the problems of this area, is that no

0:10:35.240,0:10:39.819

statistics outside hospitals and some GP surgeries need to be done at all

0:10:40.550,0:10:45.490

but it is estimated even by the NHS and generally anecdotally that about 15% of

0:10:45.889,0:10:48.729

males in this country have undergone circumcision and

0:10:49.370,0:10:55.359

that is of course the removal of the entirety of their foreskin, which is a normal component of their body.

0:10:55.970,0:10:57.970

The vast majority of those

0:10:58.670,0:11:00.410

15 percent have had

0:11:00.410,0:11:04.830

circumcision imposed on them as children and without, obviously, their their their choice.

0:11:05.920,0:11:07.920

And without a therapeutic need.

0:11:09.070,0:11:13.259

In the UK, there is no legal requirement for circumcision by a doctor.

0:11:13.260,0:11:17.400

You do not have to be a doctor to circumcise a child. You have to simply

0:11:18.250,0:11:23.489

have, if you are going to undertake the the procedure, you need to do it competently, but

0:11:24.070,0:11:26.969
that's all - no requirements for registration or

0:11:27.580,0:11:31.020
any form of training or skill whatsoever.

0:11:31.020,0:11:35.100
But if you undertake the job, you have to do it competently and we know sadly

0:11:35.500,0:11:38.190
that many of the people in this country doing it are not

0:11:38.740,0:11:39.670
competent and

0:11:39.670,0:11:45.479
if you'd like to see, the reason we know that it's because some of the worst cases have appeared in front of the Crown Court

0:11:45.820,0:11:47.110
for

0:11:47.110,0:11:49.110
severe child cruelty and

0:11:49.900,0:11:53.910
manslaughter because some children circumcised in the last five years have died

0:11:54.910,0:12:01.380
because of the problems arising from a very poor case. So we know that that's the situation but

0:12:01.750,0:12:04.169
in practice - a circumciser requires

0:12:04.870,0:12:06.870
no training whatsoever.

0:12:07.180,0:12:09.180
There is no requirement of

0:12:09.760,0:12:17.250

authorisation - a parent doesn't have to justify their reasons for wanting circumcision of their child. The only effective

0:12:17.770,0:12:19.180
threshold

0:12:19.180,0:12:20.650
requirement is that both

0:12:20.650,0:12:23.129
parents in law must agree for it to proceed.

0:12:23.170,0:12:28.229
So, a child who for whom one parent degrades one parent doesn't is in a much much much

0:12:28.810,0:12:32.639
better position, even though their rights are pretty much identical.

0:12:33.880,0:12:40.500
So we don't have the time really today to discuss the issue of the harm done by this procedure but a

0:12:40.720,0:12:42.070
safe way to

0:12:42.070,0:12:48.749
proceed really is to categorize it in the way that the criminal law would and so that's what I'm going to do today

0:12:49.690,0:12:56.729
because from the point of view of the criminal law, any invasion of the body which cuts the dermis of the skin

0:12:56.770,0:13:02.129
which occasions pain, bleeding, scarring and the amputation of any part of the body

0:13:02.770,0:13:05.370
- which circumcision always does -

0:13:06.670,0:13:12.060

will amount to wounding in the criminal law,
which is a more serious form of harm than

0:13:12.640,0:13:14.239

actual bodily harm

0:13:14.239,0:13:20.439

- it's actually, wounding is actually part of the
same statute section of the statute as grievous
bodily harm -

0:13:20.439,0:13:24.308

and that's interesting because of course the
CPS' charging

0:13:24.920,0:13:29.769

policies identify FGM as always amounting to
grievous bodily harm no matter how

0:13:30.769,0:13:32.769

significant or insignificant the cutting event.

0:13:33.980,0:13:37.599

And we also have a definitive decision by the
High Court,

0:13:37.600,0:13:42.819

and this is by the president of the Family
Division in a case called B and G, which I'll
come to later

0:13:43.040,0:13:48.459

In which Lord Justice Munby determined that
from the point of view of the Children's Act
1989,

0:13:49.220,0:13:53.139

any case of male genital cutting will amount to

0:13:53.899,0:13:59.558

significant harm within the meaning of the
Children's Act. Now, that's just the legal point
of view -

0:13:59.559,0:14:04.238

I know some people will disagree, but that is
the way the law looks at male genital cutting.

0:14:05.029,0:14:07.238

So, well, what's wrong with that? Well,

0:14:07.910,0:14:13.839

perhaps one would start by saying well any
deliberate infliction by one person of

0:14:14.269,0:14:18.638

significant harm, physical harm on another
person who doesn't consent is at least
problematic

0:14:19.189,0:14:23.439

but of course whenever I start that argument
you always get people on the other side saying

0:14:23.439,0:14:24.949

well, not very harmful

0:14:24.949,0:14:29.918

really - actually, my children have had it and
I've had it and I'm fine and I don't think there's
any real harm so

0:14:30.019,0:14:32.948

that ends up going down a bit of a rabbit
warren. I

0:14:34.069,0:14:35.239

think,

0:14:35.239,0:14:40.298

although I should say I think there is a
significant case for major harm being done
here,

0:14:42.410,0:14:47.949

but let's look at it in a clearer way because
there is a clearer way to look at that, look at
this, and and the

0:14:47.949,0:14:52.539

way that you should be able to see I think that
this position is problematic is

0:14:53.419,0:14:58.629

to compare that situation of the imposition of
circumcision on a child

0:14:59.089,0:15:05.318
with the situation in which the law is dealing
with a full rights holder, namely an adult,

0:15:06.199,0:15:09.609
because everyone agrees that an 18 year old is
a full

0:15:10.189,0:15:15.248
citizen - a full bearer of all the human rights
that we say we believe in as a society and

0:15:15.799,0:15:21.759
the reason why this is a good way of looking at
it is because pretty much everyone in this
debate - the most pro circumcision

0:15:22.620,0:15:29.029
advocate and the most opposed will agree on
what the situation is when we're dealing with
an adult.

0:15:29.550,0:15:34.520
So it's a nice platform to start from and I want
to start from this. If you were to do

0:15:35.100,0:15:42.560
exactly the same thing to an adult that we do
in the community every day to a

0:15:43.140,0:15:47.029
circumcised child, namely, to take his body,
pin him down,

0:15:47.670,0:15:53.510
cut off his foreskin - usually without much
anesthetic, make him bleed, leave him scarred

0:15:54.120,0:15:56.419
without seeking any consent whatsoever

0:15:57.839,0:16:02.958
then irrespective of your intention and belief
in undertaking that operation,

0:16:03.810,0:16:08.119

Irrespective of how much you think this
procedure is justified or a good thing,

0:16:09.510,0:16:11.510
everyone agrees that

0:16:11.970,0:16:19.399
that would be a very serious offense and that
you would end up being convicted and
imprisoned for that very serious offense.

0:16:20.100,0:16:23.120
Now it's interesting that everybody agrees
with that

0:16:24.480,0:16:31.670
because the only thing that changes when you
look at the genital cutting imposed on a child,
is the age of

0:16:31.770,0:16:33.770
the victim. That's it.

0:16:33.810,0:16:35.300
Nothing else changes -

0:16:35.300,0:16:40.399
the religious intention stays the same, the
procedure stays the same, the irreversibility
stays the same -

0:16:40.890,0:16:42.089
everything's the same

0:16:42.089,0:16:46.669
the only thing that changes is the age of the
child and this is why I say

0:16:47.010,0:16:50.089
when we're talking about genital cutting we
are actually not

0:16:50.820,0:16:52.820
unclear about

0:16:53.190,0:16:57.320
personal, about how personal autonomy and
religious freedom

0:16:58.050,0:17:02.120

Interacts, we're actually very clear on that when we're talking about an adult.

0:17:02.790,0:17:04.790

No one will disagree with you.

0:17:04.949,0:17:11.329

We're very clear about how far bodily autonomy goes and how far religious freedom goes when the adult is concerned.

0:17:11.579,0:17:14.779

Where we wobble is as soon as we've got a child

0:17:15.300,0:17:22.219

involved and that's why I say this is not a case primarily about the law interacting with religion. It's about the law interacting with children

0:17:24.000,0:17:26.000

and we really have to remember that.

0:17:26.550,0:17:32.599

Now, I'd like to - my position here is that there isn't a single field of law

0:17:33.960,0:17:35.160

that

0:17:35.160,0:17:38.899

touches this topic that doesn't have its principles

0:17:39.420,0:17:43.369

fundamentally violated by the phenomenon of infant circumcision and

0:17:44.370,0:17:49.849

I've spent 10 years, which is practically my whole life as a barrister listening to arguments for circumcision

0:17:51.060,0:17:58.669

of children and I can say that whether it be criminal law, whether it be equality law, whether it be

0:17:58.920,0:18:03.320

anti-discrimination law, whether it be civil law, whether it be family law, whether it be medical law,

0:18:04.170,0:18:11.269

children's law, human rights law and actually also the law of religion of belief and conscience,

0:18:12.180,0:18:16.969

not one of them will support the practice of infant circumcision.

0:18:17.010,0:18:20.900

It is an anomaly. A complete, standout anomaly.

0:18:21.930,0:18:26.989

Now I'd like to be, I'd be delighted to be able to talk about each and every one of those fields, but first of all

0:18:26.990,0:18:31.310

you've got better speakers to hear after me so we don't have time for that.

0:18:31.310,0:18:35.089

I can do it and I've thought about it a lot

0:18:35.090,0:18:37.640

so I'd be delighted to but you'd be here all day

0:18:37.640,0:18:41.930

So what I'm gonna have to do is, I'm gonna have to content myself with just one or two

0:18:42.870,0:18:50.030

by way of example and hope that you you know, believe me that the same theme flows through. So, I think, oh

0:18:50.610,0:18:56.390

we're running out of time already, but I think, well we'll quickly, I mean, I've actually already covered what

0:18:57.030,0:18:59.010
criminal law would say

0:18:59.010,0:19:05.869
I've already told you that that it'll always satisfy the legal definition of actual bodily harm and wounding and it amounts to significant harm.

0:19:06.150,0:19:11.570
That's the sections of the act - Offences Against the Person Act - it's not particularly exciting, but there we are,

0:19:12.180,0:19:16.820
that's what, that's what the law is - to say that any form of assault at this level will be a

0:19:17.580,0:19:18.930
serious one.

0:19:18.930,0:19:24.739
What, - there's a bit of a definition there, which I'm going to go over very quickly, but I've already told you that

0:19:25.290,0:19:28.729
circumcision any standard form will, will meet the test.

0:19:30.090,0:19:34.130
What's interesting is that there are some exceptions to

0:19:35.730,0:19:37.820
the infliction of actual bodily harm

0:19:37.820,0:19:41.539
but very importantly, consent actually will not

0:19:42.000,0:19:46.199
validate in English law an assault at the level of actual bodily harm.

0:19:46.200,0:19:52.709
Even if you consent, you cannot, that is not a defense to an assault as serious as actual bodily harm.

0:19:53.409,0:19:55.409
We do

0:19:56.019,0:20:03.598
exempt within the criminal law a few activities which in the common law have been determined not to be falling within this

0:20:04.719,0:20:09.029
category but you can see very quickly the three I've put up there - sports,

0:20:09.820,0:20:11.849
so including boxing and so on,

0:20:12.820,0:20:15.989
tattooing and ear piercing and body piercing

0:20:18.099,0:20:22.259
but of course all of those activities have a very strong element of

0:20:22.959,0:20:29.578
consent by the person doing the action - a person who plays sports, wants to play sport and

0:20:30.579,0:20:35.009
so therefore it's an inherent part of the good thing that they want that they are in fact

0:20:35.769,0:20:39.838
taking a risk that there will be some injury and so on, tattooing of course as well.

0:20:39.839,0:20:44.549
I might point out that the Tattooing of Minors Act only includes adults - it excludes children.

0:20:45.879,0:20:49.559
Body piercing as well, no one thinks, that is of course technically

0:20:52.719,0:20:56.609
an intervention on the skin but of course if it's consented to that's an exception.

0:20:57.190,0:21:02.459
There is no established exception for ritual circumcision. There is one

0:21:03.669,0:21:05.619
comment in a case in

0:21:05.619,0:21:10.139
1994 in which Lord Templeman, without any argument on the point, said "oh, and

0:21:10.389,0:21:14.488
also ritual circumcision will be in that category" but everybody agrees that

0:21:15.249,0:21:20.458
his comment there was obiter, in other words, it doesn't apply to the case and he never heard any arguments about the,

0:21:21.009,0:21:23.309
about the phenomenon of circumcision and in fact

0:21:24.039,0:21:26.699
the irony of that case is that he was sending to prison

0:21:26.799,0:21:32.429
someone who had actually driven a nail through another person's foreskin, by their consent - another adult

0:21:32.559,0:21:34.858
so it's ironic that at the same time he was,

0:21:34.989,0:21:40.829
at the same time as saying this is terrible that someone has done this damage to this adult man by his consent

0:21:41.410,0:21:46.379

but I will say that doing it to a child without their consent is absolutely fine. So this is very very silly,

0:21:46.380,0:21:52.979
it's a very silly comment by Lord Templeman. No one can take that one. seriously. So there really isn't an established category.

0:21:54.669,0:21:59.729
Right, we've got five minutes so I'm gonna have to, gonna have to leave a few categories out.

0:22:02.559,0:22:08.159
What I will say is it's often thought well maybe there must be some sort of cultural or

0:22:08.799,0:22:11.879
religious or philosophical freedom of belief defence

0:22:12.220,0:22:18.959
but the answer is there isn't and it's very interesting, most the people that promote the idea of a defense are actually,

0:22:19.510,0:22:21.370
ah, they

0:22:21.370,0:22:23.010
struggle to show a single example

0:22:23.010,0:22:23.710
but I

0:22:23.710,0:22:29.460
can show you some examples of where it doesn't matter what form of religion or philosophy you deal with, anyone who

0:22:29.559,0:22:34.288
Inflicts harm on a child at this level will be convicted irrespective of their intentions.

0:22:34.289,0:22:40.139

So here are three examples in the criminal law. The first one is a case called Adesanya, which is a case where

0:22:40.659,0:22:42.659
someone from an African

0:22:43.090,0:22:45.780
traditional community came to this country.

0:22:46.270,0:22:51.989
She ritually scarred her children's, cut her children's faces in in all sorts of ways

0:22:52.960,0:22:56.939
which is a, which was an entry criterion into adulthood for her particular tribe.

0:22:57.700,0:23:00.510
If she'd have done it in Africa she probably would've got away with it

0:23:00.510,0:23:05.129
but in this country she was caught and she of course at the Old Bailey said this is what

0:23:05.320,0:23:11.429
my religion, culture says every child should have done to them. I was only following my culture

0:23:12.010,0:23:17.819
and so that's my defense. She lost. That was, it was quite routinely

0:23:18.760,0:23:22.679
established that a cultural defense doesn't exist for this level of harm.

0:23:22.900,0:23:29.879
So that's one form, that's from 1974. Case of Senior, is a case where a person who had -

0:23:31.000,0:23:35.819
a rather strange Christian sect called the Peculiar People - that was their actual name -

0:23:35.820,0:23:42.450

I know it sounds quite bizarre, was a Victorian sect. But anyway, they believed that no medicine was

0:23:43.270,0:23:48.059
acceptable within God's law. And so if a child was suffering you in fact just had to let them

0:23:48.750,0:23:54.650
suffer and a child almost died and the father was brought before the court and he said well, I, I did this out of a

0:23:56.550,0:24:03.409
religious belief, in good faith, um the court and that's still, that's actually very interesting this is a Victorian case, so quite odd

0:24:04.740,0:24:07.099
but the court said no, not a defense.

0:24:08.640,0:24:15.770
Last of all we've got Queen against Z. This is a case about a man taking his two teenage sons to a mosque where a

0:24:16.860,0:24:18.210
flagellation

0:24:18.210,0:24:23.600
ritual was going to be carried out - there was evidence that the child actually was quite happy to carry this out upon himself - the

0:24:24.030,0:24:25.950
child was 13

0:24:25.950,0:24:27.120
and

0:24:27.120,0:24:28.740
the man

0:24:28.740,0:24:30.510
was ultimately

0:24:30.510,0:24:33.800

arrested because the doctor found all these marks, scars on

0:24:33.940,0:24:35.800
the child's back

0:24:35.940,0:24:42.220
and of course the man - the same argument - I've got a religious defense. This is my belief,

0:24:42.230,0:24:45.199
It was in good faith and so on. He was convicted as well.

0:24:45.200,0:24:51.470
So there isn't actually a defense for cultural, religious belief and so on. Right,

0:24:51.470,0:24:53.540
I have almost no time. So

0:24:54.240,0:24:56.070
What I'm going to rush to,

0:24:56.070,0:24:59.899
I'm going to pass over the civil law, I'm gonna pass over the other fields of law, I'm gonna

0:24:59.970,0:25:01.610
pass over the BMA

0:25:01.610,0:25:08.060
but I'm going to come to the one, one issue that people do talk about a lot because most of the people who are

0:25:08.790,0:25:10.790
in favor of

0:25:11.130,0:25:15.680
continuing genital cutting will say well the European Convention on

0:25:16.410,0:25:17.940
Human Rights

0:25:17.940,0:25:20.929

article 9 says that everyone has a right to freedom of

0:25:21.780,0:25:23.700
belief, and and

0:25:23.700,0:25:29.450
conscience and that's my, that's my right to to conduct circumcision

0:25:30.000,0:25:32.930
but most of the people that talk about it don't actually

0:25:33.780,0:25:38.030
have a nuanced understanding of what article 9 allows.

0:25:39.540,0:25:44.540
There's article 9 there and it's true that in article 9, 1

0:25:45.570,0:25:48.289
everyone has the right to freedom of thought, conscience and religion.

0:25:48.600,0:25:53.570
This includes freedom to change religion and belief either alone or with others, public or private. To

0:25:54.000,0:25:58.279
manifest his religion and belief in worship, teaching, practice and observance. Okay

0:25:59.579,0:26:04.099
that's the right, but we can see straight away that it's a qualified right because

0:26:04.679,0:26:12.439
Subsection 2 says that your freedom to manifest your beliefs will be subject only to such limitations as are prescribed by law and are necessary

0:26:12.929,0:26:14.929
in the interests of

0:26:14.940,0:26:21.709

public safety for the protection of public order, health or morals or the protection of the rights and freedoms of others. So these are all

0:26:22.259,0:26:25.098

qualifications on the right so where this right

0:26:25.649,0:26:28.638

clashes with some of the interests below, you can,

0:26:29.549,0:26:33.288

religious, religious freedom is restricted. We don't have an absolute right of

0:26:34.019,0:26:39.708

freedom of religion and what article 9 appears to be getting at is to protect the right of the

0:26:40.139,0:26:44.238

Individual to have a belief and to practice that belief

0:26:44.579,0:26:45.179

for

0:26:45.179,0:26:52.158

themselves. That is really what the right is saying - that there is an inviolable space where the state can't intrude on the conscience of

0:26:52.159,0:26:55.549

the person but what article 9 is not doing

0:26:56.420,0:27:02.140

Is saying that you have a right to impose your belief and practice on someone else.

0:27:04.460,0:27:11.220

We've all, we all, if you grew up as I did in the 80s and 90s, we all sat through, you know, the wars in the Balkans and so on

0:27:11.220,0:27:17.100

the various forced conversions and so on and of course we see in Islamic state the, this is within the muslim community, but the sort of

0:27:17.300,0:27:19.079

convert or die

0:27:19.079,0:27:21.079

mentality. That is not a

0:27:21.509,0:27:27.708

right that article 9 protects - the right of someone from Isis to say you either convert to my way of Islam or you die.

0:27:28.559,0:27:30.559

That's not article 9.

0:27:30.569,0:27:32.869

Article 9 is there, was there to stop people

0:27:33.449,0:27:36.799

imposing their beliefs and practices on another person so

0:27:37.559,0:27:44.838

circumcision within the context of article 9 doesn't actually look very good because it is actually the imposition on someone else irreversibly

0:27:45.359,0:27:47.069

of a,

0:27:47.069,0:27:50.269

of a, a form of belief and practice that

0:27:52.829,0:27:54.419

results in an invasion of

0:27:54.419,0:27:59.448

something down here, namely the protection of the rights and freedoms of others and actually the health of others in some cases.

0:27:59.879,0:28:06.468

So Article 9 really isn't a great, a great bulwark of defense for pro circumcision theory.

0:28:07.520,0:28:12.619

I'm running out of time, but what I want to...
....I'm sorry? I am out of time.

0:28:13.160,0:28:19.620

Well, okay. Well what I was going to say.... [LAUGHTER goes on for a while.....]

0:28:21.000,0:28:25.840

.Barristers are terrible at predicting the amount of time they're going to take to give their talk.....

0:28:25.980,0:28:28.730

But what I won't say

0:28:28.730,0:28:29.720

but I'll leave it to questions

0:28:29.720,0:28:34.130

if you want to is how far the law has come to try to recognize this and it has come a little way

0:28:35.400,0:28:42.019

so there are four cases in the last year where the court has said the best interests of a child are not to be

0:28:42.660,0:28:47.540

circumcised and for their, for the decision to be deferred until they are old enough to

0:28:48.059,0:28:50.149

make their own decision. So we do have,

0:28:50.790,0:28:56.719

repeated decisions from the court to say the best interests of the child do not involve being circumcised until they're an adult

0:28:56.970,0:28:58.970

but there's a lot further to go

0:28:59.640,0:29:03.349

and I think ultimately it's probably going to be in the healthcare field that that,

0:29:04.170,0:29:10.579

that that progress is made because the law is only an instrument and unless there's people who are actually prepared to

0:29:11.309,0:29:13.459

reinforce the message that

0:29:14.460,0:29:16.460

this is a practice which really doesn't

0:29:17.010,0:29:21.979

match anymore the way we think about the dignity of a person and the dignity of a child

0:29:22.800,0:29:25.729

then the law isn't going to be enforced.

0:29:25.730,0:29:28.520

So we need people, particularly healthcare professionals and other people -

0:29:28.650,0:29:34.189

people in faith communities and so on to be saying well, this really is one of the elements of the way we did treat children

0:29:35.250,0:29:37.250

that we now realize

0:29:37.679,0:29:42.649

doesn't match anymore any of our other fundamental principles, so I'm going to leave you there.

0:29:42.650,0:29:47.660

I'm sorry that I can't talk any longer, but Anthony will not, well, needs to keep on time.

0:29:48.150,0:29:53.839

So I think there's a couple of questions and otherwise, I think I'm speaking, I'm gonna be a open to questions later, too.

0:30:02.669,0:30:07.158

Well, I'm really sorry to cut James off mid-flow there - I could listen to him all day.....