

Religion Report

on ABC Radio National

The Exclusive Brethren and the rights of children

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Tension between the priorities of the Family Court of Australia and the doctrines of the Exclusive Brethren.

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Transcript

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[Alistair Nicholson on the Exclusive Brethren](#)

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Stephen Crittenden: Welcome to the program.

In December last year, after a three-year battle, a father who left the Exclusive Brethren three years ago was granted access to his two youngest children, aged 8 and 11 by the Family Court. But the conditions were very strict. The children aren't allowed access to radio or television, or even any contact with non-members of the sect, while they're in the father's charge.

Justice Benjamin refused to rule on the father's claim that the Exclusive Brethren were a harmful cult. But in his judgment, he described the Brethren's attempts to prevent the children seeing their estranged father, as 'psychologically cruel, unacceptable and abusive.' He also referred to 30 years of conflict between the Brethren and the Family Law Act.

Then last month, the same judge handed down four months suspended jail sentences against the children's mother, an older son, and her son-in-law—all still members of the Brethren—for breaching his orders and preventing an access visit.

Well as a result of this case, public attention on the Exclusive Brethren appears to be shifting towards a new focus on the rights of children. Last year, in federal parliament, Senator Bob Brown was angry because the Brethren had funded a political campaign against the Greens. He called for a Senate Inquiry and he's still hoping that the Labor party and the Democrats will support an inquiry when the matter is decided next week.

And so this week on *The Religion Report*, we're asking whether Australian children have a right to an ordinary Australian childhood, or whether freedom of religion trumps everything else.

Alistair Nicholson is former Chief Justice of the Family Court. I asked him about the problems he'd faced, dealing with the Exclusive Brethren in the court.

Alistair Nicholson: Well I think that any fundamentalist religious group in a Family Law context does provide a headache, because on the one hand you've got legislation which is designed to cover all Australians, which is essentially secular; there's no established religion or anything in Australia, and indeed the constitution forbids it. So you've got that on the one hand, and then you've got people who genuinely believe in fundamentalist faiths that they find difficult to reconcile with a broad secular concept.

Stephen Crittenden: Did you ever have any reason to take action against the Exclusive Brethren?

Alistair Nicholson: No, not as such. I met with delegations on a couple of occasions. Basically they claimed that they were being unfairly treated in the courts; I pointed out to them they were not, that they were being treated in accordance with the law, and that's the only way the court could operate. I think they felt that they should get some special consideration, but it's one of the problems you have with any faith, is that if you started giving preference or consideration to one, what about the other, and what happens when the parties follow different faiths, and so on. But anyhow, I pointed out to them that they were being treated no differently to anyone else in Australia.

Stephen Crittenden: Is it possible that the Family Court is not approaching custody and access cases involving the Exclusive Brethren with enough steel in its belly? Perhaps not even with a clear enough sense of who and what it's dealing with? You know the court refused in this case to make a ruling that the father wanted it to make a ruling, that the Exclusive Brethren was a dangerous cult.

Alistair Nicholson: Yes well I think it would be very dangerous for courts to start making those sorts of rulings, because the reality is that we do have religious freedom in this country, and once courts started singling out particular religious faiths as in general having some offensive characteristic, I think one could start worrying very much about freedom of religion, because courts could no doubt, depending on the whim of the court concerned, take the same view about other religions. I think there's great danger in that.

Stephen Crittenden: Is there an absolute freedom to religion, and is it actually theoretically possible that a religious group could indeed be a dangerous cult that in its behaviour towards its members, and particularly towards the rights of children in the group, is intrinsically abusive?

Alistair Nicholson: Oh, you could get that situation. I mean satanic rituals would be an example of that sort of thing, not that I've encountered them personally, but there have been instances around the world of those sorts of cults. I think it's drawing a bit of a long bow to put the Exclusive Brethren into those sort of categories. It seems to me that the main problem about them is that they have a concept of living really apart from society. But you couldn't say that children brought up in that faith were intrinsically suffering as a result of it, those children may be very happy to be brought up in that faith, they believe nothing else, and so I think it's really

pushing it a bit far to say that the cult as such -

Stephen Crittenden: This court ruling last month though did say that when the children were with the father, they were not to have access to television or radio, or even to non-members of the cult. Doesn't that ruling say in effect that those children are being confined, that they're effectively being walled up, not just when they're with the father, but when they're with the mother in ordinary circumstances, and isn't that in fact child abuse?

Alistair Nicholson: Well it's very difficult to - certainly I couldn't arrive at that conclusion simply on the basis of that. I don't know what the evidence was in the case, and I don't know what the circumstances were in that case. But what I can say is that you do have a situation where if those children are normally being brought up by their Exclusive Brethren parent, according to the tenets of the Exclusive Brethren, you get an immediate conflict, because when they go on contact with the non-Exclusive Brethren parent, that parent is going to take presumably if not guided by the court, is going to take a different view. Now I think this is an enormous problem. I mean it's a problem because that could arise just as easily with a cross-faith relationship between Judaism and Christianity, or Islam and Christianity, and what the courts have tended to do is to say "Well the person with whom the children are normally residing, and if they're being brought up in that person's faith, the other person shouldn't in effect teach them another faith. Or go against the tenets of the original faith". Now this is very harsh in relation to children in the Brethren situation, because of the harsh nature of the faith, but I can understand a judge making an order like that, because the alternative orders are pretty limited. One alternative is to remove the child completely from the Exclusive Brethren parent, and that may not be in the interests of the child, that parent may be a very good parent in all other ways, and indeed the other one, the access parent, may not wish to have full custody of the children. So that's a tough one. So if you don't take that step, you've then got the situation where are you going to leave these children in effect torn between their religion in which they're brought up on the one hand, and the views of the other parent on the other, or the views generally of society on the other. I don't think it's that simple.

Stephen Crittenden: Is it perhaps time that we saw legislation maybe introduced into federal parliament to guarantee the rights of children as Australian citizens, to have a normal Australian upbringing? You know, to go to the shops, watch TV, learn to swim with their classmates, have friends down the street, that kind of thing?

Alistair Nicholson: Well arguably what you've got is the fact that the court is bound to make decisions in the best interests of the child, and in the normal course of events, I suppose, you would look for that as normally being in a child's best interest. But these are very exceptional cases, very unusual cases. I don't think it's as simple, indeed I'm a bit concerned about this sort of modern tendency to superimpose so-called Australian values on anyone, because whether people like it or not, we're a society of many cultures and many backgrounds, and I think it's very worrying that we should start trying to impose some kind of an Australian norm as it were, on anyone.

Stephen Crittenden: It's not all that onerous an Australian norm to expect that a kid would be able to speak to the people over the back fence though.

Alistair Nicholson: Well maybe not, but that's in accordance with what you and I would believe, but these people don't believe that. I've had the experience of living next to Exclusive Brethren parents and children, and I found it somewhat - not unnerving, but an unusual experience that your neighbours would absolutely ignore you and take the children away if they went to speak to them, or you went to speak to them. But it seems to me that that's the way those people want to live, and unless we're going to take the children away from them, I don't think we've got the right to impose on them.

Stephen Crittenden: Just let me give you another example involving another religious group and that is the Jehovah's Witnesses are opposed to blood transfusions, but as I understand it, if the child of Jehovah's Witnesses parents needs a blood transfusion, the religious beliefs of the adults will be set aside and the child will get the medical attention it needs.

Alistair Nicholson: Oh certainly, and that's a decision that's taken, and indeed if you like, this is what the judge has done in the case you're speaking about. I mean what the judge has done is to say "Well regardless of the religious belief of the Exclusive Brethren that you as the parent no longer have a right to see the child because you've left the sect," the court is saying "Well, the child has got a right to see this parent and is permitting that." No, the courts can override these things, and the courts can go further. I always have difficulty in commenting on a judicial decision and I think too many of us try and do so, that's where we haven't heard the evidence, so I'm certainly not criticising this judge for what he did. I may not have made that particular decision, but I can understand the dilemma that faces him. There have been plenty of cases where judges have not done that, and they've simply ordered the contact take place in the normal way. Sometimes they've imposed less stringent limitations on it, but you've really got to look at the case as it comes before you.

Stephen Crittenden: Isn't part of the problem that the Family Court has with the Exclusive Brethren, just the simple fact that the Exclusive Brethren don't recognise the validity of the court, of the laws, and that there's just a general sense, a problem of members of the Exclusive Brethren defying court orders?

Alistair Nicholson: Yes, and I think they can be dealt with by the usual method of punishment of people who do defy court orders. There's no problem about that.

Stephen Crittenden: Thank you very much for being on the program, it's been great talking to you.

Alistair Nicholson: OK, it's a pleasure.

Stephen Crittenden: Thank you.

The former Chief Justice of the Family Court, Alistair Nicholson.

Well Uniting Church Minister, David Milliken is a former head of the ABC Religion Department and he's probably Australia's leading authority on sects and cults. Does he agree that public interest in the Exclusive Brethren is shifting away from the focus on the group's political activities, and towards its impacts on the rights

of children.

David Millikan: Yes I would. Although I think it's always been there simmering in the background, because the Exclusive Brethren have been really pushing this and they have been pushing the courts for quite a while, in many cases refusing to follow orders. There's been a history of them hiding kids and making it extremely difficult for parents that have left the group to keep contact with their kids. It's a very serious matter I think.

Stephen Crittenden: We just heard former Justice Alistair Nicholson suggesting that I was drawing a long bow by suggesting that the Exclusive Brethren might be considered a dangerous cult whose behaviour towards its members is intrinsically abusive. What do you think of that?

David Millikan: I'd be a bit reluctant to make a very broad judgment like that. But what I would say is this: and I've been in this situation myself acting as an expert witness in custody cases over the years. But when you have a fundamentalist group, whether they're Christian or not, who have formed the view that those who step outside their ranks become agents of the devil, and you've got kids involved, that in itself can create the most enormous difficulties. You imagine a five-year-old kid say, who's living with his Mum inside a group, and the Dad has rights on the weekend. That kid, moving from inside the group to his Dad, is being told that his Dad is now acting for the devil, and that his Dad is going to hell. And I've had people in extraordinary distress, wondering how they're going to deal with this. Now that should be the business of the Family Court, they should become involved in it, because the Family Court are there first of all, to protect the rights of the kid. But I've discovered quite often, but not always, and there's some inconsistency about this, that the court is really reluctant to step into those sort of areas, and say "Well the beliefs of the group in fact are relevant."

Stephen Crittenden: Well here in this case, Justice Benjamin refused to make a ruling that the Exclusive Brethren was a dangerous cult, but Justice Benjamin does explicitly say in his judgment that the Brethren had been psychologically cruel, unacceptable and abusive in the steps it took to prevent the children seeing their estranged father.

David Millikan: The courts don't need to make judgments as to whether or not they're dealing with a cult. The court simply should be in the business of working out whether or not in the particular circumstances, the beliefs that the parents hold within the group are going to work against the wellbeing of the kid. And there were a number of circumstances in which that could occur. I've stated one example, where the group will teach the kid that the person outside is like an agent of Satan. Now under any circumstances that's very, very difficult, and psychologically damaging to the kid, and I say the courts should be involved.

Stephen Crittenden: Are you in favour of a Senate Inquiry? Bob Brown reckons there should be a Senate Inquiry into the role of the Exclusive Brethren in, he says, "undermining the Family Law Act"?

David Millikan: I'd like to see a slightly broader canvas than that. It's not just the Exclusive Brethren that are up to this sort of business, there are various other groups. I was involved in a breakaway group from the

Christadelphians for example, some time ago. I was also involved in another Brethren group, who were quite different from the Exclusive Brethren, and they had no connection with them, but it was a sort of breakaway Brethren group that were meeting on a farm outside Bingara, and in that case I was an expert witness on behalf of the mother, who was outside the group. And the courts, when they heard the evidence about what this group was teaching the kids, actually ruled that as part of the custody order, that the children should not be submitted to the teachings of the group, that the leader of the group should be no closer than 500 yards from the kids and so forth.

Stephen Crittenden: Well it sounds like you're saying that the Family Court's rulings in these cases aren't necessarily always consistent.

David Millikan: Well they're not. And it depends very much on who's hearing the case, and it also depends a bit on the barristers involved, because over the years I've found that some barristers will take a very conservative view, a bit like Justice Nicholson, and say it is not the business of the courts to look into the beliefs of the group. But that's entirely the domain of the parents, and they've got to sort of work it out. But that's just putting your head in the sand, because the fact is, it is relevant, and it does go to the wellbeing of the children.

Stephen Crittenden: Just to come back to the Senate Inquiry proposal: what should a Senate Inquiry into the Exclusive Brethren be looking at then?

David Millikan: Look I would like to see an Inquiry that goes broader than the Exclusive Brethren and looks at the role of religious groups in matters that have to do with the Family Court. Because the problem is that the courts don't have the mechanisms to work out what is good religion and what is bad religion.

Stephen Crittenden: In fact is the court too inclined to just take the idea of freedom of religion for granted and basically take the idea that all religion is good religion?

David Millikan: Well that all religion is not their business is what they're saying. But as I say, not all the time. In fact I've noticed over the last 20 years, that there is a greater inclination to look at these matters. I remember when I first became involved in this sort of stuff, maybe 20 years ago, it was impossible, the courts would never listen to evidence that went to the role of the beliefs of the groups. So getting back to the Senate Inquiry, that's what I would like to see, is an Inquiry into what sort of characteristics in any group or in any religious group that may prove to be inimical to the wellbeing of children. And that means we've got to make that decision: what is good religion and what is bad religion?

Stephen Crittenden: Do Australian children have a right to a normal Australian childhood, or are those rights trumped by freedom of religion?

David Millikan: No, no. Freedom of religion doesn't take precedence over the wellbeing of children. Because of this issue, we know, all of us know, that there are certain religions which step out of the bounds of

respectability. There are certain general principles we could talk about. For example, a religion that refuses to allow its adherents to write, to question the beliefs; a religion that invades the psychological space of its followers to a point that leaves no person any autonomous place where they can be themselves; a religion that won't allow you to leave without its curses ringing your ears and telling you that if you do, you're going to hell, or you'll die of cancer and so forth. There are certain general principles like this. I think if we had these, I think that courts would be better equipped then, and I think some judges, I think they just feel at sea, and I think many of them don't have knowledge of these things, and I think they're frightened of stepping into areas that they're not familiar with.

Stephen Crittenden: OK, a last question: you were on my colleague, John Cleary's program late on Sunday nights a few weeks ago, and you made a very interesting observation, which I want to get you to repeat to this audience about the Exclusive Brethren, and that is that you think it's inevitable that the Exclusive Brethren will begin to break apart, for theological reasons. Why is that?

David Millikan: I think that they are in a state of serious contradiction, both in terms of the leadership and in terms of their belief. That's one reason why I think pressure is going to come to bear on this.

Stephen Crittenden: In what way?

David Millikan: Well this is a group that has really defined itself in relation to its attitude to the world outside, as one of essential hostility. They're part of that sort of fundamentalist group of Christians who in a sense are at war with their own flesh, and they believe that separation is the key to holiness, and for that reason they over the last 100 years or so have kept away from eating with people, and not having television and not as they say being unequally yoked together with the world outside. Now that has been one of their defining characteristics. Now what we're seeing with this new leadership is a quite dramatic change, and they are now entering into quite sophisticated relationships with the world, not just in terms of their interest in politics, but also in terms of business. They've become a lot more savvy, they are building up their own businesses.

Stephen Crittenden: You're suggesting that in the long run that's sort of psychologically unsustainable?

David Millikan: Well it is because, one, it means that they're now in tension with their entire history, but it also means that the leadership is now in a type of paradoxical relationship with the rest of the group. The leaders are now these sophisticated men of the world, while they're still calling on their followers to maintain this really sort of dour separation.

Stephen Crittenden: How much is that to do with the specific influence of Bruce Hales?

David Millikan: It's got a lot to do with him, and his family. I think it's all to do with him and his family. I would love to know what the theological arguments are within this group. I would just be fascinated. Unfortunately I don't. It would be extraordinarily interesting to know how they are justifying this current shift. This is a group that has known shifts in the past. It was about 20 years ago that there was a call from on top that

there be a whisky bottle on every table when elders joined. And that was an astonishing thing to happen. And it turned out that the leader at the time was alcoholic. And they had to sort of deal with that. And that caused ructions. And I know a couple of people that walked out of the group because of that. You see you pay a real price in a groups like this if you make dramatic shifts.

Stephen Crittenden: That's David Millikan.

Guests

Alastair Nicholson

Former Chief Justice of the Family Court

Dr David Millikan

Uniting Church Minister, Cult specialist

Further Information

[The Exclusive Brethren \(homepage\)](#)

[The Exclusive Brethren on Wikipedia](#)

["Recovering Exclusive Brethren site"](#)

[Background on the Exclusive Brethren assembled by ABC TV 4 Corners](#)

[Profile on Dr David Millikan from ABC radio QLD](#)

Presenter

Stephen Crittenden

Producer

Noel Debien



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