



TAKING LIBERTIES: FAITH, FREEDOM AND THE WAY FORWARD

A BRAP BRIEFING PAPER
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INTRODUCING BRAP BRIEFINGS

This is the eleventh in a continuing series of brap briefings. The purpose of these briefings is to examine key issues in public policy from a clear and practical race equality perspective.

While some briefings cover topics that have a very clear and evident relationship to race equality, others will take less obvious issues and examine them afresh, teasing out the race equality dimension.

brap briefings identify the key issues involved, highlight current trends in thinking and recommend practical action and solutions.

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Race Equality Schemes

“Do They Mean Us?” BME Community Engagement in Birmingham

Community Cohesion: The Emperor’s New Clothes?

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From ‘Anti-Racism’ to ‘Diversity’: Revisiting the Race Equality Agenda

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1 THE BATTLE FOR RIGHTS

Church versus state, gay rights versus religious rights...these are the battles that the media have been focusing on in recent weeks. Somewhat overshadowed by the media's response has been the transition that is occurring as regards Britain's handling of equalities issues: adopting a more human rights based approach. But if the media is anything to go by, then the transition and the battles that will ensue will be highly combustible. It could even be, as the head of the Roman Catholic Church in England and Wales recently suggested, that the changes are not about rights and freedoms at all but about imposing "a new morality" on us all.

Whether you know about or have a view about the changes that are shortly to be implemented, the 'battle of rights' that has been unfolding over matters of adoption and the requirements of the law will probably have caused some dismay. With the Catholic Church leading the objections – opposing the changes that require them to offer adoption services to gays and lesbians as a matter of conscience - so questions are already being asked about how we are to negotiate the issue of 'whose rights' have the most right.

2 THE SHIFT TOWARDS A HUMAN RIGHTS BASED APPROACH

Human rights legislation is a relatively new development in the British setting. Until very recently, existing protection from prejudice and discrimination was founded up on equalities and race-relations legislation. As brap will shortly set out in another briefing paper (the forthcoming, 'Human Rights: The New Face of UK Equalities?') the way that equality in the UK has been both thought about and responded to has been driven largely by the laws that have been put in place to prevent discrimination against particular groups - such as ethnic minorities and women - and in particular situations such as recruitment and promotion at work. While this has helped to protect some people, others have not been able to benefit because they have not met a particular 'profile'. And for some, reducing discrimination has simply not been enough to prevent them from suffering inequality.

Things have been changing for the past few years with various pieces of legislation seeking to protect various constituent groups and communities, but it is the introduction of the Equality Act 2006 that comes into place on the 6 April 2007 that will be the most significant. Creating a single Commission for Equality and Human Rights (CEHR) to replace the Equal Opportunities Commission (EOC), the Commission for Racial Equality (CRE) and the Disability Rights Commission (DRC), the legislation will seek to prevent discrimination on the grounds of age, religion and beliefs and sexual orientation throughout British society as well as introducing a gender duty which will require public authorities to promote equal opportunities between men and women. Discrimination on the grounds of race and disability will continue to be protected by existing legislation.

3 THE PRINCIPLES OF HUMAN RIGHTS

The adoption of a human rights based approach has some substantial benefits over and above existing forms of legislation.

- First, human rights are 'inherent' in that they are neither earned nor bought.
- Second, they are universal and equitable for all people irrespective of any markers of difference.
- Third, human rights are inalienable in that they cannot be taken away.
- Fourth, they are indivisible and so any individual or group may have more than one human right applicable to them at any given time.

And unlike existing equalities legislation that has typically emerged in response to a damaging or tragic event – e.g. the Brixton riots, the murder of Stephen Lawrence – human rights do not require knee-jerk responses. It could even be that a human rights approach may even go some way to initiating a process of identifying commonalities between even the most disparate groups.

4 NEGOTIATING THE PITFALLS

As the recent 'battle of rights' has already highlighted, the shift to human rights is not always going to be easy and the path that we have to negotiate is going to be fraught with pitfalls. Firstly, British society and its media are to some degree unused to a 'human rights culture'. So for example, populist perceptions continue to perceive human rights as something that applies to people in far off places where persecution, torture and other hideous crimes are de rigueur. These perceptions also tend to associate human rights with organisations such as Amnesty International and their high profile campaigns. Or more recently, with the seeming injustice of allowing asylum seekers the freedom to commit crime because their 'rights' would have been infringed had they been sent back to their country of origin (a generic storyline in the mould of some of the more populist press). Britain may not necessarily be that receptive to human rights.

5 AGAINST GOD'S WILL

Aside from the wider issues, certain groups including faith communities as the Catholic Church will no doubt have already begun to find out may be presented with even greater obstacles in moving towards a human rights approach. Given the universality of human rights, they apply to all without differentiation. This will present serious challenges to some faith groups – or maybe more precisely, some from within those faith groups - where the rights of their faith group appear to contest, contend or be contrary to others who may be seen as lesser or even 'sinful', possibly for theological interpretations.

So in the recent debate, both sides felt that their freedoms and rights were being infringed. For the Catholic Church, they felt that the requirement to offer adoption services to gay and lesbian families contravened their moral and ethical conscience, whilst gay and lesbian groups suggested that as it was no longer legal to put up signs that say 'no, blacks, no Irish'

for instance, so faith organisations should not be allowed to put up signs that say 'no gays' either. It is necessary to stress here that whilst the Catholic Church and its representatives were at the forefront of this particular debate, given a similar situation, so too would other Christian groups have taken the same line of argument and protest as indeed would have some Jewish and Muslim groups also (as witnessed in the protests outside the House of Lords in January this year when the Lords upheld the Sexual Orientations Employment Regulations). It is therefore extremely difficult to negotiate a solution that works for everybody. How do we negotiate a solution that up holds matters of moral and ethical conscience, or even endorses 'sinful' activities if they contravene some form of divine will or teaching?

6 AVOIDING THE PITFALLS

Negotiating this will be vital to the value attributed to the new human rights legislation by faith and other groups that feel they are in some ways being compromised. But this is the paradox: if all groups and communities – including faith groups – are to have their freedoms and human rights upheld, then this must apply to the freedoms and rights of all others also. 'Why' though you might be asking? Well the answer is simple, once you deny the rights of one person or group, so it becomes progressively easier for the rights of others – including your own - to be denied also. Not only might this present challenges to faith groups but so too might equally oppositional problems be presented to those from secular liberal perspectives who have previously chosen not to engage with issues relating to faith. How then might we locate the necessary language to argue, legitimise and subsequently justify whose rights and freedoms be upheld?

For faith constituents in particular, the key to overcoming this will need to be two fold. First, they will need to begin to identify with and make clear the distinction between upholding and respecting the inalienable human rights of everyone without differentiation, and agreeing with or even endorsing those activities, practices and also conflicting beliefs that might be contrary to their collective or individual consciences or contravene their interpretation of their faith. As regards homosexuality, those from within certain faith groups will need to negotiate a way – including negotiating the necessary language – to acknowledge that gay, lesbian and bisexual men and women respectively have the same inalienable human rights and freedoms as indeed everyone else, quite irrespective of whether their activities and practices are deeply offensive and in some extreme cases, even require some form of punishment being meted out. As with any group or community however, it is important to stress that within any given faith group or community, so a wide range of beliefs, practices and interpretations exist and so attitudes and opinions will be different and diverse.

Secondly there will need to be some way to negotiate how one might decide whose rights take precedence. Such decisions would not only need to consider which freedoms needed to be prioritised but would also need to be informed by public debates that reflect the issues and challenges that we face in today's society. Here such human rights principles as 'proportionality' could be useful in helping make balanced decisions about whether the rights of an individual or group can be protected without adversely affecting the rights of society as a whole. So for example, does the individual's right to exercise their religion conflict with the right to life and security of society as a whole? In these situations, the rights of society as a

whole may need to take precedence. This is not necessarily a problem only facing faith communities, but one that will require some encounter wherever and whenever the rights and freedoms of one group appear to infringe or go against the rights of another.

7 THE WAY FORWARD

The transition to a human rights approach and the establishment of the CEHR (Commission for Equality & Human Rights) must at the outset be seen to be a positive development, one that will provide a much fuller and comprehensive framework of protection for all in society, especially those that continue to encounter inequalities because of the failings of existing legislation. However, the transition won't always be an easy one. So to make it as painless as possible, it is vital that all those that are engaged with equalities issues – including those from within the various faith communities that in many ways have not participated in these arenas – are engaged in dialogue and begin to address the issues honestly and openly. Through asking the most difficult of questions today, so it is hoped that the pitfalls and obstacles of tomorrow can be overcome.

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brap is transforming the way we think and do equality. We support organisations, communities, and cities with meaningful approaches to learning, change, research, and engagement. We are a partner and friend to anyone who believes in the rights and potential of all human beings.

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