

Two Cheers for Equality?

John Duddington

Equality today

Equality: everyone talks about it now. There are Equality and Diversity Committees wherever you look in any organisation, buttressed by accompanying policies. I have sat on them myself and, from my limited experience, they do much good work, usually on the practical level of ensuring that, for example, there is sufficient disabled access to buildings. Then we have the Equality Act 2010, the Equality and Human Rights Commission and a Minister for Equality, the present occupant of the post being Maria Miller MP.

Government ministers and other politicians use the term 'equality' frequently. Here is a typical example from the Deputy Prime Minister Nick Clegg who was reported as saying that the vote to legalise same sex marriage was a "*landmark for equality in Britain*".¹ However, we are entitled to ask: in what sense was this a victory for equality and is, in fact, the pursuit of equality a desirable goal for any government and system of law?

In fact most of the provisions of the Equality Act 2010 have nothing to do with the notion of 'equality' precisely because it is impossible to capture that elusive term in legislation. What they have everything to do with is the prevention of discrimination which is defined as treating a person less favourably than others because of a protected characteristic. Such protected characteristics are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex and sexual orientation. The legislation allows what amounts to positive discrimination in cases of disability as it provides that an employer, for instance, must make reasonable adjustments in cases where an employee has a disability. This legislation is very sensible and practical and the enactment of detailed anti-discrimination legislation, starting with the Equal Pay Act 1970, must count as one of the signal achievements of postwar Britain.

However, this does not prevent politicians and others developing an obsession with the chimera of equality. On the practical level, despite what Mr. Clegg says, any legalisation of same sex marriage would do absolutely nothing for equality because a study of the Civil Partnerships Act will soon show that its detailed treatment of civil partnerships treats them as marriages in virtually all respects. This view is confirmed by the case of *Wilkinson v Kitzinger* (2006) where it was noted that the Act bestows on civil partners 'effectively all the rights, responsibilities, benefits and advantages of marriage in all but name'.

Thus if, for example, a party to a marriage dies without leaving a will then the surviving spouse has automatic rights to a proportion of their property, and perhaps to all of it. If a marriage is dissolved then the court will divide all of their respective assets and distribute them in such proportions as it considers fair. If there is a civil partnership then the position is exactly the same: the survivor has automatic rights to the property of the party who had died intestate and on a dissolution of the civil partnership a court can make the same orders relating to their property as in the case of a married couple. I suspect that Mr. Clegg and others would then reply: yes, this is true, but still there is

no equality of civil rights: those who wish to enter into a same sex relationship do not have the right to marry. Yet here the evidence is that despite Mr. Clegg's fashionable concern with equality in this case there is very deep inequality elsewhere which politicians completely ignore.

Example of deep inequality

Let us take an example. Many of us who are involved with health and social care are aware of the 'personalisation' agenda. In 2007 the Government published *Putting People First: a shared vision and commitment to the transformation of adult social care*. This took the form of a concordat between central and local government departments, the third and private sectors, which officially introduced the idea of a personalised adult social care system, where people have maximum choice and control over their support, and services are tailored to meet the individual needs and preferences of users. What it has actually meant in many cases is the wholesale privatisation of social care.

Suppose that you are a disabled adult who needs to attend a day centre. You will no longer find very many of these run by local authorities. Instead they are increasingly run by private organisations. Suppose that you, as a service user or carer, have cause for complaint about the service you receive. You ask for the complaints policy: there is none. You ask social services to intervene: they cannot as the centre is not run by them. You contact the Care Quality Commission (CQC): they tell you that they can do nothing. If the centre had provided care for the elderly or residential care then the CQC could have taken action.

Thus we have a large number of institutions caring for the most vulnerable in our society which are entirely unregulated. Anyone can set one up and when set up there is no inspection regime at all. Do politicians care? No. I asked one MP (of a type likely to be sympathetic) about this scandal and was told that it was 'not a political issue'. Yet here is blatant inequality: those in certain types of centres and homes have the benefit of a complaints and inspection system. Others do not.

The Christian vision of equality

It is here that as Christians we need to set forth our vision of equality: not a flat and unattainable notion of equality but about something that goes to the heart of the Christian message: as Michael Nazir-Ali, a former Anglican Bishop of Rochester, puts it: *'the radical equality of all, no matter what appearances may suggest. This is about who people are and not necessarily about what they do or how they choose to live their lives.'*² It is, I think, above all about caring for others. This notion of equality is, I suggest, best expressed by the idea of the innate dignity of each human being. The question is not the supposed value of that person's life or the contribution which they make to the community. Instead we as Christians proclaim that all human life has an intrinsic value in itself: as Nazir-Ali says: 'who people are'. Not only this, but Christians proclaim that the human dignity of us all is to be realised in community and in the search for the common good.

The Second Vatican Council links these two concepts in *Gaudium et Spes*: the common good *'is the sum total of social conditions which allow people, either as groups or as individuals, to reach their fulfilment more fully and more easily.... At the same time, however, there is a growing awareness of the sublime dignity of human persons,*

who stand above all things and whose rights and duties are universal and inviolable.³ Thus, as Thompson points out: *'The common good is neither simply an aggregate as in utilitarianism...which can be blind to the well-being of individuals and minority groups, nor a disaggregate as in individualism, which de-links personal flourishing from the health of the community or from a good society*.'⁴

How much richer all of this sounds than the mantra of 'equality' uttered so ceaselessly! For the truth is that the current obsession with equality is in fact linked to a naked individualism of a kind that all Christians must reject. Not only this, but the emphasis on individualism is essentially nihilist as it rejects all moral authority and thus takes refuge in what turns out to be a cul-de-sac of worshipping at the secular god of equality. For the secular emphasis on equality turns out to be nothing more than the kind of relativism that Pope Benedict XVI so rightly condemned. All are equal: all life style choices are of equal value: nothing is good: nothing is bad. We are all autonomous human beings.

The result is that, as Pope Benedict said: *'The concept of 'truth' has in fact moved into anti-democratic intolerance. It is not now a public good but something private*'.⁵ All that equality means is the right to pursue different ends and thus to have nothing in common as children of God. As Philippe Beneton puts it: *'It is impolite to say 'You should'; it is necessary to say: 'I prefer'. Or, to put it another way, it is bad to defend the idea of the good*'.⁶ Roger Twigg makes this point when writing of the notion of relativism as applied to different religions. Do we really mean it when we say that 'one religion is equal to another'? What about a religion which demands human sacrifice as distinct from sacrificial love? Would we say that they were both equally good?⁷

In fact a moment's reflection will show us that this idea that we can have a value-free, content-free society where we are autonomous – and the only imperative is to respect the life-style choices of others – is impossible of attainment. Attempts to argue that it can be so are intellectually dishonest. Take once again the example of the legalisation of same sex marriage. The Massachusetts Supreme Court in *Goodridge v Dept. of Public Health* (2003) considered the validity of legalisation allowing same sex marriage⁸ and the Chief Justice, Margaret Marshall, observed that *'many people hold deepseated religious, moral, and ethical convictions that marriage should be limited to one man and one woman'*. Others, she pointed out, *'hold equally strong religious, moral, and ethical convictions that same sex couples are entitled to be married'*. However, as she put it: *'Our obligation is to define the liberty of all, not to mandate our own moral code'*.

By adopting what she saw as a position based on autonomy, equality of all and freedom of choice the Chief Justice doubtless thought that she was avoiding all value judgements but of course she was not. As Michael Sandel points out: *'If the government were truly neutral on the moral worth of all voluntary relationships, then it would have no grounds for limiting marriage to two persons'*.⁹ Not only this but, to be truly neutral and value-free, it would not promote marriage at all. The fact that it does shows that, for all protestations to the contrary, talk of a society where governments are neutral on all moral choices and the absolute autonomy of all is a kind of Holy Grail is just a sham.

Human Rights

In legal terms this notion of equality places a heavy emphasis on the protection of civil liberties as reflected in the provisions of the Human Rights Act 1998 which incorporates the European Convention on Human Rights of 1950 into UK law. When this legislation was passed I gave it a cautious welcome in an article in this journal.¹⁰ Now I feel that its emphasis on civil liberties alone, albeit reflecting the conditions under which the Convention was passed in 1950, make it an unsuitable instrument for today. Instead human rights need to be seen on a broader canvas in the way that is seen by the Charter of Fundamental Rights and Freedoms which is part of the Lisbon Treaty. This covers, in addition to such matters as a right to a fair trial, social and workers' rights including the right to fair working conditions, protection against unjustified dismissal, and access to health care, social and housing assistance.

In fact Pope John XXIII's encyclical *Pacem in Terris* very neatly encapsulates this wider notion of human rights: *'Man has the right to live. He has the right to bodily integrity and to the means necessary for the proper development of life, particularly food, clothing, shelter, medical care, rest, and, finally, the necessary social services. In consequence, he has the right to be looked after in the event of ill health; disability stemming from his work; widowhood; old age; enforced unemployment; or whenever through no fault of his own he is deprived of the means of livelihood'*.¹¹ It is noteworthy that this list is introduced by the words: *'But first We must speak of man's rights'*. Later on indeed duties are linked with rights: *'The natural rights of which We have so far been speaking are inextricably bound up with as many duties, all applying to one and the same person'*.¹² However, rights come first and are then linked with duties.

The UK secured an opt-out from the Charter but that does not stop its actual provisions being the basis of a new UK Human Rights Act, as I think it should. I sense that we are reaching the point in this country where the existing human rights legislation will need to be rethought and when it does we as Catholics and indeed all Christians must be in the forefront of the debate. What better place is there to begin than with those noble words of *Pacem in Terris*? Human Rights are often claimed as a kind of gospel of secularism: as, for instance, Vanessa Klug puts it: *'Human rights are seen as a possible alternative common morality for the UK'*.¹³ We could do worse than remind them of the noble efforts made by Christians in the protection of human rights, for example by the Dominican friar Anton Montesimo in his famous sermon in 1511 in what is now the Dominican Republic, where he preached against slavery.¹⁴ Not only this but the part played by Protestant Christianity, in ensuring that human rights were included in the United Nations system after the Second World War, deserves to be better known.¹⁵ This initiative eventually bore fruit in the Universal Declaration of Human Rights issued in 1948.

Our duty to challenge current orthodoxy

What this does require from Christians is the determination to rise up and challenge the current orthodoxy of equality, something which I sense they are often reluctant to do, possibly from fear of being accused of promoting inequality. In the case of Catholics there is another, often I think unconscious fear: that of being outcasts from the mainstream of society and current progressive thought. There is a dim echo from Recusant days of us being outcasts from English society, encouraging a desire to come

in from the cold and no longer swim against the tide.

It was, I believe, this thought that underlay Paul Velelly's London Newman Lecture in 2008 where he argued that: 'The task of good religion, therefore, is to seek mutual understanding rather than adding to the tensions of a polarising situation'.¹⁶ No it isn't. The task of good religion is to proclaim the Truth. If that puts us at variance with the contemporary world and its mores then that is not a bad thing. When Christ was presented in the Temple it was Simeon who foretold to Mary that He was '*destined to be a sign that is rejected – and a sword will pierce your own soul too so that the secret thoughts of many will be laid bare*'.¹⁷ Christ is a sign of contradiction.

As Michael Nazir-Ali points out, although as Christians we are often called to be the salt of the earth it is in fact as a light to the earth that we are called to be '*working against the grain in a prophetic and not merely a pastoral mode*'.¹⁸ We will pay no heed to the '*easy speeches that comfort cruel men*' in Chesterton's phrase but we find ourselves ever alert to point out and remedy the injustices of the kind which I mentioned earlier and so build up the Kingdom of God. For it is when Christians have been insiders in society that they have been weak: when they have been outsiders they have been strong. Tony Blair's 'Big Tent' is no place for us.

John Duddington is Editor of *Law and Justice* – the Christian Law Review

Notes

- 1 www.pinknews.co.uk/5th February 2013 accessed April 8th 2013
- 2 In 'Triple Jeopardy for the West' London Bloomsbury Publishing 2012 at pages 140-141
- 3 At section 26. I have used the text edited by Austin Flannery OP : 'The Basic Sixteen Documents of Vatican Council II' Dublin Dominican Publications 1996
- 4 In *Introducing Catholic Social Thought*, New York Orbis Books 2010 at page 59
- 5 In 'What is truth?' printed as Chapter 4 of 'Values in a Time of Upheaval' Ignatius Press San Francisco 2006 see page 55
- 6 Quoted in Roger Ruston, 'Human Rights and the Image of God', London SCM Press 2004 at page 10
- 7 In 'Religion in Public Life' Oxford University Press 2007 – see especially pages 2-3.
- 8 I owe this discussion, and the quotations, to Michael Sandel's illuminating study 'Justice, What's the Right Thing to do?' London Penguin Books 2010 at pages 253-260.
- 9 Sandel op.cit. page 251.
- 10 *Human Rights and the People of God*, The Newman, no.86, May 1999, pages 24-28.
- 11 At section 11
- 12 At 28
- 13 In *Values for a Godless Age*, Penguin London 2000 at page 192.
- 14 See Ruston op.cit. pages 66-69
- 15 The story is well told in John S. Nurser 'For All Peoples and All Nations' Geneva WCC Publications 2005.
- 16 Printed in *The Newman*, issue no.74, May 2008, at pages 2-11
- 17 Luke 2:35 New Jerusalem Version
- 18 In 'Triple Jeopardy for the West', London Bloomsbury Publishing 2012 at page 36