Equality Principles - Equality Policies

As the European and local government elections approach, Omar Khan examines how equality of opportunity has been and is being adjusted during the customary interplay between principles and policy-making.

Electability is often emphasised as the most significant change achieved by the Labour party during the leadership of Tony Blair. For some analysts - including many in the Labour party itself - the contrast with the period from 1979 to 1997 serves to underline this point. Notably, many believe that the values of ‘old’ Labour were simply out of touch with the sensibilities of the British public, and there has been a noticeable and concomitant dilution of socialist rhetoric. More specifically, direct criticism of the market is now judged both utopian and politically suicidal; the (perhaps accurate) assumption was that most British voters accepted the continued functioning of the market, on grounds ranging from inevitability to justice.

In this context, the principle of equality was jettisoned, partially because it was fairly or unfairly assumed to mean equality of income in the old Labour interpretation. But electability leads to government majorities, which leads to the necessity for policies, which in turn (usually) depend on principles for their justification. The politically expedient reasons for rejecting older Labour values may have led the Labour party to power in 1997, but other principles - or at least new interpretations of those principles - would have to take their place when formulating policy.

In the current environment, due to a variety of factors (summarised from the viewpoint of the CRE on p.12), Labour finds itself considering the establishment of a new Commission on Equality and Human Rights (CEHR). The White Paper is due to be published shortly, and in this article I outline some of the fundamental questions of principle that need to be considered in any discussion of equality. Part of the reason for this is because many of the specific details of the working and scope of the Commission have yet to emerge. However, conceptual analysis should also be taken as a necessary but insufficient first step for considering the reasons for and scope of the proposed Commission, though for reasons of space and expertise this article focuses solely on equality and not on the arguments for or against human rights.

Even if it becomes ultimately necessary or advisable to place restrictions and limitations on a concept such as equality when considering its application in practice, improving the clarity of what we mean by equality as a concept is vitally important. Otherwise the justification for any specific proposal flounders, and our ability to assess its consequences is likewise inhibited.

Equality of What?

Although there are many reasons that support the establishment of the CEHR, such a body requires some conception of equality to direct, justify and evaluate its agenda. To demonstrate that consideration of principles, even at a relatively abstract level, is a necessary part of developing and justifying policy, consider the response of the Labour party in 1992 following a third election defeat in a row.

At that point, Labour's new leader John Smith set up an independent inquiry called the Commission on Social Justice whose final report The Justice Gap was published in 1993. Whatever its merits and faults, this report represented an attempt by the Labour party to consider seriously the philosophical questions underlining egalitarian policies.

As this Commission recognised, in thinking about equality, it soon becomes clear that we need to define some metric or substance to equalise, and that these can in fact conflict. For example, achieving equality of income would result in an inequality in terms of welfare or functioning for those that require greater resources to lead a fulfilling life. As Amartya Sen has indicated, this will mean that certain inequalities will be seen as appropriate or justifiable for any theory of equality: the argument takes the form of showing this inequality to be a consequence of equality in some other – more centrally important – space.1 In the philosophical literature, this has resulted in a complex body of work referred to as the ‘equality of what’ debate.

So in thinking about equality, we need an answer to the ‘equality of what’ question, based on what we view as the most important sphere of human relations and activity requiring equality. Consider the response given by The Justice Gap:

• The foundation of a free society is the equal worth of all its citizens
• Everyone is entitled, as a right of citizenship, to be able to meet their basic needs
• The right to self-respect and personal autonomy demands the widest possible spread of opportunities
• Not all inequalities are unjust, but unjust inequalities should be reduced and where possible eliminated

This formulation is not unobjectionable, but it is at least clear in identifying worth, basic needs and opportunities as the
appropriate ‘things’ to be equalised in a democratic society. Whether or not the current CEHR concurs with these answers, it will need some response to the ‘equality of what’ question in order to articulate, justify and evaluate policy choices.

**Political Principles: the Potential for Conflict**

This brief foray into the philosophical debate on the ‘equality of what’ question has highlighted a more general issue about political concepts: they often conflict. As Adam Swift has sympathetically pointed out, this is a hard thing for politicians to accept, since they tend to be reluctant to acknowledge that their preferred policies or positions might involve anything other than the complete and harmonious realization of all good things. Unlike philosophers, however, politicians who point out the possibility of conflicting principles can expect to be pilloried by their opponents and political commentators for rejecting an obviously desirable principle or (more frequently nowadays) for waffling about what they really mean. (This is perhaps one source of the increasing concern that ‘style’ tends to dominate ‘substance’ in politics today.)

In designing policy and considering the development and reach of statutory Commissions, however, governments need to outline where they stand on particular conflicts. Such conflicts will not simply disappear if they are ignored as first principles, and they can never be resolved entirely: many of the current disagreements between the Home Secretary and the judiciary stem from a genuine conflict between the requirements of democracy and the requirements of justice, and it will never be easy to decide such cases. One response to these sorts of dilemmas is to try to discover some particular principle that everyone seems to agree on, and that can thus adjudicate where values conflict.

Returning to the case of equality helps demonstrate the problem in invoking a conflict-free interpretation of a political principle. Here the idea of ‘equality of opportunity’ is usually invoked by the entire spectrum of politicians. A deeper consideration of this issue helps to demonstrate that this appearance of consensus is deceiving. First of all, there are a number of different ways of interpreting the idea of equality of opportunity. Secondly, a well-known treatise by Michael Young has issued a direct challenge to the very notion of equality of opportunity.

**Equality of Opportunity: Multiple Interpretations/Outcomes?**

A though nearly everyone accepts some form of equality of opportunity, it is useful to distinguish three separate positions, the ‘minimal’, the ‘conventional’ and the ‘radical’. Following Adam Swift, these can be defined as:

1. The Minimal Conception: a person’s race or gender or disability should not be allowed to affect their chances of being selected for a job, or getting a good education, and so on. This conception of equality of opportunity focuses on what is relevant to getting a job or education, and insists that skills, potential or competence are all that is relevant. Race, gender and disability are irrelevant to who the best person is for a particular position, with monitoring of recruitment policies the best way of ensuring this version of equality of opportunity.

2. The Conventional Conception: people should have equal opportunities in the sense that their prospects are influenced neither by their social position, nor by their position in the distribution of natural talents. Only in that case will different outcomes really reflect people’s choices rather than unchosen differences in circumstances. This position derives its support from the Rawlsian view that people’s talents are a matter of luck or a product of the ‘natural lottery’. It would thus seem unjustifiable to reward (or penalise) people based on something over which they have no control. Many people object to this notion on the basis that certain jobs require certain talents, and it would be both unjust and inefficient to allocate jobs without recourse to people’s different talents. The rejoinder is that the radical conception of equality of opportunity simply

3. The Radical Conception: all should have an equal chance of acquiring the relevant competences required for a job or education. People’s prospects in life should depend, not on their social background. In terms of policy, this could be taken to justify some pretty extreme measures. As Swift points out: ‘A person’s social background affects their prospects in so many different ways that removing its influence altogether is impossible, or achievable only by massively restructuring parental freedom’. While most proponents of the conventional conception insist on a greater level of ‘starting-gate’ equality, especially targeting policy towards equality in early childhood, they do admit the autonomy of the family unit. Yet those who advocate the radical conception insist that the conventional conception does not go far enough toward equalising opportunities.

**Notes**

A Development Update note by the CRE on the Proposed Commission for Equality and Human Rights

This note summarises the work taking place to progress the Government's decision to set up a Commission for Equality and Human Rights.

**Government Plans for a Commission for Equality and Human Rights (CEHR)**

The Secretary of State for Trade and Industry, Patricia Hewitt, announced in October 2003 the Government's decision to create a new, single equality body which would also have a remit for the promotion of human rights. This announcement followed two rounds of public consultation on how to take forward equality work, given the need to implement the EU Race and Employment Directives and the report of the Joint Committee on Human Rights, which recommended a single commission on equality and human rights.

The working title for the proposed new body is the Commission for Equality and Human Rights (CEHR). The Government's plan is that it will replace the three existing equality commissions and cover the new equality strands – of sexual orientation, religion or belief and age – currently being integrated into British legislation to implement the EU Employment Directive. Discrimination in employment on grounds of sexual orientation and religion or belief was made unlawful in 2003. Employment discrimination on grounds of age will become unlawful towards the end of 2006. There will be no statutory body responsible for supporting the new strands, assisting complainants, etc., as there is currently for race, sex and disability, until the CEHR is in place.

Government's timetable is for a White Paper to be published in late spring 2004, with late 2006 as the earliest date for the establishment of the CEHR. This would enable the CEHR to be in place in time for – or shortly after – full implementation of the EU Employment Directive. In practice, it means that the bill to establish the new body will need to be considered, and legislation passed, in the 2004/5 session of Parliament.

**CEHR Task Force**

Patricia Hewitt's statement in October 2003 indicated that a task force would be established to provide advice on key issues relating to the setting up of the CEHR and the white paper. The Task Force and its meetings are organised by the Women and Equality Unit (WEU) at the Department for Trade and Industry (dti). Membership of the task force includes people concerned with each of the six equality strands, human rights, business, local government and trade unions.

The CEHR Task Force has so far held 6 one-day meetings since December 2003. The schedule of CEHR Task Force meetings, papers for them, and notes of the proceedings are publicly available on the CEHR Task Force website [http://164.36.253.98/equality/project/task_force.htm]. A further meeting of the task force on 18 March is designed to identify areas of consensus and address issues on which there are differences. It is not expected that full consensus will be achieved, given the different interests represented on the Task Force. However, membership of the Task Force will not inhibit organisations like the CRE from commenting critically, if necessary, on the White Paper when it is published and taking other steps to influence the shape and functions of the proposed CEHR.

**CRE Views on the CEHR**

The CRE responded to earlier Government consultation, with support for a single equality body which could address broad equality issues in a strategic way, while taking account of and responding to differences between the six equality strands. It also argued, among other things, for a comprehensive and coherent approach to equality law to avoid a hierarchy of equality rights, sufficient resources, and appropriate arrangements to address good relations and the CRE's current funding arrangements under which it helps to support organisations like RECs to conduct work to promote racial equality and good race relations. The CRE has also made it clear to Government that in its view the non-regression clause in the EU Race Directive protects the current level of powers and functions of the CRE and the law, but indicated that a review of the legislation could lead to more effective legislation and enforcement.

**CEHR Issues**

The CRE Task Force has discussed a range of issues, from government and arrangements to take account of devolution in Scotland and Wales, to law enforcement and support for individuals. They include the following:

A vision for the CEHR of an independent body, with expertise in all the equality strands, speaking out and arguing its case with Government and other stakeholders, providing a service as good or better than existing commissions and delivering to individuals and making a positive difference to their lives.

Governance arrangements including a Board, selected through open and transparent processes, which reflects the plurality of experience and knowledge among the communities and stakeholders it serves, advisory committees on particular equality strands to include non-commissioners, and a statutory responsibility on the CEHR to consult its stakeholders on plans and strategies.

Duties, powers and functions along the lines of those currently held by existing commissions, including the power to assist individual cases as at present. The CRE is firm on retaining existing powers to support individuals and effective law enforcement as well as promotional powers such as production of statutory codes of practice. It will be easier in future to make a complaint which covers more than one equality issue, e.g. race and religion. Promotional powers, including general investigations, will extend to human rights and areas where there is as yet no legislation, e.g. the provision of goods, facilities and services in relation to religion or belief.

More effective law enforcement tools, including streamlined investigation procedures, more effective non-discrimination notices, and the power to enter into binding agreements, which the CRE has sought for some time. The CRE is still pressing for other changes, including the power to bring proceedings in its own name, i.e. without a complainant.

The Human Rights remit which should help to promote a wider culture of respect for human rights. It is proposed that joint equality and human rights cases may be supported by the CEHR and general investigation/inquiries conducted, and further proposals by task force members have been put forward.

Retaining and possibly extending to other strands the good relations duty which the CRE has in relation to race, along with grant-making powers to other organisations to support this. While other strands may not be as clear about whether they want this duty extended to them, the CRE is firm about retaining the existing duty and grant-making powers in relation to race.

**Next Steps**

The CRE will be pressing to ensure that the White Paper reflects its concerns and those of the people it serves. When the White Paper is published – expected late May – the CRE will take steps to inform minority communities about what it proposes and what we think about it. The more people who make their views known to Government the better.

Editor's Note: Runnymede is establishing a group email list to keep people informed and to enable online debate. If you wish to join this group email our director with your full contact details m.lafeche@runnymedetrust.org.
requires that rewards should not be based on matters of luck. So David Beckham merits his place on the Real Madrid and England football teams, but this doesn’t necessarily mean he should be paid £5 million for his efforts.  

**Rejecting Equal Opportunity and Merit**

There are a number of additional issues in considering equality of opportunity but it is important to refer to a famous attack on the entire concept, framed in the form of a satirical novel by Michael Young in *The Rise of the Meritocracy* 1870–2033. Writing in 1958, Young imagines a futuristic world where equality of opportunity is implemented effectively and comprehensively, particularly in the fields of education and employment, giving rise to an actual meritocracy. The utopian and satirical explanation and defence of the roots of this meritocracy as it advanced in an alternative 20th century is written in the voice of a fictional historian in 2034. Formerly the idea of a meritocracy, a word coined by Young, is often promoted as an obviously good thing: who could possibly oppose it? But although this is the same argument presented by Young’s future historian, it is clear that the text is in fact a satirical rejection of what Young saw as unpalatable features of equality of opportunity. Even if opportunities were equalised, Young saw no reason to assume that the result would correspond to the equal worth necessary for a democracy, nor that a class society would be overturned. Two statements in the introduction underline this point:

Today we frankly recognise that democracy can be no more than aspiration, and have rule so much by the people as by the cleverest people; not an aristocracy of birth, not a plutocracy of wealth but a true meritocracy of talent. (p.18)

Young’s historian explains more straightforwardly why equality of opportunity might lead to such a seemingly egalitarian and elitist result, namely that ‘equality of opportunity meant equality of opportunity to be unequal’ (p. 103). The basic injustice of the old system was that ‘intelligent members of the lower classes were not given their due… When the basic injustice was remedied, and the intelligent from every class were given their full opportunities, who would have been enemies of the established order became its strongest defenders’ (p. 129). If there is any question that Young’s satire is in fact a dystopian one, it can be dispelled by the following references to the deservingsness of the upper and lower classes in his meritocracy:

The upper classes are… no longer weakened by self-doubt and self-criticism. Today the eminent know that success is just reward for their own capacity, for their own efforts and for their own undeniable achievement. They deserve to belong to a superior class… As for the lower classes, their situation is different too. Today all persons, however humble, know that they have had every chance… their image of themselves is more nearly a true, unflattering, reflection. Are they not bound to recognize that they have inferior status – not as in the past because they were denied opportunity, but because they are inferior? (pp. 85–7)

Young’s satirical critique is certainly powerful, and is instructive for pointing out that a meritocracy can be an ugly basis for a society, especially since it is so prominently advocated today. However, there are a number of responses to Young’s version of equality of opportunity, many gleaned from the radical conception of equality of opportunity presented above. In Young’s dystopia, people receive rewards according to intelligence plus effort (see p. 74). But if intelligence is distributed according to luck, it is unjust and egalitarian to distribute rewards in such a way, even according to certain understandings of equality of opportunity.

Some will further object to the use of intelligence as the sole criterion for merit, but Young’s observations can be extended to a more generalized point. Differential rewards, whatever their basis, can reinforce and even strengthen class positions and thus create systematic inequalities. For some, this explains why the radical view is the only justifiable conception of equality of opportunity. Although few reject equality outright, many will respond to this discussion by rejecting the idea of equality of opportunity – or perhaps any institutionalisation of the concept as hopelessly utopian. On the other hand, if we do want to advance the claims of equality, it should now be clear that we need an appropriate answer to the ‘equality of what’ question, an answer that views certain areas of human relationships and activity as the most important sphere in which people should be treated equally.

**Relevant and Irrelevant Differences**

As a way of relating this argument to the proposed Commission on Equality and Human Rights, it is helpful to expand the relatively abstract ‘equality of what’ debate. More concretely, any conception of
equality delimits specific distinctions as irrelevant reasons for differential treatment. That is to say, for every conception of equality, some differences in treatment, opportunities or outcome are clearly the result of what it categorises as morally irrelevant reasons. If the explanation of differential treatment stems from what is viewed as an unjustifiable distinction, egalitarians view this as a morally irrelevant reason. What distinguishes conceptions of equality here depends on where they direct their anti-egalitarianism, or which differences are viewed as based on irrelevant reasons and thus defined as inequalities in need of rectification.

How does this idea of irrelevant reasons relate to the CEHR? The proposed Commission will have to meet the requirement that gender, race, disability, religion/belief, sexual orientation and age are illegal grounds for discrimination. So each of these grounds will be viewed as an irrelevant reason for treating people differently. As Bhikhu Parekh has noted: [b]roadly speaking, equality consists in equal treatment of those judged to be equal in relevant respects.' This relatively clear statement is complicated by the fact that there are dissenting views about which of these respects are in fact relevant in any given society. While Parekh focuses on the difficulty of agreement in a multicultural society, his insight can be extended more generally.

For many people, this seems like a lot of abstract discussion for an obviously reasonable and justifiable position. There are two concerns that help to explain the consideration of political principles offered in this essay. First, the New Labour government seems to be in some confusion about its understanding of equality, and often seems to shy away from discussing the topic openly, focusing instead on creating a 'meritocracy'. Even compared to the principles offered in The Justice Gap, there seems to have been a shift in thinking towards work requirements; and instead of any consideration of political principles, there seems to have been a shift in thinking towards work requirements; and instead of any particular conception of equal opportunity we read of the 'opportunity to contribute to building wealth' (cf. DSS Press Release, 2 November 2001). The government is also relatively unreceptive to the idea of greater redistributive taxation, as noticed in its campaigning for the 2001 General Election. But this might be precisely what most conceptions of equality of opportunity – to say nothing of social justice – require.

The second concern stems from the proposed Commission's focus mainly on discrimination in the workplace. This seems to suggest that the above six distinctions are irrelevant reasons for differential treatment only in the workplace. Now there may be pragmatic grounds for limiting the scope of a principle, but if a ground for differential treatment is genuinely held to be an irrelevant reason, such as the case of race, then additional legislation will be required to ensure that it is in fact irrelevant in other spheres of life. In fact, current legislation does provide protection in areas other than the workplace (i.e. in the provision of access to goods and services), but this raises an even more fundamental problem in the government proposals. Since the CEHR will be established without overarching legislation, there will be different standards for the currently existing grounds of race, gender and disability as compared to the grounds of religion/belief, sexual orientation and age. While the first three grounds will be deemed irrelevant reasons for differential treatment both in the workplace and in the provision of access to goods and services, the latter three grounds will be considered irrelevant grounds only in the area of employment.

If the CEHR argues for the 'minimal' conception of equality of opportunity it is theoretically coherent to limit legislation to anti-discrimination legislation in the field of employment. However, this suggestion is precluded since existing legislation for race, gender and disability extends beyond the minimal area of employment law. If government proposals go forward as planned, race, gender and disability will be institutionally viewed as more irrelevant grounds than religion/belief, sexual orientation and age, hardly an auspicious beginning for a commission dedicated to fostering equality.

Whether a proposed policy or commission will effectively make race, gender, disability, religion/belief, sexual orientation and age truly irrelevant features for someone's prospects in life, or whether a different answer to the 'equality of what' question will be required, should be issues raised both before and after the CEHR is implemented, even if the current inconsistencies are ironed out.