

**DIFFERENCE, INEQUALITY AND UNFAIRNESS:
THE FALLACIES, ERRORS AND CONFUSIONS IN
THE EQUALITY AND HUMAN RIGHTS
COMMISSION REPORT, *HOW FAIR IS BRITAIN?***

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What is the EHRC report about?

Under the terms of the 2006 *Equality Act*, the newly-established Equality and Human Rights Commission is required to report every three years on Britain's 'progress' towards becoming a more equal society. The Commission has just published the first of these reports, entitled *How Fair Is Britain?*

It runs to 749 pages, most of which contain data harvested from existing research published by government, academics or third sector organisations. There is little new in the report (despite the flurry of excited media headlines that greeted its publication), but it does bring together a lot of up-to-date material in one place.

The report focuses mainly on what it calls the seven 'equality groups,' corresponding to social divisions based on age, disability, gender, race and ethnicity, religion, sexual orientation and transgender status.¹ These groups correspond to the seven 'protected identities' covered by UK equality legislation (for it is now illegal for employers or service providers to discriminate directly or indirectly against anybody on the basis of any one of these seven characteristics). Although social class is not a legally-protected identity, the report also spends quite a lot of time on class differences too.

Descriptive statistics on each of the seven 'equality groups' are presented for 40 different 'indicators.' These were chosen following 18 months of consultations with 'academic experts, statisticians and other stakeholders'² (the report contains an appendix listing 60 advocacy groups which submitted evidence, and many more that attended round tables). On some of these indicators, data for one group are broken down by the categories of another (e.g. gender differences in employment are presented for 'Indian women', 'Afro-Caribbean women', and so on). This partly explains why the report is so long and why it makes for such dry reading (we can safely assume that few journalists got past the Executive Summary). Yet despite this level of detail, the report complains that statistics for some groups (especially transsexuals and gay, lesbian and bisexual people) are not good enough for it to perform breakdowns on some indicators, and it calls for more research to fill these gaps.³ There might be a squeeze on public spending, but the EHRC is in expansive mood.

The 40 indicators outlined in the report are grouped into 10 'domains' representing aspects of people's lives which are thought to be crucial in enabling them to be 'happy, productive and fulfilled.'⁴ These domains are:

- life (indicators include life expectancy, homicide rates)
- law (e.g. treatment by police and courts, imprisonment rates)
- physical security (e.g. vulnerability to crime, fear of crime)
- health (e.g. long-term illnesses, healthy lifestyles)
- education (e.g. child development, school and university performance)
- employment (e.g. pay differentials, job 'segregation')
- standard of living (e.g. poverty rates, housing conditions)
- care and support (e.g. access to child care, involvement in offering unpaid care)
- politics (e.g. representation in elected bodies, political activism).

The Commission's vision for Britain

Adopting a slightly patronising tone, the report commends the British people for the 'progress' we have made in recent years in tolerating diversity and endorsing equality. It regrets that many of us are still 'uneasy' about mass immigration, and that we are 'suspicious' and 'disapproving' of gypsies and travellers, but it puts these attitudes down to our exposure to the media.⁵ It notes with approval that few of us any longer believe in traditional gender roles;⁶ it seems pleased that only a quarter of the workforce still conforms to 'the old standard model of being White, male, non-disabled and under the age of 45';⁷ and it congratulates us on moving in less than 20 years from 'vilifying same-sex relationships' (it means the legislation outlawing the promotion of homosexuality in schools) to legally recognising them (through civil partnerships).⁸ Noting that public opinion thinks the gap between rich and poor is too large,⁹ it claims that an egalitarian agenda now commands widespread political support,¹⁰ and it detects in the population as a whole a 'shared aspiration towards greater equality.'¹¹

While giving us a tick for all this 'progress,' the report nevertheless warns that we still have a long way to go. It notes that, 'Outcomes for many people are not shifting as far or as fast as they should,' and it predicts that 'new forms of inequality' are likely to become entrenched 'without some form of corrective action.'¹² While accepting that it cannot by itself achieve all the changes that are needed, the Commission nevertheless reminds us that Britain now has some of the strongest equality laws in the world, and that the Commission is one of the most powerful regulators in this field.¹³ It promises to flex its muscles and to put its powers at the service of 'individuals, voluntary groups and organisations fighting for change.'¹⁴

The Commission's own priorities for change are outlined towards the end of the report, where five 'aims' are identified as core elements in its 'agenda for fairness'. Without losing sight of all the other things it wants done, the EHRC says it will focus in the future mainly on these five aims, and it will refer back to them when it comes to assess whether things have been 'improving' or 'deteriorating' in its next report in three years time.¹⁵

- Its first aim is 'to reduce the effect of socio-economic background on health and life expectancy'. Two measures will be monitored. Even though social class inequalities do not fall into the Commission's legal remit, one is the elimination of class inequalities in health. The other is to 'close the infant mortality gap between ethnic groups.'
- The second aim is 'to ensure that every individual has the chance to learn and to realise their talents to the full.' This will be assessed in four ways. First, boys must catch up with girls in their educational performance. Secondly, girls and boys (and students from different ethnic groups) must stop clustering in the types of subjects they study. Thirdly, disabled people must increase their qualifications. And fourthly, the social class gap in educational attainment must be reduced.
- The third aim is 'to give every person the opportunity to play a part in strengthening Britain's economy.' This is bureaucracy-speak for employment equality, and it will be measured on three criteria: closing the 'gender pay gap'; closing the pay gap between different ethnic groups; and raising the employment level of people with disabilities.

- The fourth aim is ‘to put an end to identity-based violence and harassment’, which means reducing the incidence of ‘hate crimes’ against ‘protected identity groups’; reducing bullying of members of these groups; reducing domestic violence; and increasing the conviction rate for those charged with rape.
- The final aim is ‘to give people greater personal autonomy and civic power.’ The Commission intends to develop a new suite of indicators dealing specifically with ‘autonomy’, which it sees as a particularly important aspect of inequality,¹⁶ but in the mean time it wants to reduce the use of informal care (because this is provided mainly by women who thereby lose their ‘autonomy’) and to close what it calls the ‘power gap’ in public bodies (e.g. by increasing levels of representation of women and ethnic minorities).

Much of this might sound harmless, even worthwhile, but it is worth examining these aims in more detail, for the problems that emerge point to a series of weaknesses at the very heart of this report.

When do different outcomes become an ‘unfairness problem’?

The methodology of this report is to look for differences in outcomes for ‘protected groups’ in order to show evidence of their victimisation and deprivation. However, scattered throughout the report are statistics which run ‘the wrong way,’ in that they show ‘protected groups’ doing *better* than supposedly more privileged groups rather than worse.

Consider the evidence on ethnic minorities. We learn in the report that Chinese men and women report the best health, and black African men report better health than white British men.¹⁷ Indian and Chinese men are twice as likely as white British men to be in professional jobs,¹⁸ and Indian people are more likely than Whites to be in the professional/managerial class.¹⁹ By the age of 5, Indian children have developed as well as white British children, but much better than Black and Pakistani children.²⁰ Children from Asian families are less likely to be excluded from school than children from White families.²¹ When they come to take their GCSEs, Indian and Chinese pupils comfortably out-perform everybody else, while White children do no better than Bangladeshi or Black children.²² White pupils report higher levels of bullying than pupils from ethnic minorities, and as adults, Whites are more likely to be victims of violence.²³ Blacks and Asians also seem to feel more empowered than Whites.²⁴

The report never asks *why* Indian and Chinese people seem to do so much better than Whites or Blacks or Pakistani Asians on so many of these indicators. Presumably it has something to do with cultural differences such as the value they place on education, a belief in free enterprise and a commitment to strong, traditional family values.²⁵ Certainly, evidence of Indians out-performing Whites casts doubt on the Commission’s own favoured explanation for ethnic differences, which has to do with so-called ‘systemic bias’ in British society and institutions.²⁶ It is difficult to see how racist practices, norms and structures could systematically disadvantage Pakistanis yet work to the positive advantage of Indians.

It is also notable that nowhere in this report is it ever suggested that White British people are ‘disadvantaged’ as compared with Indian or Chinese people. There is a clear pattern of differences between them, but it is never picked out, discussed or explained. Yet when outcomes for Whites are found to be better than those for, say, Pakistani or Afro-Caribbean

people, the report is swift to identify ‘social inequality’ and to flag an incidence of ‘unfairness’ that needs remedying. It seems that differences of outcomes are only ‘unfair’ when they confirm pre-existing Commission assumptions about the structure of power and privilege in society.

This bias does not only arise in the analysis of ethnic differences; we find it in the treatment of gender differences too. Women, for example, typically live 4 years longer than men.²⁷ Men are more overweight,²⁸ are more likely to commit suicide,²⁹ get assaulted more,³⁰ and are killed at work in much greater numbers.³¹ Men are also more likely to be stopped and searched by the police,³² and 95% of prisoners are male.³³

We shall see that when this report finds differences like these between ethnic groups, it has no hesitation in identifying ‘inequality’ and ‘unfairness’ as the cause. But even sharper divisions on the same indicators appearing along gender lines warrant hardly a mention. Presumably, the Commission believes there are ‘good reasons’ for these differences to arise between men and women (e.g. different genes for life expectancy; different behaviours for imprisonment rates), and that these reasons do not apply to variations between ethnic groups (e.g. health differences cannot be explained by genetic variations between ethnic groups; incarceration rates do not reflect differing levels of criminal activity between ethnic groups). But such reasoning is never spelled out in the report, and the evidence we would need to evaluate such claims is not therefore presented.

There is just one area where inferior male outcomes *are* treated as problematic and remediable, and that concerns boys’ educational performance. By the age of 5, girls are out-performing boys on 11 of 13 development assessment criteria (the biggest gap is in writing, where 72% of girls reach the expected level compared with just 53% of boys).³⁴ The differences continue through school,³⁵ and into university.³⁶ As we have seen, the Commission wants this gender difference in educational performance addressed as one of the key aims in its ‘fairness agenda,’ so presumably it believes that these differences are being generated by some sort of ‘unfairness’ which is operating in the opposite direction to the ‘systemic bias’ favouring males elsewhere in society, and which can be rectified by ‘corrective action.’

At the press conference launching the report, Trevor Phillips, the EHRC chair, claimed boys were failing in school because of a lack of male teachers and the move to coursework-based examinations.³⁷ There is some evidence that these may indeed be contributory factors,³⁸ although there is also a lot of evidence that biological differences between the sexes may be implicated.³⁹ Phillips seems to have forgotten that girls have been out-performing boys in British primary schools for at least 50 years, long before the exodus of male teachers and the switch to coursework in examinations.⁴⁰

Why is the EHRC so concerned to address this particular difference in outcomes when it is indifferent to all the other examples where ‘protected groups’ outperform the norm? A clue may be found at that press conference. Noting that many teachers are female, Phillips said: ‘For most of the day, most of the week, boys will not see any male role models in school. *That is one of the reasons that we supported positive action clauses in the Equalities Act.* I want a head teacher of a primary school to be able to say: “I have five great candidates in front of me who could all be good at teaching at my school and I’m going to choose the man because I think it is better to have a teaching force that has both men and women in it.”’⁴¹

Although the Coalition government has said it will implement most of the 2010 *Equality Act* it inherited from Labour, ministers are said to be unsure about the clauses legalising ‘positive discrimination’ in recruitment and promotion. Like the rest of the equalities lobby, the EHRC is keen to introduce positive discrimination, and it may believe that championing the issue of boys’ education will be a useful vehicle for pushing this through.

Is there no role for free choice?

Phillips’s comments at his press conference also highlighted a second concern dear to the Commission’s heart, which is that it deeply dislikes what it calls ‘occupational segregation’. The ‘over-representation’ of women in teaching is just one example of such ‘segregation’; the report contains many others.

It complains, for example, that women take up more than 9 in 10 apprenticeships in childcare, business administration and hairdressing, but less than 1 in 30 in construction and engineering.⁴² It frets that, while 83% of personal service workers and 77% of secretarial and administrative workers are female, 94% of engineers and 86% of architects, planners and surveyors are male.⁴³ It worries that 40% of working women are employed in the public sector compared with only 15% of men (it thinks this ‘disadvantages’ women, making them more susceptible to impending public spending cuts, yet disregards all the evidence that public sector workers enjoy better pensions, more job security and higher salaries).⁴⁴ It is also concerned that a quarter of employed Pakistani men work as drivers.⁴⁵

Why should the Commission be concerned that women choose childcare over construction, hairdressing over train driving? Occupational clusters like these do not appear to be a problem for the Commission when they involve gay men concentrating in jobs like acting or hairdressing. Indeed, this tendency is not even mentioned in the report.

The reason for its concern lies in its core assumption that, when it comes to gender and ethnicity, differences of outcomes *must* indicate differences of opportunity and access. It assumes that, given a level playing field, there would be no occupational differences between men and women (nor, indeed, between Chinese and Afro-Caribbeans), because all the behavioural and attitudinal differences exhibited by them have been socially constructed. The fact that women *choose* to enter certain careers and not others therefore cuts no ice with the EHRC, because it ‘knows’ that these choices have been skewed by the ‘systemic bias’ of a ‘gendered’ social structure which needs changing.

This argument is made explicit in the report’s discussion of girls’ choice of subjects at school and university. Noting that women gravitate towards courses in medicine (80% female), veterinary science (76%), education (76%) and languages (68%), while men are concentrated in courses in engineering and technology (84%), computer science (81%) and architecture, building and planning (69%),⁴⁶ the report insists that these subject choices reflect stereotyping and gender conditioning in the schools and the wider society.⁴⁷ With very little evidence to back up its claims, the report concludes: ‘Educational segregation is (at the very least in part) a function of cultural expectations, and not the expression of intrinsic difference between different groups. By implication, there is no inherent reason why today’s instances of educational segregation should persist: but the fact that they have remained, while others have diminished rapidly or disappeared altogether, suggests that they may be unlikely to change today without some form of intervention.’⁴⁸ In other words, the Commission wants to

take it upon itself to stop so many girls becoming vets, and force them into becoming engineers instead.

In the political agenda which informs the Commission's work, and which pervades the entire equalities industry, there is little or no room for individual volition as a causal explanation for inter-group differences. In the world of the EHRC researchers, it is inconceivable that women might select caring careers because they are, on average, better at nurturing and therefore get more satisfaction from caring professions than men do, or that men are drawn to engineering because on average, they perform better on spatial tasks and therefore enjoy them more. Such propositions sound archaic to the ear of an equalities advocate who has learned all about gender socialisation and stereotyping, and who 'knows' that explanations couched in 'natural differences' are dangerously 'ideological.' These debates are therefore closed down before they can begin.

Yet choice may still cause the equalities advocate a problem when it reflects 'legitimate' multicultural diversity. It is one thing to force more girls into engineering, but what is to be done about ethnic groups where employment by married women outside the home may be frowned upon? The report notes that only one in four Bangladeshi and Pakistani women works, compared with nearly 3 in 4 White British women.⁴⁹ Almost half of all Bangladeshi and Pakistani women are 'looking after the family or home' rather than being 'economically active'.⁵⁰ Are these inactive, ethnic minority women to be pushed into jobs in order to achieve 'equality', or are they to be left alone caring for their families, out of respect for multicultural diversity? The report does not say, but it is unlikely the Commission will be taking 'corrective action' on this any time soon.

Is feminism always right?

Throughout the report, data on gender differences are reported from an uncritical, feminist perspective. This underpins an unstated assumption throughout the report that paid employment for women is preferable to participation in family-based activities, even though many women do not share this belief themselves.

One of the core aims of the Commission's 'fairness agenda' is to 'close the gender pay gap', and it is true that women on average still earn less than men. The report reveals that median hourly pay (excluding overtime) for men in 2009 was 12.2% higher than for women. It describes this difference as 'stubbornly persistent' and suggests that, although the gap has narrowed over the last 30 years, 'progress' now 'seems to have stalled.'⁵¹

This difference in average pay rates was often the subject of comment by Harriet Harman, when she was shepherding the 2010 *Equalities Act* through the House of Commons, and it was seized upon in much of the press comment that followed the publication of the EHRC report. However, it is crucial to investigate what is producing this difference. In particular, we need to know whether employers are under-paying women doing the same jobs as men (which is often the assumption when statistics like this are publicised), or whether women are making different job choices than men which result in them engaging in different patterns of employment at different rates of pay.

We have already seen that women cluster in certain kinds of occupations, and this 'segregation' explains part of the pay gap, but the full explanation goes much deeper than this. The EHRC report notes that pay differences are small when men and women are in their

twenties, but the gap widens after that.⁵² This suggests it is not simply the choice of job, but also the subsequent career trajectory, which is generating the difference in earnings. The obvious divergence in career patterns between the sexes is that women are much more likely than men to take career breaks to have children, returning to employment later on a part-time basis. A career break is likely to disrupt progress on the promotion ladder, thereby depressing earnings, and subsequent part-time work is likely to attract a lower rate of pay.

The report says ‘it is hard to separate out the effect of career breaks,’⁵³ and it suggests the causes of the gender pay gap are mainly occupational segregation, lower pay for part-time work, the caring responsibilities of women and the impact of discrimination.⁵⁴ But there is plentiful evidence that women who do not have a career break enjoy much better earnings than those who do. Women tend to change jobs and take breaks from work more than men, and when they have children, this pattern is reinforced. This difference explains ‘a large part of the sex differential in earnings.’⁵⁵

Catherine Hakim finds that many women are happy to combine career and family choices. They are not forced to sacrifice their careers for their families, but exercise a clear preference about the respective claims each will make on their lives. Hakim estimates that about 20% of women are clearly home-centred, 20% are clearly career-centred, and the rest seek to combine the two, making such compromises as are appropriate in each area of their lives.⁵⁶ This research never gets mentioned in the EHRC report. It prefers to explain women’s career patterns as the result of constraint rather than choice. The report acknowledges that ‘many’ non-working mothers of pre-school age children prefer to stay at home to look after their children rather than going out to work, but it insists there is a ‘preference to work if suitable employment were available,’ and it deplors the fact that the primary responsibility for childcare in most British homes still falls upon mothers.⁵⁷

The report also notes that women have more responsibility for caring for older family members than men do,⁵⁸ and it worries that these domestic caring responsibilities may prevent some women from participating in the labour market, or from engaging in other activities outside the home, which is where it thinks they should be.

Reforms designed to reduce women’s domestic caring responsibilities within their families are highlighted as one of the core aims in the Commission’s ‘fairness agenda’. It says it wants to reduce the need for ‘informal care’ and to increase the ‘autonomy’ of carers. This translates into a demand that the government should take over more of the responsibilities to ‘free’ carers to engage in economic activity.⁵⁹ The aim is to get the state to look after infants and elderly family members so women currently providing informal care to their families can be ‘released’ into the economy to find paid jobs. But not only is there a logical circularity in this proposal (the state could end up paying people to care for each other’s family members), but it also directly contradicts the Coalition’s ‘Big Society’ agenda which explicitly aims to support informal provisioning and to limit dependency on the state. It is, however, entirely consistent with the traditional anti-family, pro-work agenda of radical feminism.

Must victims’ claims always be believed?

The influence of feminist ideology in this report can also be seen in its analysis of rape data. One of the most striking aims listed in the Commission’s fairness agenda is the blunt demand that the rate of rape convictions should be increased.⁶⁰ This demand for more punitive action sits oddly with the tone elsewhere in the report where we learn that the fairness of the

criminal justice system cannot be trusted,⁶¹ and (implausibly) that most British people would prefer to see offenders rehabilitated rather than punished.⁶²

The explanation for the Commission's uncharacteristically hard-nosed approach to this particular crime lies in its assumption that large numbers of men are raping women and getting away with it. Its evidence for this is that between 1997 and 2006, the prosecution rate for rapes reported to the police fell from 30% to 18%.⁶³ However, as the report also notes, an increasing number of women were reporting rape over this period, so the number of convictions did not fall.

The obvious question is whether the prosecution rate fell because the increase in the number of reports meant there were more unsubstantiated accusations that could not be prosecuted. The EHRC seems to assume that every rape accusation was valid, so there should have been many more prosecutions, but we cannot simply assume this. Accused men went free presumably because the CPS considered the case against them was too weak to prosecute, or because a jury was unconvinced of the evidence against them. For the EHRC to demand that more of them should have been put behind bars (which is what its core aim of increasing the rate of rape convictions amounts to) begs the crucial question of whether or not they were guilty.

This propensity to 'believe the victim' without subjecting their claims to the usual canons of evidential probity ripples through many other parts of the report in addition to the analysis of crimes against women. Many of the health statistics, for example, depend on people's subjective assessments of their own health, rather than on objective measures, so the finding that a quarter of the population thinks it is in poor health⁶⁴ may tell us more about our national propensity for hypochondria than about our true level of ailments. Similarly, the fact that almost two-thirds of school students say they have been the victims of bullying in the course of a two year period should surely be treated with some degree of scepticism, as should the claim from a different survey of lesbian, gay and bisexual school students that 92% of them had been subject to 'verbal, homophobic bullying' and 17% had 'suffered death threats'.⁶⁵ The report swallows all this whole and uncritically – indeed, it even warns us of the emergence of new forms of bullying (1 in 3 secondary school pupils has apparently been subject to 'cyberbullying'), and the Commission calls for more research on this to see which 'protected groups' suffer most.⁶⁶

The data on 'hate crimes' also depend entirely on the subjective assessments of those who claim to be victims (indeed, a 'crime' only becomes a 'hate crime' when a member of a 'protected group' claims that it was motivated by hostility to their identity).⁶⁷ Predictably, the report thinks many hate crimes go unreported. It accepts an estimate by the gay pressure group, Stonewall, that two-thirds of gay men, lesbians and bisexual people experienced a 'homophobic crime or incident' between 2005 and 2008,⁶⁸ and it estimates that 3 in 4 people who experience 'homophobic hate crime' fail to report it.⁶⁹ But we have no way of assessing the validity, or even the meaning, of statements like these. It does not help that, according to the British Crime Survey, only one in a thousand gay/lesbian/bisexual people say they have been the victim of a hate crime in the previous 12 months,⁷⁰ and the report makes no effort to reconcile these figures with those it gleans from Stonewall. Yet reducing the incidence of hate crimes is flagged in the 'fairness agenda' as another of the Commission's key priorities.

More subjective claims are taken at face value in the analysis of 'unfairness' at work. We are told, for example, that women and ethnic minorities 'are more likely to report experiencing

discrimination in relation to promotion than White men'.⁷¹ Similarly, only 1% of Whites, but 7% of ethnic minority people, believe they have been rejected for a job because of their race.⁷² Whether these beliefs and suspicions are true, no-one knows, although the report does include an account of one useful study which documented some discrimination at initial selection on the basis of ethnic-sounding names.⁷³ The obvious danger in relying so heavily on subjective feelings and conjecture is that the EHRC report could easily generate a self-reinforcing circularity: Blacks claim they are being blocked by racist employers, these claims are taken up by the Commission, and this official endorsement is then reflected back to the Black community to reinforce and legitimate its initial grievances.

In his foreword to the report, Trevor Phillips emphasises how important it is that 'we despise prejudice.'⁷⁴ But some prejudices, it seems, are acceptable. When large numbers of people complain that gypsies are responsible for driving up crime in their area, this is dismissed as 'conjecture' stirred up by the media.⁷⁵ It is an unacceptable prejudice. But when feminists complain that thousands of men are getting away with rape every year, or gays say that the police would discriminate against them if they reported an offence,⁷⁶ or Black Caribbean people complain that racist employers are failing to offer them promotions or jobs, these comments are reported uncritically as indicators of unfairness in this country. As David Green has warned, 'Many people want to be classified as victims,'⁷⁷ and the EHRC seems only too happy to assist.

Is society always to blame?

Sometimes, people really are victims, but the fault lies not with society, but biology. The EHRC report accepts that biology can explain some age and gender differences in health outcomes.⁷⁸ It also agrees that 'genetic predisposition' can be a factor in shaping differential outcomes between groups, particularly with regard to indicators like life expectancy. However, it claims that in some cases, group differences are 'so stark that it is possible to infer with some confidence that they are indicative of the cumulative impact of unequal outcomes experienced by different groups throughout their lives.'⁷⁹ This rather odd logic (genes cannot be to blame if the differences are big ones) then allows the Commission to ignore biology and genetics and search for ideologically more comfortable, social causes of the group differences it discovers.

One of the 'stark' variations it finds is the difference in infant mortality rates across different ethnic groups. The infant mortality rate for White British babies is 4.5 per thousand live births, while that for Pakistani babies is 9.8 per thousand – almost double. The Black Caribbean rate is also troublingly high (9.6), yet, counter-intuitively, the Bangladeshi rate is lower than that for White British babies at just 4.2.⁸⁰

Following its own presumption that 'stark' differences 'must' be due to social conditions, the report gets understandably indignant about the Pakistani and Black Caribbean figures (although it remains sadly incurious about the apparent Bangladeshi anomaly): 'The case for action is a moral one. We question whether a society committed to the principles of equality and human rights could be indifferent to such widely differing infant mortality rates among different groups.' The aim of 'closing the infant mortality gap' is duly instated as another of the Commission's priorities in its 'agenda for fairness.'

The data on infant mortality cited by the EHRC report come from the Office for National Statistics. But the ONS report which presents these findings also makes clear that, 'Half of all

infant deaths in the Pakistani group were due to congenital abnormalities, compared with only a quarter of deaths in the White British group.’⁸¹ Research published in the *British Medical Journal* suggests this high incidence of congenital abnormality is probably due to high rates of inter-marriage within extended Pakistani families.⁸²

It always was unlikely that the high rate of infant mortality could have been due to the socio-economic conditions of Pakistani families, for these are quite similar to those of Bangladeshi families who enjoy an infant mortality rate less than half that of their Pakistani neighbours. What the BMJ article makes clear is that the defects causing these deaths are *genetic*. In most Asian populations throughout the world, the rate of congenital abnormalities in new-born babies is actually below the average for Whites, but in the case of the UK Pakistani community, the prevalence of cousin marriages appears to have pushed this rate up.

This still leaves the question of the high Black Caribbean infant mortality rate. But again, it seems genes are at the bottom of it. Research suggests that Black women in many countries are at greater risk of giving birth before reaching full term than White women (pre-term rates in the UK and USA are 16-18% for Blacks compared with 5-9% for Whites). This difference appears to be genetically-determined and has nothing to do with socio-economic conditions.⁸³ Its relevance is that early births are associated with a higher risk of infant mortality.

Where all this leaves the EHRC’s ‘agenda for fairness’ is unclear. To achieve the lower infant mortality rate it wants among Pakistanis, the Commission will need to block cousin marriages (which would again bring it into conflict with its own principles of tolerating cultural differences). To achieve the lower rate it is demanding among Black Caribbean women, it would probably need to do some genetic engineering. Before allowing their ‘moral outrage’ to shape their aims and recommendations, the EHRC might have been well advised to have read their sources more thoroughly. They also need to understand that even ‘stark’ differences can have biological foundations.

But like many activists committed to engineering a better society, the Commission’s researchers seem ill-disposed towards biological explanations of social group differences. We have already seen they ignore biological explanations for some of the differences in boys’ and girls’ developmental and educational outcomes. They are similarly indifferent to the probable biological differences underpinning some of their school exclusion data.⁸⁴ And, even though the Commission’s ‘agenda for fairness’ includes as one of its aims a reduction in the ‘disparities in educational performance by socio-economic background’, the report completely ignores the genetic basis to the intelligence differences which are undoubtedly driving much of this variance, which means this priority aim is also most unlikely to be realised.⁸⁵

Do individuals have no responsibility for the outcomes of their own behaviour?

This reluctance to accept that biological causes may lie behind some of the group differences identified in the report goes hand-in-hand with a corresponding failure to acknowledge that sometimes, people are responsible for their own negative outcomes.

An obvious case in point are the health findings on diet and lifestyle. We are told that ‘cigarette smoking, lower exercise levels and poor diet are associated with lower social class’,⁸⁶ but the report insists that class differences in life expectancy are nevertheless ‘unfair’, and it wants the gap between the highest and lowest economic groups closed as part

of its ‘fairness agenda.’ Nowhere is there any recognition of individuals’ own responsibility for at least part of their groups’ health outcomes.

Similar issues arise in the report’s discussion of ethnicity and child poverty rates. The report finds that children in Black families are more than twice as likely as those in White families to be living in poverty (defined as an equivalised income below 60% of the median). But it also notes research by the DWP that finds that ‘black Caribbean and black African children are poor predominantly because of their family characteristics.’⁸⁷ In other words, many Black families are single parent households without a father. We know that lone parenthood is strongly associated with high child poverty rates (and with many other unfortunate child outcomes besides). If these parents married and raised their children together in a committed relationship (as, for example, many Indian and Chinese parents do), their poverty rate would be much lower, and many of their child outcomes would be much better. But nobody – least of all the EHRC – is willing to say this. Instead, the high child poverty rate in Black families is paraded as yet another indicator of ‘unfairness.’

Perhaps the sharpest example of the report’s failure to pin responsibility where it belongs concerns crime. We are told that Black people are much more likely to be stopped and searched by the police than Whites are. Relative to their population size, the Commission calculates that in 2007/08 Black people were stopped and searched more than six times more than they ‘should’ have been.⁸⁸ But this begs two questions. First, are Blacks more likely than Whites to come to the notice of passing police patrols because they are spending more time in public places?⁸⁹ Secondly, and more importantly, are these two groups equally likely to be committing a crime that justifies the police approaching them?

It turns out that, although they are stopped and searched six or seven times more than Whites, Blacks who encounter the police are about as likely as other groups to end up arrested.⁹⁰ The police arrest about 1 in 10 of all those they stop and search, and this is true across the ethnic groups. This suggests that, while Blacks are being approached much more often by the police, they are also more often engaged in activities that warrant such police attention.

There is actually something ‘unfair’ about the Commission’s discussion of this issue, for the report notes that ethnic minorities are more likely to be victims of crime (especially crimes of violence), and it even accuses the UK state of failing to protect people in the ethnic minorities from being attacked and murdered,⁹¹ yet it criticises the very actions which are most likely to stop this happening. Most violent crime is within rather than between ethnic groups, so if Black people are more likely to be victims, it is because they are also more likely to be perpetrators.⁹² It is precisely by stopping suspects and frisking them for weapons that the police can hope to offer the protection that the Commission is demanding they provide.

But in this report, there are only victims, no perpetrators. It tell us that Blacks are five times more likely than Whites to find themselves in prison, and it is clearly indignant that ethnic minorities make up 25% of the prison population when they only account for 11% of the population as a whole. There is, it splutters, a ‘greater disproportionality in the number of Black people in prisons in the UK than in the United States.’⁹³ But it offers no data on the ethnic composition of offenders. The possibility that there are more Black people in prison because more Black people commit crimes is never considered. It seems to be unthinkable. In the world of the Commission, fair outcomes always have to be equal.

The basic problem: fairness, difference and equality

This, at root, is the fundamental problem with this whole report. It rests on two core assumptions, both of which are false.

The first assumption is that demonstrating the existence of group differences is enough to prove the existence of unequal conditions and opportunities. But we have seen that average differences in group outcomes can arise for all sorts of reasons, and lack of social opportunity is only one possible cause.

Girls develop better writing skills than boys, for example, at least partly because of differences between male and female brains, and this is probably a bigger influence than the lack of male teacher role models. Part of the reason why children from lower social classes get fewer good GCSEs than middle class children is because they tend, on average, to have lower IQs, not because they rely on free school meals. Part of the reason lower class adults die younger than those in the middle class is because they smoke more and exercise less. More Pakistani babies die in infancy than White babies, not because of poor social conditions, but because they suffer disproportionately from congenital defects brought about by high rates of cousin inter-marriage. Many Pakistani and Bangladeshi women stay out of the workforce, not because they are excluded by racist or misogynist employers, but because their culture emphasises a traditional gender division of labour which gives them a key role within their families. Women tend on average to earn less than men, not because their pay rates are lower, but because many women choose to take career breaks when their children are young, and opting for part-time employment when they return to work, their earnings progression is disrupted.

In his Foreword, Trevor Phillips writes: ‘All too many of us remain trapped by the accident of our births, our destinies far too likely to be determined by our sex or race.’⁹⁴ It is a familiar rhetoric, but it’s not generally true. Our destinies are not ‘determined’ by our sex or race, and very few of us are ‘trapped’ by the circumstances into which we are born. Comments like these are not grounded in social science; they are hyperbole, and they are irresponsible.

The second core assumption in the report is that unequal outcomes are necessarily unfair. But the report never defines ‘fairness.’ It unthinkingly equates fairness with equal outcomes, yet it is obvious that unequal outcomes can often be fair, and that forcing equal outcomes onto people could be very unfair. It is not ‘unfair,’ for example, that Indian and Chinese people who work hard are able to gravitate to the professional and managerial classes in greater numbers than Whites. Indeed, such an outcome is testimony to the openness and fairness of a society where recently-settled immigrants can seize opportunities to such an extent that they out-perform the host population. Nor is it ‘unfair’ that women cluster in well-paid and highly-respected professions like medicine or veterinary science, while men are drawn to careers in engineering and building. In a free and fair society, men and women will choose for themselves the subjects that most interest them, and will enter the occupations where they feel they can best exploit their talents. There is nothing unfair about this. What would be unfair would be to try to push men and women down other routes simply to fit in with some ideal blueprint of what egalitarians think our society should look like. This is precisely why the Coalition government is right to hesitate and think again about introducing the positive discrimination clauses of the 2010 *Equality Act*.

The report is entitled, 'How fair is Britain?', and in his Foreword, Phillips answers: 'We are not as yet a fair society.' He thinks that group variation is enough to demonstrate the existence of 'an invisible, many-stranded web of prejudice, inertia and unfairness that holds so many back.'⁹⁵ But the test of fairness does not lie in outcomes, but in processes, and this report does almost nothing to demonstrate that the 'web of prejudice and inertia' imagined by Phillips even exists, still less that it has a significant causal impact on our lives.

Notes

¹ P.59

² EHRC, *How Fair is Britain? The First Triennial Review*, 2010, p.57

³ The report suggests at one point that large government surveys should in future ask ‘questions to define whether a person is transitioning or has transitioned in the past, or considers themselves transgender in any way’ (p.630).

⁴ P.14. The list and the terminology reveal the strong influence of Amartyr Sen’s ‘capabilities framework’.

⁵ The belief that there are too many immigrants ‘correlates with media coverage’ (p.33), and negative attitudes to gypsies and travellers are ‘exacerbated by inaccurate media reporting’ which falsely links gypsies to crime and presents ‘the nomadic lifestyle’ as a problem (p.35).

⁶ P.29

⁷ P.40

⁸ P.29

⁹ P.461

¹⁰ ‘Where equality was once contested political ground, all three of the main political parties went into the last election with an explicit commitment to equality in some form’ (p.12)

¹¹ P.47. It describes ‘concern for equality’ as ‘a mainstream attitude’.

¹² P.637

¹³ P.47. Following the 2010 Equality Act, the Commission can hold organisations to account for their performance against the standards set out in the Act, which means it can investigate them, seek an injunction against them or take an enforcement action (p.24).

¹⁴ P.47

¹⁵ These aims are set out on pages 661-2

¹⁶ P.58. Following ‘extensive consultation’, it will also develop another set of indicators designed specifically for children (p.59). As already noted, the Commission is in an expansive mood.

¹⁷ Figure 9.1.4

¹⁸ 27% of Chinese men and 25% of Indian men are in professional jobs compared with 14% of White British men.

¹⁹ 51% against 42%. This contrasts with just 28% of Pakistanis and Bangladeshis. P.60

²⁰ P.307

²¹ Asian = 5 per 10,000 pupils; Whites = 9 per 10,000. Exclusions were highest among black Caribbean (30 per 10,000) and Gypsy/Roma children (38 per 10,000). P.312-13

²² Proportions achieving 5 or more good GCSE passes including Maths and English: Chinese 72%; Indian 67%; Bangladeshi, White British and Black African 51%; Pakistani 43%; Black Caribbean 39% - p.332

²³ 67% of White pupils say they were bullied between 2004 and 2006, compared with 62% of Black Africans, 61% of Black Caribbeans, 58% of Pakistanis, 52% of Bangladeshis and 49% of Indians – p.321. Violence is reported by 3% of Whites and 2% of ethnic minority group members (p.220).

²⁴ 49% of Blacks and 45% of Asians felt able to influence decisions in their local area compared with 36% of Whites – p.603.

²⁵ See David Green, *We’re (Nearly) All Victims Now!* Civitas 2006, pp.68ff

²⁶ ‘Systemic bias does not necessarily arise out of malice on the part of any individual, it nonetheless has the effect of creating conditions which restrict opportunities for some groups and entrenching inequality’ p.19. The report prefers to talk of ‘systemic bias’ rather than ‘institutional racism’ because it applies to gender as well as ethnic differences.

²⁷ P.74

²⁸ In England, 32% of men are ‘normal/healthy weight’ compared with 42% of women – p.286

²⁹ Suicide rate for men = 17.7 per 100,000; women = 5.4 per 100,000 – p.91

³⁰ *How Fair is Britain?* Executive Summary, p.13

³¹ Only 4 of 129 fatalities at work in 2008/09 were women – p.639

³² Men are 3 times more likely to be stopped and searched by the police – p.131

³³ P.164

³⁴ P.304.

³⁵ 54% of girls achieved 5 or more good passes including Maths and English in 2009, compared with 47% of boys – p.326.

³⁶ Girls are more likely to attend university (they accounted for 57% of all students in 2009 – p.338), and they are more likely to get a first or upper second class degree (64%, compared with 59% of men – p.340).

³⁷ Tim Ross, ‘Boys failing at school “may plunge economy into abyss”’ *Daily Telegraph* 12 October 2010

³⁸ See the review by Jennifer Buckingham, *Boy Troubles* Centre for Independent Studies, Sydney, 2000

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- ³⁹ Sex differences in language ability in particular seem to have a genetic basis, which could explain why dyslexia is so much more common in boys. For a review of the genetic evidence, see Anne Moir and David Jessel, *Brainsex* (Michael Joseph, 1989).
- ⁴⁰ In his classic study, *The Home and the School* (MacGibbon & Kee, 1964), Jack Douglas wrote 46 years ago: ‘There is much evidence from past studies that girls are more successful than boys in the primary schools. In reading, writing, English and spelling, the average eleven-year-old girl beats the average eleven-year-old boy’ (p.99). Douglas also noted that more girls than boys passed the 11+ exam and went to grammar schools.
- ⁴¹ Trevor Phillips, quoted in *Daily Telegraph*, 12 October, emphasis added
- ⁴² P.337
- ⁴³ P.425
- ⁴⁴ ‘The possibility of job losses in the public sector has the potential to affect women more than men’ p.43
- ⁴⁵ P.380
- ⁴⁶ P.340
- ⁴⁷ ‘Stereotyping in schools particularly affects girls, disabled young people, children from lower socio-economic backgrounds and those from some ethnic minority groups [note that ‘some’!]. Stereotypical information and guidance can limit young people’s options and aspirations at an early age’ (p.323).
- ⁴⁸ P.667
- ⁴⁹ P.671
- ⁵⁰ P.402
- ⁵¹ P.410.
- ⁵² P.412
- ⁵³ P.413
- ⁵⁴ P.670
- ⁵⁵ Catherine Hakim, *Key Issues in Women’s Work* Athlone Press 1996
- ⁵⁶ Hakim, *Workstyle Choices in the 21st Century* Oxford University Press, 2000
- ⁵⁷ P.562
- ⁵⁸ 58% of carers are women and 42% are men, according to the 2001 census. The report says women have a 50:50 chance of providing care by the time they are 59 while men have this same chance only when they get to 75. Presumably (although this is not considered) this is partly because (a) women tend to marry men older than themselves and (b) men die younger.
- ⁵⁹ P.679
- ⁶⁰ ‘Challenge: To raise the rate of rape convictions further...Raising the conviction rate is a significant challenge’ (p.676)
- ⁶¹ About a quarter of the population distrusts it – p.137
- ⁶² P.125
- ⁶³ P.244
- ⁶⁴ P.255
- ⁶⁵ P.322. Interestingly, only 41% of the gay, lesbian and bisexual sample said they had suffered from physical bullying, which would seem to put their level of victimisation well below the average for all students in the earlier survey.
- ⁶⁶ P.317
- ⁶⁷ Hate crimes are ‘offences that were thought by the victim to have been motivated by the offender’s attitude to one of a range of characteristics’ (p.226)
- ⁶⁸ P.233
- ⁶⁹ P.673
- ⁷⁰ Table 8.2.1
- ⁷¹ P.443.
- ⁷² P.447. This figure rises to 10% for Black Caribbean people.
- ⁷³ P.448
- ⁷⁴ P.7
- ⁷⁵ P.35
- ⁷⁶ The report reproduces figures from Stonewall claiming that 1 in 5 lesbian, gay and bisexual people expects to encounter police discrimination if they reported an offence. One third think they would be treated worse than a straight suspect if accused of a crime. P.138
- ⁷⁷ David Green, *op cit*, p.1
- ⁷⁸ P.253
- ⁷⁹ P.71
- ⁸⁰ P.81
- ⁸¹ ONS press release, 2008, quoted in Christopher Snowdon, *The Spirit Level Delusion* Little Dice 2010, p.93

⁸² Research by Balarajan et al, published in the BMJ on 18 March 1989, and cited by Snowdon, p.95, fn.25

⁸³ Snowdon, citing a research review in *The Lancet* by Robert Goldenberg, p.91

⁸⁴ Almost 4 out of 5 exclusions are of boys (p.311), and this almost certainly reflects the effects of testosterone as much as conditioning. The report also notes, under the heading 'Disability', that nearly three-quarters of exclusions are of children diagnosed with 'special educational needs', but since SEN is itself a label for troubled and troublesome pupils, this is almost a tautology. The Commission approvingly quotes a UN Committee condemning exclusions on the grounds that they violate human rights.

⁸⁵ I have discussed the link between class origins, intelligence and educational and occupational outcomes at length in Peter Saunders, *Social Mobility Myths*, Civitas 2010. Interestingly, the EHRC report notes that 'ethnic differences in GCSE results have narrowed' but 'the gap between students from different socio-economic backgrounds remains wide' (p.325). Indeed, Black Caribbean, Pakistani and Bangladeshi students all now perform as well as White British students. This ethnic convergence and class reproduction is exactly what would be predicted if innate ability is driving success, for while there is no reason to think that ability levels should vary between ethnic groups (which means their outcomes should converge), it will necessarily vary between classes, since in a relatively open, meritocratic system, classes tend to be recruited according to ability and talent.

⁸⁶ P.287

⁸⁷ Lucinda Platt in a 2009 DWP paper, quoted p.477

⁸⁸ Blacks make up no more than 3% of the population but constituted 15% of all those stopped and searched – pp.134-5.

⁸⁹ A few years ago, research was reported (which I have failed to trace while writing this report) suggesting from analysis of CCTV footage that ethnic variations in stop and search rates reflect the amount of time the different groups spend gathered in public spaces.

⁹⁰ Of those stopped and searched in 2008/09, 9% of Blacks were arrested compared with 10% of Whites, 10% of Mixed Race people, and 8% of Asians – p.135.

⁹¹ 'The state has a positive duty to protect people from unlawful killing... the evidence here suggests that the state discharges that duty towards some minority groups less well than it does towards the majority of the population' (p.71)

⁹² 'In 2004-05, there were 78 fatal shootings in England and Wales. Forty of the victims were white, 25 black, seven Asian. The figures do not record the ethnicity of the killers but, by and large, murderers tend mostly to target members of their own ethnic group. In 2005-06, there were 50 fatal shootings. Eighteen victims were white, 19 black and four Asian. That same year, 351 black people were injured by guns. For whites, injuries totalled 2,952. The statistics confirm that the problem of gun crime is not unique to the black community, but they provide stark evidence that the black community is over-represented to a frightening degree. According to the 2001 Home Office census, Britain's black community makes up just 2 per cent of the total population. Yet each year around a third of all shooting victims are black.' Tony Thompson, 'The truth about black on black crime' *The Independent* 15 April 2007

⁹³ P.171

⁹⁴ P.7

⁹⁵ P.7