

# **‘What would Joseph Rowntree think of the Equality Bill?’**

## **Speech by Trevor Phillips at Bradford Cathedral, 11 October 2009**

It’s a huge pleasure to be in Bradford.

My thanks to the Dean and the Canons for inviting me, and thank all for turning out on a Sunday evening.

And a final thank you to the Joseph Rowntree Foundation for supporting tonight’s lecture. In their century of existence, the social and charitable organisations established by Joseph Rowntree have left an indelible mark. The Equality and Human Rights Commission sees them as major allies in our mission to make Britain a fairer place.

It’s a particular pleasure to join forces here in Yorkshire, where Rowntree was born and where he made his fortune. Committed Quaker, canny businessman, chocolate magnate: he was all of these. He was also, of course, a philanthropist and social reformer to the core. Today, as we prepare for the most significant reform of equality law in a generation, I want to ask - what would Joseph Rowntree make of it?

Let me begin with some introductions.

First, the Equality and Human Rights Commission. The Commission is a unique body. Established by law in 2006, its job is to challenge prejudice, to promote human rights, and to encourage good relations between people of different backgrounds.

In short, it’s here to help answer the fundamental question of how we all live together. A diverse society cannot succeed without a common ground where people meet as equals. This challenge could scarcely be

more relevant today, with Britain experiencing unprecedented demographic and social change. To give just 3 examples:

- Today, pensioners outnumber children under the age of 16 for the first time ever.
- 10 million of us are disabled, and more of us will define ourselves as disabled in the years to come.
- The fastest-growing ethnic group today is mixed race. Already 9 per cent of children are growing up in mixed households.

Put the statistics together, and you get a picture of a dynamic Britain, rich in identities, and set to continue changing for generations to come.

We think that for Britain to be all it can, it should be a place where all these different people have a chance to get on, and to contribute to the country's success – economically, culturally, socially.

There is a fundamental point I want to make here about the relationship between diversity and equality, which may resonate to people in this city. For people of my generation, a good education was the ladder to a better life in which our talents could be recognised. But for many of us that also meant finding a way of conforming to the prevailing orthodoxy or an idea of success, which, at its heart, did not include the background from which we came. If we were women, we had to somehow adapt to men's ways. If we were black or Asian, we were subtly asked to leave our culture, our language and our faith at the office door. And if we were from the North we would have to adopt the manners and the accent of the South to gain access to the corridors of power.

Today, all of this is less true. And all of it is, to most of us, wholly unacceptable.

Today, when we talk about equality, we don't mean just the right to become like those who are already in power. We mean the right to change our society so that whatever we bring to the table is valued, and that we can be fully ourselves. At root, the equality society can be defined simply: a society in which our origins do not determine our destiny.

That is why an equal society cannot allow unjustified discrimination.

The principle would have resonated with Joseph Rowntree. This country has a proud tradition of tolerance, and a long history of law designed to widen opportunity. I am thinking not just of the equal rights acts of the 1960s and 1970s, but further back, to the Catholic Emancipation Act of 1829. I am thinking not just of Roy Jenkins, but of philosophers such as Thomas Paine – acknowledged as one of the most important influences on the development of democratic thought.

Each generation has its hard-won victories: from the abolition of the slave trade, to the introduction of universal suffrage, to the elimination of the signs saying 'no dogs, no Irish, no blacks' of my childhood.

Yet despite this tradition, and despite this progress, inequality and disadvantage still remain a part of the fabric of British life.

- On average, for every pound earned by a man, a woman takes home less than 85p
- Bangladeshi families are likely to experience higher than average rates of unemployment, ill-health and child poverty
- A mere one in seven people with a diagnosed mental health problem has a job, despite many more wanting to work

Each one of those instances of disadvantage may be deeply felt by the people affected. We all know what it feels like to catch a tough break. And by and large these disadvantages arise more from what other people believe than from any lack of capability on the part of the disadvantaged person. It's simply unfair.

But the Commission think that the case for challenging these inequalities is not just a moral one, it is social and economic too.

Any instance of potential constrained, opportunity limited, contribution denied is detrimental to the common good.

In crude terms, it costs. The Women and Work Commission, for example, estimated that eliminating barriers to women's fuller participation at work could be worth the equivalent of more than £15bn each year.

The REACH project for the Department for Communities and Local Government suggested that raising the aspirations and achievements of young black men could be worth £24bn over the course of the next 50 years.

Challenging inequality, therefore, is in everybody's interests.

That's why the Equality and Human Rights Commission – even if you don't immediately think of yourself as diverse or different - matters to you.

And I do mean you personally. Whether you like it or not you will get older. Whatever race you were born into there's a serious chance that your spouse, your child or your grandchild will be a different race to you. Or one day you may discover or develop an aspect of your identity that didn't show itself before – in your sexual identity, or an impairment of

some kind, or a faith you didn't realise you held. It is everyone's destiny to be different in some way at some point in their life.

The Commission builds on the legacy of previous bodies charged with fighting discrimination – the Commissions for Racial Equality, Equal Opportunity and Disability Rights.

It unites in one organisation their responsibilities (for race, gender, and disability), and takes on new ones - age, religion and belief, sexual orientation, and transgender issues.

But it's much more than an exercise in consolidation.

At the start of the new century, many of us looking at the state of play might have said that the historic approach to equality – based on ending discrimination, and equipping individuals to demand redress – had achieved a great deal. But we would also have had to acknowledge that while individual remedy allowed people to get redress, it wasn't enough; the same old problems kept coming up. The Equal Pay Act, for example, had helped lots of women – and some men - get a fair deal. Yet every year saw new claims and cases crop up, faster than the system could deal with them. (The trend continues today: last year, tribunals referred more than 45,000 equal pay claims to ACAS.)

And a lot of instances of unfairness or disadvantage – the fact that certain groups tended not to do as well at GCSE, for example – weren't down to individual cases of anyone being mean or unreasonable. They were about culture: structures and practices embedded in the very way institutions work.

To use a medical analogy, the equality law and its institutions had been like good doctors, treating symptoms. And thank heavens for good doctors. But better doctors look to resolve the underlying problem too.

So the government decided that to build on the achievements of the existing equality law, to take the fight for fairness to the next stage, and to promote fundamental cultural and institutional change, a new approach and a new body would be vital.

There are three elements that set the Equality and Human Rights Commission apart from its predecessors – and most equivalent watchdogs elsewhere in the world.

First, previous Commissions were constituted to focus on a single characteristic: race, gender or disability. We, in contrast, try to see the whole person. Why? Because in the real world, unfairness doesn't come neatly packaged. For instance, when considering the

disadvantages faced by Muslim women of Bangladeshi origin, previous Commissions might have had to puzzle over who was responsible. Was this a case of disadvantage arising from race? Call the CRE. Gender? The EOC. And if religion seemed to be at the root, well, you might have to stand alone. No such quibbling today. And with responsibility for human rights, the Commission works to promote dignity and respect for every individual, no matter what their background.

The second element that makes the Commission special is its powers. The Commission has a wide range of options at its disposal. It can choose to support individuals in legal cases. It can investigate serious systemic problems. And it can compel organisations in breach of their duties to sort themselves out. Using the right tools for the job is one key to making public money make a genuine difference for the public, especially when budget constraints are inevitable for years to come.

The third element is its perspective. The Commission's job is not just to end discrimination, but to stand up for fairness. It will enforce the minimum, but it will also encourage firms and public organisations to go beyond. A modern regulator should not spend all its time saying 'you must not,' or stepping in only when things go wrong. It needs to help organisations get things right in the first place: and open their eyes not only to what they must do, but what they could do and should do.

In its two years the Commission has already begun to make a difference. The Commission came in for its fair share of negative media coverage this summer. Scrutiny is of course entirely legitimate. But flattering as it is to be the centre of attention (sometimes), almost no-one was writing about what really matters – the work the Commission is actually doing.

Since it opened its doors, the Commission has been involved with over 300 legal cases. Sharon Coleman, for example, was treated badly by her employers, because she cared for her disabled son. She sued them. We backed her. She won. This helped establish the principle in law that every one of Britain's 6 million carers have the right to be protected from unfair discrimination at work.

In September we revealed the results of our examination of the financial services sector. Financial services employ 1 million people, roughly half and half men and women. Yet in some firms the average woman's salary is half the average man's. Across the industry, for every pound men get in bonuses, women get 20p. We have begun an urgent discussion with the industry to redress the balance.

And in the past year we have disbursed £10m to local groups helping people at the grass roots with advice and advocacy. Several groups in

Bradford have benefited. For example, the Commission sponsored the Anne Frank Trust to produce an event in conjunction with Bradford Education called 'The Anne Frank Human Rights Festival.'

We are proud of what we have achieved so far, but none of us thinks for a minute that it is anything but a platform for further progress. We have a 3-year strategy that sets out priorities for action. With the passage from recession to recovery providing the context for our work, it is vital to get on with the job.

That means, for example, proceeding with our legal action against the British National Party.

It means continuing our inquiry into race discrimination in the construction industry.

It means improving support for women who have experienced violence.

And much more.

But of all the items on our 'to do' list, perhaps the most important is the Equality Bill.

The aim of the Government's Equality Bill is to reform and modernise equality law for the 21st century. The Bill is currently making its way through parliament. The Commission strongly supports the Bill. There are aspects we wish to improve further, and various practical points that require attention, but by and large the Bill is a Good Thing (capital G, capital T.)

If he were here today, I imagine that Joseph Rowntree would approve too.

105 years ago, Joseph Rowntree wrote a memorandum to guide the management of his social and charitable trusts after his death. The memorandum is a remarkable mix of radical ambition and meticulous planning. It avoids being too prescriptive. Rowntree knew that what seemed sensible in 1904 may not longer be appropriate in 2004. He put it rather more poetically than we might dare do today: 'time makes ancient good uncouth.'

The reason we need the Equality Bill is because time has indeed made ancient good uncouth.

The principle of the bulk of equality law that we have today is equipping individuals to pursue redress when they are treated unfairly. This has helped many thousands demand dignity and respect. To some extent, it

has encouraged firms and public bodies to reform their practices. Attitudes have changed. Much of the blatant racism and sexism that was once part and parcel of daily life is gone. We still face everyday prejudice; but at least it is no longer all day prejudice.

But as the tide of overt unfairness has receded, it has uncovered the reefs of deep, systemic, ingrained bias. After decades of the Equal Pay Act, the gender pay gap has never come close to single figures. After decades of the Race Relations Act, young black men are still far less likely to get decent A-levels than their peers, far more likely to be arrested or sectioned.

We will not achieve the kind of progress that the Commission believes necessary with the tools currently at our disposal. Piecemeal steps only take you so far.

For all it has achieved, and for all that it remains important, there are 3 great weaknesses to an approach predicated solely on individuals being able to pursue redress.

First, the current system asks the individual to make all the running. If you think you have been hard done by, it's up to you to get advice, up to you to start an action, up to you to see things through. Meanwhile, the people standing on the other side of the court may be big organisations with HR experts and lawyers and money and time that you don't have. It takes courage and energy to go through with a claim. Some people struggle to summon the heart. If you have to be a hero to get it, it's not justice.

Second, the current system is about picking up the pieces. By the time the law kicks in, the horse has bolted. In an ideal world we would aim to be as skilful in anticipating problems as reacting to them. When our train is delayed compensation goes some way to make amends. But wouldn't we much rather get home at a decent time instead?

Third, an adversarial system – which pits employee against employer, consumer against provider – breeds adversarial attitudes. Some organisations hear the words 'equality and human rights' and instantly go on their guard. It becomes hard to have a positive conversation. It is of course good for people to take their responsibilities seriously. But no-one's interests are best served by an approach that is exclusively defensive, nor if equality and human rights are always seen as liabilities instead of opportunities.

The Equality Bill marks the evolution of a new approach. It shifts the spotlight:

- from the individual, to the organisation
- from piecemeal casework, to fully-fledged institutional reform
- from remedying problems, to anticipating them

This is a new approach that first began to emerge with the Race Relations Amendment Act 2000, then Disability Discrimination Act 2005 and the Equality Act 2006. Those laws contained what are called 'public sector equality duties.' If we get these right they may be the single most significant change in public policy during the life of this administration.

The duties mean that public authorities –including local councils, central government departments, quangos like the Homes and Communities Agency – have to think about how what they do affects people from different backgrounds. They are under an obligation to collect evidence and carry out analysis. And they should make all of this information public. What it means in practice, when it comes to gender, for example, is this.

A Primary Care Trust might look at the figures and find that the majority of visits to local GPs are made by women. (In fact, national statistics suggest that the average woman goes to a doctor 3 times for every 2 visits by the average man.) Let's say that the Trust strongly suspects that this is not merely a result of men and women having different needs. Another explanation may be that local men are sometimes ignoring problems and letting them get to the stage where it's much harder to fix them. The Trust thinks about what it can do to make men feel more comfortable and confident about getting help: advertising in gyms, opening surgeries late once a week, perhaps even thinking about the language they use. The idea of a 'routine check-up' might not push any buttons for a Top Gear viewer. A health MOT' might.

Or take a recent example from the downturn. Rotherham set up a service providing advice for people wanting to start new businesses. But they found that very few women were coming through the door. So they thought about advertising in new places, and using word of mouth, to reach a wider audience. They helped make sure that Rotherham wasn't missing out on bright ideas and entrepreneurial drive.

These examples show that disadvantage often occurs without anyone consciously desiring it. No-one set out to put men off coming to the doctor. No-one wanted to dissuade budding businesswomen. These things happened simply as a result of the design of services, or the quirks of organisational culture. It was just the way things were done. The scrutiny demanded by the public sector duties prompted a rethink

and a redesign to make sure that those services deliver better for everyone.

It's a much more thorough, profound and thoughtful change than the knee-jerk reaction you often see when an organisation acts in response to adverse court judgements. For us it marks a crucial shift of emphasis, which will require the Commission to grow from being a sporadically influence state-funded pressure group into a serious, tough statutory regulator of the behaviour of British institutions public, private and voluntary, national and local. This is a daunting but thrilling task. And again, I think Joseph Rowntree would approve. In his own words, he regretted that so much effort went into 'remedying the more superficial manifestations of weakness or evil, while little thought or effort [was] directed to search out their underlying causes. The public sector duties – with their emphasis on evidence and anticipating problems – put those underlying causes into sharp relief.

The new Equality Bill marks a new era for public sector duties. For a start, it brings together the existing duties on race, gender and equality and extends them to religion or belief, age, sexual orientation and trans status. This means that public authorities need to think hard about delivering for everyone, no matter what their background or personal circumstances.

But the Bill is also a chance to reinvent these duties in the light of experience. To paint a very crude picture, our job is to moderate and improve the behaviour of public bodies to make them fairer. This is a regulatory task. Most regulators, however, have authority over a specific area, or set of institutions, whose environment they manage: OFSTED for education, OFCOM for media, and telecommunications, the FSA for financial services.

We are different. We are what you might call a universal regulator, setting standards and expectations for the whole society, and for all institutions, irrespective of their field of activity. The nearest modern parallel, I guess, might be the Health and Safety Executive, who also guide and monitor institutional behaviour across the board.

Perhaps in a previous era we might have regarded the established church as a kind of universal regulator of behaviour, setting standards for decent behaviour, but maybe that's a topic for another evening where there are bishops present.

But it may be a useful parallel to bear in mind because I'd like to sketch out some ideas about how we go about promoting change – something the church has been doing for 2000 years. Regulators always act

according to some theory of change even if they don't say so explicitly – after all their core business is to alter behaviour for the better.

For some specific regulators, like OFGEM or OFWAT, change depends on a price theory – fix the price and suppliers and consumers respond. For others, like OFSTED, there's what you might call the competitive theory – give the consumer information and the right to choose, and standards will rise.

I'd say that universal regulators have to work differently. Take, for example, the spiritual regulators. They have a different approach to promoting change – what you might call the theory of the perfect model. In Islam, the perfect model is described in the holy book, the Quran. In Buddhism, we can read of the perfect state of being, which after many attempts will elevate us to a perfect state of enlightenment. And of course, in Christianity, we see the perfect model embodied in one being, Jesus Christ – the closer to his example we make ourselves, the more likely we are to change our world for the better. So the theory goes.

My point here is not to advertise religion or belief – I could just as easily have made a case for a secular, rationalist theory of change – but to illustrate that what we do is not just based on some essential, empirical propositions.

Unfortunately, our current theory of change has proved wanting. That, above all, is why we need new law and a new institution guided by that law. We presently use what would best be described as a bureaucratic theory of change, last used most widely in the old Soviet Union.

The main test we currently apply to stimulate change is to ask public bodies: 'have you produced a paper policy?' The bureaucratic theory of change said that simply producing the document would prompt you to get better at solving the problems. In fact, it meant organisations just got better at producing policies. A piece of paper setting out some good intentions could sometimes be a pretty effective way to mask less-than-sparkling results. It risks becoming what Mao Zedong might have called a 'paper tiger.'

Instead, in future, what we care about – and what we want to be able to hold people to account for – is actual change in outcomes. Change for better. Practical change. And we're going to be working hard with government to make sure that the legislation gives us the room to set some specific, measurable, time-limited measures to test public authorities against. This theory doesn't have a snappy name yet. But it will. And it will be basing on showing that real people's real experiences are different – and that we can show and measure the difference.

The public sector duty is not the only step forward that the Bill makes. I want to highlight 3 more in particular.

First, the Bill introduces a ban on unjustified age discrimination. This means that elderly people will be guaranteed a fair deal from public services and private firms. Currently, for example, it's legal for insurance firms to hike up their premiums for customers once they hit a certain age. This means that some fit, healthy and active older people simply can't afford to travel for holidays or to see relatives. Similarly, some older people find it hard to access mental health care. With a greater proportion of the population aged 65 and over than ever, putting this right will make a difference for millions today and in the years to come.

Second, the Bill introduces the power for the government to compel large private firms to disclose the difference between men and women's pay in their organisation. We think that making a problem visible creates a big incentive to do something about it. The bright new female graduates might ask serious questions about joining a firm with a significant pay gap. Investors might wonder whether that firm has the right policies in place to get the most from its workforce. Meanwhile the company which can demonstrate that it treats employees well has a new selling point to ethically-minded customers. The Commission is working with business and trade unions to agree a single, common way for firms to describe their pay gap. Once we have agreed that, we will be encouraging firms to start using it as a matter of course. If we can make enough progress, the government may not need to invoke its power at all.

Third, perhaps most radically of all, the Bill introduces what is called the 'socio-economic duty.' This is a new obligation for strategic authorities to think hard about how they ensure a fair deal for people from deprived backgrounds and poorer areas. Joseph Rowntree would surely have been glad. So too would his close contemporary and fellow philanthropist Charles Booth. Booth carried out a systematic and careful survey of poverty in London. He drew up maps that showed each type of neighbourhood in a different colour: gold for the most well-to-do, black for what he termed 'vicious, semi-criminal.' His rigorous survey – the first of his kind – became an invaluable guide for public policy-makers.

If you compare Booth's maps from a century ago with London today, the sad thing is that some things have not changed. It is still a long, long way from Mayfair to the Isle of Dogs. Patterns of deprivation persist. Then, as now, growing up in one postcode can set you up for life, while growing up in another can make it that much harder to get on.

Some people ask, what can one clause in one piece of legislation achieve where generations of economic growth and the best efforts of

progressive governments, philanthropists and local communities have failed? Well no-one is claiming that once the clause is passed into law all will suddenly be right with the world. This is not an overnight panacea. But what it does do is give licence to imaginative thinking from anyone who believes that your origins should not define your destiny. In practice, the duty will prompt the regional development agency to look at the evidence of which neighbourhoods feel the benefit when thinking about where to locate the new business park. It will encourage the council to ensure that it's not too hard to get from the deprived estate to the job centre when it's planning new bus routes. It will give heart to the Primary Care Trust which knows that by focussing resources now on healthcare on the poorer area – where people may have a worse diet and do less exercise - they can save in the longer term: subsidised gym membership today, instead of treatment for heart disease and diabetes tomorrow.

The duty will also be a constant reminder for politicians, as they design new policy, to think about the impact on different types of people. Take for example, the 'clearing' process: that frantic fortnight in August as universities try to fill spare places. There's a pool of anxious would-be students: none more anxious, perhaps, than those who have just missed out on their grades for their preferred place. And the parent who has been to university, and who knows the ropes, will be able to help their child navigate the system more readily than a parent who hasn't. In other words, the working-class parent and child are likely to be at a disadvantage compared to the middle-class parent and child, not because of money, but because of procedure.

If Government were to redesign the clearing process with the socio-economic duty in the background, it might not necessarily come up with a different policy: but it would be obliged to ask those difficult questions and take them into account. It might need to suggest to universities that they positively reach out to families rather than giving an unintended advantage to the children of the sharp-elbowed middle classes.

The Commission will help public authorities understand what they can do under the duty, and use it in a positive and creative way. Indeed, this is our overall aim with the whole of the Bill: to make it as easy as possible for private firms and public bodies to understand what they have to do to stay on the right side of the law, and to help them understand how far they can go in the interests of promoting equality.

There is still some way to go before the Bill becomes law. It has to pass through the House of Lords. And there are still opportunities for it to be amended. We in the Commission think that it could still go further in several areas. For example, why not abolish the mandatory retirement

age? Even though a recent case ruled that having a mandatory retirement age was legal, the judge said that the current arrangement was 'odd.'

There are also some more technical amendments that could strengthen the Bill further. A 'purpose clause,' for example, framing the whole of the Bill, would help cut the risk of the legislation being interpreted or invoked in unintended or unhelpful ways.

But even if our arguments on these points do not win the day, when the Bill becomes law, we will have a powerful new tool to encourage, promote and where necessary require the kind of reform we need to succeed as a diverse and dynamic society.

And this is what the Commission will continue to work for in the months and years to come.

Finally, the sixty four thousand dollar question: why should you care?

If we get our job right, with the equality bill and in our wider work,

- Every woman in Bradford should be sure she's getting fair pay.
- Every father should have genuine choices about balancing work and family life.
- Every person with a religious belief should be confident in the knowledge that it won't hold them back.
- Every person caring for a friend or relative should be able to go about their daily life free of discrimination.
- And the common ground on which everyone of every background can meet as neighbours and citizens should be a that bit larger.

I'll end with Joseph Rowntree again. I will ask you to accept that he came from an age when the idea of gender neutral language had not percolated into the general consciousness. Nonetheless his call to fairness and solidarity still resonates profoundly. He called for public policy to be 'influenced by the spirit of human brotherhood and alive to the claims of social justice.' That is certainly what we aspire to today.

Thank you.