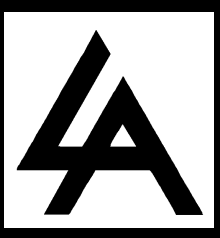


AGAINST 'ANTI-RACISM' IN EDUCATION

ANTONY FLEW



In December 1989 the Commission for Racial Equality (CRE) issued a *Code of Practice* which was, it said, *For the elimination of racial discrimination in education*. This document was unreservedly endorsed in a Foreword by the then Secretary of State for Education and Science, who commended it "in particular to school and college governing bodies as they assume their important new powers and duties under the Education Reform Act". No one at the DES seems to have been anxious about the educational implications. So presumably the Minister signed the draft provided by his civil servants for the Foreword without a second thought; or even a first.

The Education Correspondents too failed to study this *Code* with the care needed to notice that, though supposedly directed towards "the elimination of racial discrimination in education", it actually contains clauses constituting a racially discriminatory threat to properly colourblind educational standards. There was, however, some consequent correspondence in the serious dailies. And on 2 March 1990 the *Times Educational Supplement (TES)* published, as a Second Opinion, a brief critique entitled 'A Code of Malpractice'. But in the end it all added up to a rather small stir. Even teachers' union leaders and others ever eager to see and denounce criticism of the performance of the maintained system, and of course pay offers, as "an insult to teachers" passed up what they might well have seized upon as a promising occasion for complaint.

Such a protest would in the present case have been unusually well founded. For, surely, to make and publicize proposals for the elimination of some evil is to suggest that you have good reason to believe that evil to be prevalent? Certainly, had I myself at any time during my twenty-five years as Head of Department received a questionnaire such as the one sent out on 21 February 1991 "to a selection of departments in all universities", then I should have responded at once, and angrily. That questionnaire, as the covering letter explained, was the work of a University of Warwick team, funded by the Universities Funding Council (UFC), and commissioned to "research into provision for minority ethnic groups within Higher Education".

These researchers began by explaining: first, that by 'blacks' are to be meant not just blacks but, comprehensively, all non-whites; and, second, that, as researchers, "they are concerned ... with anti-racist higher education whether developed through anti-racist policies or as part of equal opportunities policy development". All their questions—questions imperatively demanding uniformly affirmative answers—ask those questioned whether they have adopted and are maintaining explicitly formulated "anti-racist and/or equal opportunity" policies.

WANTON SUGGESTIONS OF MISBEHAVIOUR

But a need to formulate and proclaim such policies arises only if and where there is good reason to believe that—absent explicitly

formulated and noisily proclaimed prescriptions and proscriptions—some of the people concerned either have been or will be favouring or disfavouring others for no other or better reason than that those others happen to be members of one particular racial set and not another. So I should have been right to resent wanton suggestions that I or my colleagues either had been misbehaving or were likely to misbehave in this way; and to challenge the researchers either to produce their evidence or to withdraw that gratuitous insinuation.

My immediate anger would have been intensified by Question 8: "Has your department taken any steps to increase the number of the black students coming into your courses?" For, if and wherever the true answer to such questions is 'Yes', then and there consistent and principled opponents of racial discrimination cannot but recognize such pretendedly "anti-racist and/or equal opportunity" policies as in truth textbook exemplars of precisely the racist practices to which they themselves, if not their questioners, are always and unreservedly opposed.¹ (It appears that for many of its militants and apparatniks 'anti-racism' is a matter not of principle but—as Americans love to say—of whose ox it is which is being gored.)

Had anyone been disposed to protest that the production and publicizing of this *Code of Practice* constituted "an insult to teachers", then they might well have called in evidence important research reported earlier in the same year.² Its findings are the more significant because the researchers were working for the successor organization to one which had in the early seventies given impetus to the passage of the 1976 Race Relations Act. They followed the progress of 3,000 pupils in 20 urban comprehensive schools from the age of 11 until the age of 16. In all 20 schools the proportion of children from racial minority groups varied from a minimum of 10% to a maximum of 90%. (Some minority that last!)

The researchers themselves seem to have been surprised to discover that very few parents mentioned racial hostilities of any kind. Only 1% of 2,075 parents interviewed either referred to racial attacks, or suggested that black and white children don't get on; and exactly 8—less than one half of 1% of these 2,075 parents—asserted that there was racial prejudice among teachers.

It is remarkable that the CRE in producing its *Code of Practice* apparently took no account of these findings. Had it done so it might nevertheless have concluded that some code is needed. But in that case it would surely have had the grace to indicate, however briefly, that it possessed no warrant for believing more than the tiniest minority among our teachers to be guilty of racist discrimination; guilty, that is to say, of intentionally advantaging or disadvantaging persons for no other or better reason than that they are members of this particular racial set and not that. Such a disclaimer would have been the more appropriate since the Commission itself appears to be primarily if not exclusively concerned with outcomes rather than intentions.

VIOLATIONS OF COMMON LAW PRINCIPLES

Here we should perhaps recall that and why Clause 70 of what was to become the 1976 Act—the Act which established and constrains the CRE—was fiercely opposed by legal traditionalists. A future Lord Chancellor complained that "the Government by this Clause subverted the whole doctrine of English law ... that a crime should consist of two separate elements: first there must be a prohibited act ... then there should be a state of mind ... quite deliberately the Government have created an indictable offence in which the mental element is removed altogether."³

Clause 70 is not immediately relevant. But the offence of indirect discrimination, with which the *Code of Practice* is mainly concerned, may be committed not only without any intention to discriminate racially but even without any actual segregation on racial lines. For instance: "the placement of English as a Second Language (ESL) pupils in separate centres and their removal from mainstream schooling cannot be justified and constitutes indirect discrimination" (p. 16). Yet ESL pupils are certainly not defined as, nor are they by any means always in fact, members of racial minorities.⁴ Neither, of course, are all pupils from such minorities ESL!

Almost everywhere else in the *Code of Practice* the word 'justified' is followed by the qualifying phrase "on educational grounds". Presumably it is omitted here because even the CRE is embarrassed by the commitment to deny the educational attractions of segregating ESL pupils (as such and irrespective of race) until they have (if

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www.libertarian.co.uk email: admin@libertarian.co.uk



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Antony Flew is Professor Emeritus of Philosophy at the University of Reading. He has contributed countless articles to both philosophical and political journals, and his many books include *An Introduction to Western Philosophy*, *Hume's Philosophy of Belief, Crime or Disease, A Rational Animal?*, *God and Philosophy*, *Sociology, Equality and Education*, *Thinking About Thinking*, *Thinking About Social Thinking*, *The Politics of Procrustes*, and *Equality in Liberty and Justice*.

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not completely then near enough for practical purposes) caught up with their EFL (English as a First Language) peers.

The following paragraph proceeds to prescribe that “assessments ... would be indirectly discriminatory if those assessments were culturally biased in a way that excluded a considerably higher proportion of pupils from a particular racial group and could not be justified on educational grounds” (p. 16). Not very helpfully “Culturally biased assessment criteria” are later defined as “those that assume a uniformity in children’s cultural, linguistic, religious and lifestyle experiences” (p. 19).

Since the word ‘culture’ is obviously being employed in the social scientists’ sense, to embrace everything which is not genetically determined, and since in that comprehensive understanding language is quite certainly the most fundamental and important element in culture, and since the CRE appears willing to dismiss ignorance of the language of instruction and assessment as not an educationally proper ground for exclusion; we have to ask what, if anything, it would be prepared to accept as such. Yet we are never given even a hint, much less a single accepted and approved example.

Throughout this *Code of Practice* the CRE makes its customary occupational assumption that, in the case of any racial minority, any substantially disproportionate underrepresentation in any enviable set, and any similarly disproportionate overrepresentation in any unenviable set, justifies the presumption that whoever or whatever is responsible for this result is guilty if not of direct then at least of indirect discrimination. This presumption, a violation of another of the fundamental principles of the Common Law, is doubly obnoxious. In the first place it is obnoxious precisely because it is a presumption of guilt, requiring defendants to prove their innocence. In the second place it is obnoxious because the accusers refuse to reveal what, if anything, they would be prepared to accept as an adequate defence.

The author of ‘A Code of Malpractice’ argued in the present connection that “The Secretary of State, of all people, ought to have appreciated ... that ... this code ... must provide an irresistible incentive to ... teachers finding any racial subset overrepresented among their underachievers to practise the (racially discriminatory) educational perversion of arbitrarily scaling up the marks of members of that subset.” For how else can they “hope to escape the furies of the CRE, and consequent summonses to prove their ... innocence”, of if not direct then at least indirect discrimination?

It is a remarkable and perhaps sinister fact that the Director of the Social Policy Division of the CRE, responding in the *TES* for 16 March 1990 to that article, appeared—or should it be pretended?—to be unable to understand these objections. She therefore went on to suggest that the “real target” must have been the 1976 Act itself. Whether on that occasion it was or was not, it is quite clear that ultimately it ought to be; although the proper targets are not the stated aims—“the elimination of discrimination” and “promoting equality of opportunity”—but the clauses licensing discrimination in favour of racial minorities and introducing the notion and the offence of indirect discrimination?

It is obvious that the former are flatly incompatible with the first of those stated aims. No doubt it is rather less obvious that the introduction of the notion and the offence of indirect discrimination is likely to encourage or even require practices incompatible with both those stated aims. Anyone doubting the reality of this danger needs to take a look at developments across the Atlantic.⁵

THE PROPORTIONAL REPRESENTATION ERROR

In the USA the key expression is not ‘indirect discrimination’ but ‘disparate impact’. Where, given some standards or methods of selection, a recognized minority is found to be proportionally underrepresented in some enviable (or overrepresented in some unenviable) set, there those standards or methods are said to be having a ‘disparate impact’ upon that minority. That conclusion is then taken to constitute sufficient reason for so ‘race norming’ the relevant standards or methods that the required proportionate representation is achieved. Today in the USA we find leading universities operating, more or less openly, different admissions and appointments standards for members of different racial sets; while there are now in the examinations required of would-be Sergeants in the New York City Police different pass marks for blacks (65%), for Hispanics (69%) and for whites (75%).

The fundamental misleading assumption here is that it is reasonable to expect—absent hostile racist discrimination—that every racial or ethnic minority will be more or less proportionately represented in every enviable occupational or educational category. This is an assumption for which evidence is rarely asked and almost never offered. No one truly wanting to know the truth about this assumption—namely, that it is altogether mistaken—can avoid referring to the works of the distinguished and, as it happens, black economist Thomas Sowell;⁶ none of which were, at the last time of asking (in Spring 1991), held by the CRE Library.

If challenged spokespersons for the CRE will deny making this assumption. Thus in *The Times* for 2 February 1990 the Chief Executive insisted that his Commission believes “that under-achievement is a ‘multi-causal’ phenomenon and that discrimination is only one among a number of possible factors”. It is, therefore, instructive to contrast that official statement with a specimen of the actual practice of Bhikhu Parekh, since 1985 Deputy Chairman of the CRE.

This specimen is to be found in the issue for 21 August 1987 of *New Society*, the journal which attempted to do for the social sciences what *New Scientist* still does for the natural. It is an article reviewing the findings of Inner London Education Authority (ILEA) researchers studying the different examination performance of members of different racial sets. Professor Parekh sets himself two questions: “How well do the children of the various ethnic communities fare in the public examinations? And why is there such disparity?”

The first of these is answered clearly and decisively by the ILEA researchers. They distinguished six racial/ethnic sets: Indian, Pakistani, Afro-Caribbean; African; Bangladeshi; and White. In a nutshell their findings were that the Indians and Pakistanis do substantially better than, the Africans much the same as, the Afro-Caribbeans worse, and the Bangladeshis much worse than the Whites.

Had those researchers themselves proceeded to attempt the second question, then they would presumably have recalled: both their own earlier finding that, whereas 20% of all the children in ILEA schools came from one-parent families, this was true of 43% of the Afro-Caribbeans but only 5% of the Asians; and the findings of many others in different regions showing a strong correlation between coming from that kind of family and both educational underachievement and becoming delinquent. Nor would the explanatory hypothesis suggested by these facts be immediately falsifiable by reference to the Bangladeshis. For though also Asians and with, presumably, family structures as strong as those of the Indians and the Pakistanis the Bangladeshis come from a more depressed country and are on average much more recent immigrants.

Professor Parekh, however, is Deputy Chairman of the CRE. So he does not see the finding that (black) Africans perform as well or as badly as whites, whereas (black) Afro-Caribbeans perform worse as falsifying the assumption of endemic and almost exclusively white racism but as “raising fascinating puzzles about the impact of racism on children”.

A BUREAUCRACY OWING ITS EXISTENCE TO A PROBLEM

It remains only to quote Hastie’s Law: “The incidence of alleged racism in a given society will vary in direct proportion to the number of people generously paid and prominently positioned to find it”; a law which expresses a particular application of the more general truth that, whenever a large bureaucracy owes its existence to a problem, that problem rarely, if ever, goes away. Never ask the barber whether you need a haircut.

NOTES

1. A similar objection applies to two further questions: “Do you have a policy statement to recruit black people within your department?”; and “Is there a commitment to involve black people in your department, for example black visiting lecturers?”
2. See D.J. Smith and Sally Tomlinson, *The School Effect*, Policy Studies Institute, London, 1989.
3. House of Lords *Hansard* for 14 October 1976, Column 1045.
4. Especially in the neighbourhood of such world class institutions as Reading’s Faculty of Agriculture and Food there are likely to be the school age children of long stay visitors from both Latin America and the European mainland.
5. Compare, for instance, D. D’Souza, *Illiberal Education: The Politics of Race and Sex on Campus*, The Free Press, New York, 1991; and, for the wider picture, H. Belz, *Equality Transformed: A Quarter-century of Affirmative Action*, NUJ: Transaction, New Brunswick, 1991.
6. See, for instance, his *Ethnic America: A History*, Basic Books, New York, 1981; and *Preferential Policies: An International Perspective*, William Morrow, New York, 1990.