

Catholic Union of Great Britain

Comment on 'Living with Difference' the report of the Commission on Religion and Belief in British Public Life

Introduction

1. This document is produced by the Catholic Union of Great Britain and is a comment on the report. It is not produced by the Catholic bishops or the church. It is not a comprehensive analysis of the whole report or the consultation process. It is confined to the substance of the report and to those parts which seem to us to be the ones which most require comment.
2. The report was written by a group of commissioners which was chaired by a distinguished retired judge. However, the term 'commission' is a potentially misleading one. It was not a public commission or inquiry. It was (we understand) established and funded entirely privately. Neither was it a judicial enquiry in the conventional sense. There were no public hearings at which evidence was formally taken and challenged as would happen with a public enquiry and the report does not analyse that kind of formal evidence and reason to conclusions based on such evidence. What was done is summarised at the beginning of the report and at Appendix B. At paragraph 17 the report says:

'It was from this mix of interactions and encounters and from collective reflection on them, that this report was in due course distilled'

It is also right to point out that the members of the commission were not required to satisfy the strict tests for independence and impartiality (both actual and perceived) as regards specific recommendations to be made by the commission that the members of a public enquiry would be required to meet.

The Report in Summary

3. The report contains some good sections.
4. The chapters on the media, on dialogue and on action contain some very good material and recommendations (although, as we say below, they cannot all be accepted uncritically). The chapter on the law also contains some good parts, although more work seems to us to be needed in this area, for the reasons we explain.
5. The section on schools is troubling both because some of the recommendations seem to us to be wrong on merit and in principle, but, equally importantly, because on an objective assessment of the reasoning on which the particular recommendations are based, that reasoning is flimsy. The fact that such important policy recommendations, which are on their face so surprising in a report such as this, are based on such flimsy analysis seems to us to be a serious flaw in the report.

Our Comments in Detail

6. Paragraph 3.33 recommends that funding for chaplaincies in hospitals, prisons and higher education should be protected.

7. Chapter 5 on the media begins with the following statement:

'5.2 Almost all responses to the commission's consultation expressed concern about the portrayal of religion and belief in the media'

The chapter contains an interesting discussion of the treatment of religion and belief in the media and makes some good recommendations. A number of faith groups will question the recommendation that *'Thought for the Day'* be changed from being a religious item on the *Today* programme to one which is both religious and non-religious. There is a strong argument that a diverse and tolerant society should be able to have an exclusively religious slot such as this. An equally principled recommendation would be to create a similar but separate slot for non-religious people.

8. Chapter 6 on 'dialogue' is worth reading in full. One of the quotations from a person who responded to the commission's consultation paper that has been put at the head of this chapter is:

'No one, no party and no tradition has a monopoly on truth, but...the truth will not be disclosed unless participants in dialogue passionately believe themselves to be right whilst holding open the possibility that they may be wrong'

9. Chapter 7 which is called 'action' should be a source for congratulation to religious groups in the United Kingdom. The report records *'the scale of church based provision'* to those in need (see paragraph 7.6) and says (paragraph 7.15):

'The expansion in, and growing diversity of, religion and belief-based social action has led to an increasing willingness not only to deliver services but also to challenge government policy'

Many might be surprised that these groups feel so discriminated against when seeking funding (particularly public funding) and that some of those responding to the consultation feared the effects funding these groups might have (see paragraph 7.19 of the report). The report is correct to recommend that any unjust discrimination in funding cease (in the interests of the most vulnerable if on no other basis). The report's statements about conversion, proselytism and vulnerability may require some further reflection. Any policy would have to take into account the reality that sometimes a person who says nothing but cares for others from a religious motivation can be the best advertisement for his or her faith (a point made elsewhere in the report) and no policy should interfere with this. Any policy would also have to ensure that it did not restrict the provision of spiritual support to those who come to religious charities for help. Spiritual support can be as essential for people in difficult situations as care for their physical and material needs.

10. Chapter 8 which deals with the law is in a slightly different category.

Its discussion of the different treatment of Muslims is to be applauded.

However, its treatment of the law as it applies to religion and belief generally requires further work. Although the commission was chaired by a retired judge and one of its

members was formerly the chief executive of the Equality and Human Rights Commission it was not equipped (nor did it purport) to deal with this field of the law in a systematic or comprehensive way.

There is a general feeling among some religious groups that the law does not adequately accommodate them and that in future the law will become more hostile. Whatever the truth of these perceptions the fact that they exist and are reasonably widely held is an important problem for a democratic society based on the rule of law. The law should never be out of kilter with the freedoms and interests of a substantial proportion of the population.

The present document cannot deal with this issue in any sensible way either but there is a respectable argument (that can be developed elsewhere) that our law on religious freedom (or liberty) (which is philosophically and jurisprudentially different to the law on equality) is not as developed as it could be and as it is in other liberal democracies, such as the United States¹. This should be a fertile area for further discussion, not least because it should be an area where those who believe in liberal democracy based on enlightenment values; those who believe strongly in the rights enunciated in the Universal Declaration on Human Rights ('UDHR') and the European Convention ('ECHR'); and religious people (particularly those in the Catholic church) should be able to, in large measure, agree².

It may also be that a healthy and sophisticated approach to this principle would provide a sounder basis for the recommendations in the report as it would deal with the criticism by some commentators that, taken as a whole, the report is not as coherent in its recommendations as they had hoped.

Schools

Introduction

11. As we say above, this is the most troubling chapter of the report both because of the lack of inherent merit from the perspective of religious freedom in some of the recommendations and the methodology used as a foundation for them. The methodology used is particularly

¹ The principle is summarised in non legal language in a book by the founder of the Becket Fund for Religious Liberty, in the United States, Kevin Hasson 'The Right to be Wrong' as follows: *'Because of how we're made, we are each free – within broad limits-to follow what we believe to be true in the manner that our consciences say we must. That is, we are free to celebrate our beliefs in public and try respectfully to persuade others of them. We are free, ultimately, to organise our lives around them. So, of course, are those with whom we disagree. And we can grant this point with complete integrity. We can each recognise the other's freedom without surrendering our own allegiance to the truth. We're free to insist that others are wrong for the same reason they're free to insist that we are. The truth is, we each have the right to be wrong'*

² Religious freedom as a philosophical idea was important to the founding fathers of the United States and is developing strongly in modern United States statutes and the modern jurisprudence of the United States Supreme Court. It is enshrined in Article 18 of the UDHR and Article 9 of the ECHR. It has also been the subject of a number of significant pronouncements by the Catholic Church since *Dignitatis Humanae* in 1965 (most recently by Pope Francis on his return from the United States in 2015).

troubling because it is a part of the report which could have concrete effects on significant numbers of people and the authors must have known that their recommendations would be particularly controversial. The general rule should be that the more delicate the issue upon which one proposes to make recommendations, the greater the care one should take in coming to them.

Background

12. In order to deal with this chapter, it is necessary to set out some background.
13. According to the Catholic Education Service which bases its figures on the census results and on Ofsted findings: Catholic schools are the most ethnically diverse in the country (37 % of all pupils in Catholic schools are from an ethnic minority background, 7 % higher than the national average); 17 % of those at Catholic secondary schools are from the most deprived households in England (which is 5 % higher than the national average); at age 11, Catholic schools outperform the national average in English and Maths by 6 % and at GCSE, Catholic schools outperform the national average by 5 %; 83 % of Catholic primary schools have Ofsted grades of good or outstanding (the national average is 74 %).
14. Nobody, at least in London, can be unaware of the intense competition to get into Catholic schools or the sacrifices parents make in order to do so.
15. This is merely the continuation of the very long and very successful history of church schools. As acknowledged by the report itself (see paragraph 4.3) until 1870 '*virtually all schools were provided by religious organisations*'. For centuries from Glasgow to Sydney Catholic schools have educated boys and girls, particularly the most deprived, who would not otherwise have had access to education. They have helped and do help to lift entire communities out of poverty and marginalisation.
16. It follows that any proposal to change the nature of such schools would require the support of some compelling arguments.
17. In addition, of course, most serious thinkers on religion and its place in society would have to accept the following propositions:
 - (a) The freedom to educate one's children is an essential part of freedom of religion. It follows from the nature of religion itself (all policy recommendations dealing with a particular social issue must address the issue as it is rather than as one might like it to be). The authors of the UDHR and the ECHR included the word 'teaching' for a reason;
 - (b) Religion is taught both by words and by example. Freedom to educate must include the freedom to choose those who do the educating on the basis of the integrity of their faith and lives. This, elementary, point was made again by Justice Alito in the United States Supreme Court in 2012 in a judgment dealing with ministers of religion:

Religious teachings cover the gamut from moral conduct to metaphysical truth, and both the content and the credibility of a religion's message depend vitally on the character and conduct of its teachers. A religion cannot depend on someone to be an effective

advocate for its religious vision if that person's conduct fails to live up to the religious precepts that he or she espouses'

(c) Freedom to worship according to the rites of one's own religion is another essential part of freedom of religion.

18. Once again, it would need some very strong arguments to make a policy recommendation which affected the right of religious schools to select their pupils and teachers or interfere with their freedom to decide what worship services they arranged³.

The Analysis in the Report

19. The analysis that would be required to overcome the above does not appear in the report. This is surprising given the balance with which some other issues are dealt with by it.

20. The analysis is flawed in the following ways:

(a) The recommendation that *'Bodies responsible for admissions and employment practices in schools with a religious character ('faith schools') should take measures to reduce selection of pupils and staff on grounds of religion'* appears on page 8 as one of the principal policy recommendations of the commission. However, the relevant section of the report (three paragraphs from 4.10 to 4.12) is not consistent with this recommendation being so central. The section begins: *'...this chapter is primarily about the curriculum area in schools...But first, we consider briefly the admissions and employment policies of faith schools...'* In fact the report had already stated (paragraph 4.1) that *'How religion and belief intersect with the education systems across the UK...could be the focus of an entire commission in its own right'*;

(b) While there are two sentences on *'The perceived benefits of publicly funded religious schools..'* This section of the report does not set out the arguments in favour of selection

³ There is a campaign by the British Humanist Association (whose Chief Executive was a member of the commission and therefore a co-author of the report) to abolish 'faith schools'. The BHA is currently advertising for funds to pay somebody to campaign on this issue. In the context of the issues dealt with in this report, this seems a surprising thing to do. One could understand such an organisation campaigning for all schools to teach both religious and non religious world views in addition to their own or campaigning for 'humanist schools' which would be treated in the same way as church schools. However, to go to such lengths to campaign to abolish something that is so important to so many people, with whom you happen to disagree seems to cross an important line for a group participating so centrally in a report such as this. A campaign by a religious group to abolish state funded 'humanist' schools would be rightly condemned.

If the argument is that the objectionable aspect of church schools is their funding by the government, that argument is flawed (and it is not raised in the commission's report) . No credible theory of freedom and tolerance only grants those rights to those who can afford it. It is also potentially dangerous. Education is such a fundamental part of religion that religious people will always seek to educate their children. Removing state funding from religious schools would risk pushing this education underground where the risk of extremism being taught would be much greater than in a religious school funded by the State.

of pupils and teachers at all, never mind attempt to deal with them. It is hard to see how such an approach can be justified. The report makes specific policy recommendations to change the current practice. It therefore has an obligation to address the arguments in its favour and provide reasons why those arguments fail. The section only sets out arguments against the current practice;

- (c) In addition, the arguments against the current practice are not made as rigorously as one should be entitled to expect if such far reaching policy recommendations are to be made:
- Paragraph 4.10, contains the following: *'In England successive governments have claimed in recent years that faith schools and free schools create and promote social inclusion which leads to cohesion and integration. However, in our view it is not clear that segregation of young people into faith schools has promoted greater cohesion or that it has not in fact been socially divisive and led to greater misunderstanding and tension'*. This is simply an assertion. It has no place as a major limb of an argument in favour of such a far reaching policy change. If successive governments have made the claim, they can be expected to have had reasons for doing so. Before the claim is dismissed those reasons must be properly analysed and it has to be explained why, on balance, the authors' view is correct and the view of successive governments is wrong;
 - Paragraph 4.11 deals with the specific issue of pupil selection. It contains two assertions, supported by footnotes. The first assertion is: *'Selection by religion segregates children not only according to religious heritage but also frequently and in effect, by ethnicity and socio-economic background'*. As one can see this sentence addresses big issues and the factors that would influence the resulting statistics are many and themselves multi-faceted. Many areas of policy are implicated in the reasons for statics in this area. If the sentence were to be applied to Catholic schools it would be untrue (see above). It follows that one would expect the report to examine these issues with some care, particularly, as we say, because of the weight the report is asking this section of it to bear. Instead it merely makes the statement and attaches a footnote that refers to five sources. Of these sources, two are produced by groups who campaign to abolish selection of pupils and/or teachers on the basis of faith; one, arguably, does not support the sentence; and the two others are a report commissioned after *inter alia* the Oldham riots and an academic article dealing with London (which demonstrate how complicated this issue is). The footnote does not set out specific material putting the opposite case (such as the figures set out above);
 - The second assertion in paragraph 4.11 is: *'Public opinion is divided but certainly many people in the UK, including many from a position of devout faith, are opposed to religious selection in pupil admissions, both in principle and because of the practical consequences'* This sentence is emphatic and suggests a large group of people, including many of devout faith, have given reasoned opinions to this effect. The sentence leads immediately into the specific recommendation about pupil and staff selection. The footnote to this sentence refers to two

surveys. The first was in 2012. It was an exclusively online survey conducted by Com Res on behalf of the Accord Coalition (a body of which the BHA was a founding member and which campaigns to remove selection based on religious belief). It surveyed just '2,008 British adults' and asked a single question. No reasons were apparently asked for or given. The footnote to the commission report records that the respondents were divided 73 % to 18 % against selection of pupils on grounds of religion. The actual responses were a bit more nuanced. 50 % said 'strongly agree'; 23 % said 'slightly agree'; 10 % said 'slightly disagree'; 9 % said 'strongly disagree' and 9 % said 'don't know'. 'The second poll referred to was in 2013 and was slightly larger surveying 4, 018 British Adults. That group had quite different opinions, with 49 % finding it acceptable to select pupils on the basis of faith and 38 % finding it unacceptable. That poll makes a number of points but in fact includes the following findings: *'a majority of people don't object to faith schools discriminating on religious grounds in their admissions'* and *'There isn't majority support for reforming proposals to make faith schools more mixed by admitting a quota from a different faith or none'*. Once again it is unfair to make such a fundamental policy recommendation based on this analysis;

- (d) The recommendation about employment practices appears to be based on even less than the recommendation about pupil selection. Paragraph 4.12 is the paragraph dealing with this and merely reads:

'Schools with a religious character are not only permitted to select pupils on the grounds of religion, but they are also exempt from aspects of employment legislation, in that they may use religion as a criterion when hiring staff. There are concerns about the extent of this privilege and about the justification for it. Governments should ensure the practice of exemption is monitored effectively and the correct processes observed; whilst, if it is abused, the law should be changed to restrict its application further'

This paragraph suffers from the same flaws as previous ones. It asserts that there are concerns (based on a single publication). That may be right, there are concerns about lots of things. It completely ignores the contrary opinion: that other people don't agree with those concerns and think that what is being discussed is a fundamental entitlement inherent in freedom of religion. In addition, it provides no reason why what is said in the paragraph leads to the conclusion in the recommendations that selection of teachers on the basis of their faith should be reduced.

21. The education section also (when read with the summary recommendations at the beginning of the report) appears to recommend that there be a *'requirement to hold inclusive times for reflection'* (see page 8 of the report), that there should be education about religion and belief generally but without confessional content (paragraph 4.24) but that *'publically funded schools to be open for the provision of religion – or belief-specific teaching and worship on the school premises outside the timetable for those who request it and wish to participate'* (page 38 of the report). By contrast the report also says that the *'implications'* of the *'basic approach...informed by human rights values and standards'* *'are that religious practices should not be required in publically funded schools, but also that they should not be prohibited'* (paragraph 4.22).

22. If this is an accurate summary of the report's conclusions, the flaws in them can be easily seen. There is no reason in principle and it would be contrary to the idea of religious freedom for worship and confessional education to be banished from the mainstream school timetable. Such an approach would be intolerant and incompatible with any mainstream understanding of the nature of religious belief. Equally there is no reason in principle why school curricula should not provide for education on religion and belief generally in addition to confessional content (as catholic schools have done to some extent for some time) or for religious services to be confession specific but provide reasonable accommodation for those who could not in good conscience attend particular confessional religious services. Diversity cannot mean the removal of strongly held difference it must mean the freedom to be fully different with integrity and peaceable co existence between such different views and practices.

Postscript - Statistics

23. Chapter 2 of the report is headed 'Landscape' and contains descriptions of various belief systems and possible differences between them. Some will object to parts of this, but it is not an academic treatise and it acknowledges that there has been much cross fertilisation of ideas. From a Catholic point of view, however, it would be appropriate to make some comment on three points made in this section:

(a) As one would expect in a report such as this, there is a description of religious belief and a description of non religious beliefs. These latter are described in the report as being 'Enlightenment values and humanism'. Paragraph 2.15 contains a table which shows priorities and preferences of the public for certain values. The conclusion reached by this paragraph would surprise many Catholics, it says:

Figure 3 summarises priorities amongst different social values and clearly shows a preference for Enlightenment values and humanism, as these terms were used earlier in this chapter. The four values prioritised by over 25 per cent of the sample were respect for human life, human rights, peace and equality...

Many Catholics would regard these four values as being rooted in their religion rather than arising outside it;

(b) Paragraph 2.16 contains a table which describes various attitudes to belief in God. There are only two parts of that table which express certainty. Just over 20 % say they do not believe in God. Around 13 % say they have no doubts but that God exists. The rest of those who express opinions do so with varying amounts of doubt. Some care should be taken with these sorts of statistics. Many of the great Christian saints (including Mother Theresa) expressed real doubts and the 'dark night of the soul' is a characteristically religious experience;

(c) At paragraph 2.17 the report states that: '*...non-religious humanistic beliefs are widespread – for example, three fifths believe that 'scientific and other evidence provides the best way to understand the universe...' care should be taken with questions phrased in this way. For most religious people there is no conflict between science and religion.*

They describe different things. Georges Lemaitre and Gregor Mendel were both Catholic priests and the Pontifical Academy of Sciences (whose membership is not confined to Catholics) has had and continues to have a very eminent membership.