

**PREVENT, the Equality  
Act 2010 and religious  
freedoms: submission  
to the Independent  
Review of Prevent**

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[Date]

## PREVENT, the Equality Act 2010 and religious freedoms

The immediate context of this report is the Independent Review of the Prevent Strategy which the government announced as part of the passage of the Counter Terrorism and Border Security Act (2019). In announcing it, then Security Minister Ben Wallace, accused critics of Prevent of ‘spin and distortion’ and challenged them to provide solid evidence for their criticisms.<sup>1</sup> This is a response to that challenge.

Among other concerns, Liberty has argued that the Counter Terrorism and Border Security Act is a further step in a process of the *criminalisation of speech*.<sup>2</sup> This is a process that was begun in the Counter Extremism Strategy of 2015.<sup>3</sup> It was also an intention set out in the Conservative Party Manifesto for the 2017 election which announced the setting up of a Commission for Countering Extremism (though the latter is formally independent of Prevent).<sup>4</sup>

Under these developments, a requirement has been placed on public bodies such as schools, colleges and universities, health trusts, and prisons to *safeguard* people deemed to be vulnerable and at risk of being ‘radicalised’ in support of violent political causes. This involves reporting individuals who display signs of possible radicalisation to ‘Channel’, a special voluntary programme to support vulnerable individuals.

The requirement has a particular impact on organisations involved in education, such as universities and schools, but also arts organisations.<sup>5</sup> In universities, it involves a requirement to monitor external speakers, where it is clear that the definition of a speaker being ‘controversial’ plays a significant role in discouraging student unions from inviting speakers. The Charity Commission, for example, has used the term ‘controversial’ to refer to a speaker’s online presence and asserts that this suffices as a reason for avoiding an invitation, even though it relates to the expressing of legal viewpoints.<sup>6</sup>

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<sup>1</sup> James Grierson and Vikram Dodd, Jan 22 2019, ‘Prevent strategy on radicalisation faces independent review’ Available at: <https://www.theguardian.com/uk-news/2019/jan/22/prevent-strategy-on-radicalisation-faces-independent-review>

<sup>2</sup> Liberty’s Briefing on the CounterTerrorism and Border Security Bill for Second Reading in the House of Lords, October 2018. Available at: <https://www.libertyhumanrights.org.uk/sites/default/files/Liberty%27s%20Briefing%20on%20the%20Counter-Terrorism%20and%20Border%20Security%20Bill%20for%20Second%20Reading%20in%20the%20House%20of%20Lords.pdf>

<sup>3</sup> HM Government (2015) *Counter Extremism Strategy*. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/470088/51859\\_Cm9148\\_Accessible.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/470088/51859_Cm9148_Accessible.pdf)

<sup>4</sup> <https://s3.eu-west-2.amazonaws.com/conservative-party-manifestos/Forward+Together+-+Our+Plan+for+a+Stronger+Britain+and+a+More+Prosperous....pdf>

<sup>5</sup> As argued by Index on Censorship in a separate submission to the review.

<sup>6</sup> See, Alison Scott-Baumann (2019), ‘Students are the future of democracy: don’t muzzle them’. WONKHE, 28 January. Available at: <https://wonkhe.com/blogs/students-are-the-future-of-democracy-dont-muzzle-them/>. The Henry Jackson Society compiles an annual report of ‘Extreme speakers and events’, with an ‘Extreme speakers university league table’. See: <https://henryjacksonsociety.org/student-rights-2/>. The lists are made up overwhelmingly of those associated with Muslim organisations.

As a result of evidence given to the Joint Committee on Human Rights investigation of free speech on campus, 2017-18, the Charity Commission has removed the list of topics to be avoided, but retains the instruction to avoid controversy.<sup>7</sup> The Prevent Duty Guidance for universities and colleges requires that an event be cancelled if the risks of holding it cannot be entirely mitigated.<sup>8</sup> The Court of Appeal in the Salman Butt case ruled that this paragraph of the guidance is unlawful as it cannot be possible to fully mitigate risk.<sup>9</sup> At the time of writing, the government has not replaced it with a more acceptable version.

Against the backdrop of the Prevent Duty Guidance on university campuses, which demonstrates lack of clarity and the use of discriminatory practices, this report addresses the Prevent strategy in the context of schooling. Specifically, it addresses developments in the strategy that have moved it from countering *violent* extremism to a more explicit concern with extremist *ideology*, where the latter is viewed as a ‘gateway’ or first step on a conveyor-belt leading towards violence, despite this being widely discredited as a theory.<sup>10</sup> These developments, we suggest, create some of the very harms they are designed to mitigate and also risk breaching the civil rights of individuals whose actions should give no cause for concern. Indeed, they indicate a move toward an ‘authoritarian’ form of liberalism, one which is increasingly directed against freedoms of religious expression.

### **Fundamental British values and the Equality Act 2010**

Since 2014 and the new Duty to Promote Fundamental British Values, schools have been required to make a *curriculum* response to the supposed problem of extremism.<sup>11</sup> These values are defined as democracy, the rule of law, individual liberty, and respect and tolerance for different faiths and beliefs. We will concentrate on the impact of this requirement on schools, especially those with a high proportion of pupils with Muslim faith backgrounds.

The government acknowledges that ‘fundamental British values’ are not uniquely British. They are what underpin the constitutional framework of any liberal democratic state and are related to the various legislative protections of ‘rights’. However, ‘values’ and ‘rights’ are not the same, as we shall see. As procedural principles, they presume a diverse public

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<sup>7</sup> The Charity Commission for England and Wales (2018) *Updated Guidance to Support Trustees*, 19 November. Available at: <https://www.gov.uk/government/news/updated-guidance-to-support-trustee-decision-making>.

<sup>8</sup> HM Government (2015) *Prevent Duty Guidance: for higher education institutions in England and Wales*. Available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/445916/Prevent\\_Duty\\_Guidance\\_For\\_Higher\\_Education\\_England\\_Wales.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/445916/Prevent_Duty_Guidance_For_Higher_Education_England_Wales.pdf).

<sup>9</sup> See, Bindmans (2019) ‘R on the application of Dr Salman Butt - v - Secretary of State for the Home Department’, 8 March. Available at: <https://www.bindmans.com/news/r-on-the-application-of-dr-salman-butt-v-secretary-of-state-for-the-ho2>.

<sup>10</sup> See, Mehdi Hasan (2011) ‘So, prime minister, are we to call you an extremist now?’, *Guardian* 9 June. Available at: <https://www.theguardian.com/theguardian/2011/jun/09/cameron-counter-terror-muslims>.

<sup>11</sup> Department for Education, November 2014. *Promoting fundamental British values as part of SMSC in schools: Departmental advice for maintained schools*. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/380595/SMSC\\_Guidance\\_Maintained\\_Schools.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/380595/SMSC_Guidance_Maintained_Schools.pdf)

sphere populated by different understandings of what constitutes the good life. Rights provide protections for the pursuit of those differences, as indicated by the reference to ‘respect and tolerance for *different* faiths and beliefs’, in turn reinforced by the stipulations regarding individual liberty (historically understood in terms of religious liberty). The liberal advocacy of difference entails a minimum agreement on procedural norms to guarantee their unhindered practice and mutual cohabitation in the public square. This should be distinguished from the promotion of liberalism itself as the required form of the good life that is to be inculcated in citizens. As Rivers argues, the invocation of liberal ideals can be used to diminish the importance of religion and conscience by proposing that individual rights trump collective interactions.<sup>12</sup> Indeed, the active assertion of liberal ideals as values renders them ‘collective’ and potentially places them in conflict with other collective interactions (while disguising the fact that procedural norms have thereby been transformed into values).

The Equality Act 2010 sets out a number of characteristics – there are nine in all, including, age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation – that are to be protected from discrimination in employment or the provision of services.<sup>13</sup> This does not mean that there is a requirement on individuals to *believe* that same sex marriage is equally valid as heterosexual marriage, or that atheism is equally valid as religious belief, merely to understand that there is an obligation not to discriminate against those who seek to live their lives according to different commitments. In addition, there are recognised exemptions where the protections do not hold; for example, exemptions with regard to the exclusion of women from a priesthood, or exemptions with regard to private schools or state-supported single sex schools.

We will see, however, that the counter-extremism strategy is increasingly drawing on the Equality Act 2010 to instantiate British values in the form of an assertive insistence upon the active acceptance of procedural norms as substantive values. This is different from recognising their role in facilitating a public sphere where difference can be expressed. We will suggest that this has had particularly serious consequences for civil rights and religious freedoms, with minority religious faiths particularly affected. Notwithstanding the argument of Rivers above, we will see that ‘collective interactions’ do come to be defended and mobilised against faith groups, in arguments that religious views on women and LGBT relationships constitute a ‘collective’ harm of misogyny and homophobia, even if ‘individual’ harms are avoided by refraining from discriminatory actions. From this perspective, it would not be considered an appropriate response to demonstrate strong religious injunctions against harming others, including harm by words, as part of guidance on support for LGBT pupils in religious schools for example, as recently proposed by the Chief Rabbi, if that

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<sup>12</sup> See, Julian Rivers (2018) ‘Counter-Extremism, Fundamental Values and the Betrayal of Liberal Democratic Constitutionalism’, *German Law Journal*, 19(2): 267-299. Page 294. Available here: [https://research-information.bristol.ac.uk/files/160447622/06\\_Vol\\_19\\_No\\_02\\_Rivers.pdf](https://research-information.bristol.ac.uk/files/160447622/06_Vol_19_No_02_Rivers.pdf).

<sup>13</sup> Equality Act (2010) Guidance. Available at: <https://www.gov.uk/guidance/equality-act-2010-guidance>.

guidance also recognised religious teachings that same sex relationships were invalid from a religious perspective and that such views can be legitimately taught.<sup>14</sup>

To some extent, this reflects earlier misgivings expressed about the inclusion of religion and belief in the list of protected characteristics because of a potential conflict with other protected characteristics, most especially those associated with women's rights (gender) and LGBT rights (sexual orientation).<sup>15</sup> However, there is also the issue of the intersection of religion with race and ethnicity, a topic that is particularly significant at present in discussions of whether a definition of Islamophobia should be adopted similar to that of anti-Semitism. The National Secular Society, for example, has expressed concern that, "allegations of Islamophobia will be, indeed already are being, used to effectively shield Islamic beliefs and even extremists from criticism, and that formalising this definition will result in it being employed effectively as something of a backdoor blasphemy law."<sup>16</sup> They go on, "to silence or stifle criticisms of Islam would be deleterious to free speech and counterproductive to social cohesion." In the latter statement, they implicitly suggest that adherence to the precepts of faith is a problem from the perspective of social cohesion, rather than itself potentially also contributing to social cohesion. This is something that will be taken up later.

The Equality Act 2010 was passed by the Labour Government and accepted by the incoming Conservative Liberal Democratic coalition, albeit without the suggested clauses associated with social and economic inequalities (just as the duty on schools to promote fundamental British values, dropped a parallel concern with addressing inequalities from an earlier duty to promote community cohesion, as we shall see). The act and its public sector duty had its origins in the Race Relations (Amendment) Act 2000 which followed the Macpherson Report into the death of Stephen Lawrence and its identification of *institutional racism*.<sup>17</sup> As such, the purpose of the act and its subsequent extension in the Equality Act 2010 was to facilitate *inclusion* in the context of *institutional* obstacles (and, with the emphasis on social and economic inequalities, also 'structural' obstacles).

This initial impulse to tackle *institutional* obstacles to inclusion has been inverted, with the problem now understood to be *self-exclusion*, which is to be resolved by the inculcation of British values, as exemplified by the Equality Act 2010 itself. However, in this context, religious differences are understood to be part of the problem and their status as protected

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<sup>14</sup> See, Chief Rabbi Mirvis, September 2018, *The Wellbeing of LGBT+ Pupils: A Guide for Orthodox Jewish Schools*. Available here: <https://chiefrabbi.org/wp-content/uploads/2018/09/The-Wellbeing-of-LGBT-Pupils-A-Guide-for-Orthodox-Jewish-Schools.pdf>.

<sup>15</sup> See, for example, Lucy Vickers (2011) 'Promoting Equality or Fostering Resentment? The Public Sector Equality Duty and Religion and Belief', *Legal Studies*, 31(1): 135-8.

<sup>16</sup> See, National Secular Society, 15 May 2019, "'Islamophobia definition unfit for purpose'" say campaigners'. Available at: <https://www.secularism.org.uk/news/2019/05/islamophobia-definition-unfit-for-purpose-say-campaigners>.

<sup>17</sup> Home Office (1999) *The Stephen Lawrence Inquiry: Report of an Inquiry by Sir William Macpherson of Cluny*, Cm 4262-I. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/277111/4262.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/277111/4262.pdf).

characteristics increasingly challenged, where that challenge is legitimated by reference to other protected characteristics.

There is a long shadow cast by the Birmingham Trojan Horse affair of a supposed plot to Islamicise schools in Birmingham, Oldham and Bradford. Claims of such a plot emerged in early 2014 accompanied by a moral panic in the media. However, despite investigations purporting to demonstrate a plot, it has subsequently been shown to be false (as indicated, in part by the collapse in May 2017 of the professional misconduct cases brought against teachers alleged to be involved).<sup>18</sup> Despite this, the affair is the only example of 'extremists' seeking to gain influence over an institution that is cited in the Counter Extremism Strategy 2015 to justify the new policy direction. It is also the primary justification of the need to promote fundamental British values in schools. It is not simply that there was no such plot, but, as we shall see, that the school in question should properly have been seen as an example of successful integration in multicultural Britain.

We also want to discuss two other cases where the Equality Act 2010 has been misused (and misrepresented) in actions taken against schools with a high proportion of Muslim pupils. One is the case of the 'No Outsiders' curriculum and protests against it by parents at Parkfield primary school in Birmingham. The other is the case of Al-Hijrah school, a co-educational faith school also in Birmingham, and its gender segregation of classes which was subject to a High Court challenge by the Department of Education, Ofsted and the Equalities Commission. We will discuss these cases before addressing the Birmingham Trojan Horse affair in more detail. Our purpose is to show how the counter-extremism strategy implicitly constructs specific religious beliefs and practices as 'un-British' and, thereby, places them as potential indicators of an extremism that is increasingly to be understood as criminal, or 'pre-criminal'. Indeed, this has been further reinforced in a recent report by Sarah Khan of the Commission for Countering Extremism seeking to have a definition of 'hateful speech' adopted as an alternative definition of extremism.<sup>19</sup>

### **Prevent and the 'securitisation of community cohesion'**

The government's defence of the Prevent strategy, including the recent Counter Terrorism and Border Security Act 2019, suggests that very little has changed since the introduction of the strategy, other than its better and more detailed codification. Prevent was introduced by the then Labour government in the immediate aftermath of Islamist terrorist attacks in London in June 2007. It was directed toward challenging the ideologies associated with terrorism, specifically those that advocated *violent* opposition to Western governments and their policies. However, the initial strategy also placed emphasis on measures to combat extremism and to promote community cohesion through an emphasis on 'shared values' across different communities. These 'shared values' were the same as those currently

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<sup>18</sup> For a detailed discussion, see John Holmwood and Therese O'Toole (2017) *Countering Extremism in British Schools? The Truth about the Birmingham Trojan Horse Affair*, Bristol: Policy Press.

<sup>19</sup> Commission for Countering Extremism (2019) *Challenging Hateful Extremism*, October. Available here: <https://www.gov.uk/government/publications/challenging-hateful-extremism>.

described as ‘fundamental British values’, albeit not dignified with the designation that they were ‘British’.

There was no statutory duty on schools, or other public services, to engage with the Prevent strategy directly, although a ‘toolkit’ to counter radicalisation was made available. However, from 2007, schools had a statutory duty to promote community cohesion, a duty which was subject to Ofsted inspections.<sup>20</sup> A report for the Department for Education in 2010 showed that most schools elided Prevent and community cohesion and that it was primarily schools in inner city areas with a significant proportion of ethnic minority pupils that had specific policies directed toward risks of radicalisation.<sup>21</sup> For example, schools in Birmingham that came to be severely criticised for their failings with regard to Prevent did, in fact, engage with it and they did so to a greater extent than schools in other areas or with primarily white British school populations.<sup>22</sup> Moreover, all schools were fully engaged with their duty to promote community cohesion, a duty which incorporated the very concerns with shared values that are held to be distinctive of the counter extremism strategy after 2015.

So, what is new?

Three things changed after the election of the Conservative-Liberal Democrat coalition government in 2010. First, the new Secretary of State for Education, Michael Gove, removed the criteria associated with community cohesion from formal address within Ofsted inspections, though he affirmed that the duty remained important and would be part of inspections.<sup>23</sup> Second, after the Trojan Horse affair, while the content of ‘shared’ and ‘British values’ remained the same, what was dropped from the duty to promote community cohesion was a parallel requirement on schools to promote equality of opportunities (though of course, the government might counter that it was there implicitly in the emphasis on school performance). Third, the idea that a sense of ‘belonging’ might be affected by a *failure of institutions* was dropped. In the earlier duty, community cohesion was held to be facilitated where “there is a strong sense of trust in institutions locally to act fairly in arbitrating between different interests and for their role and justifications to be subject to public scrutiny.”<sup>24</sup> In contrast, the duty to promote fundamental British values assumes the efficacy and fairness of institutions; schools should, “enable students to acquire a broad general knowledge of and respect for public institutions and services in England.”<sup>25</sup>

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<sup>20</sup> See, Department for Children, Schools and Families (2007), *Guidance on the Duty to Promote Community Cohesion*. Available at: <https://dera.ioe.ac.uk//8108/1/DCSF-00598-2007.pdf>.

<sup>21</sup> Chris Phillips, Daniel Tse and Fiona Johnson (2010) *Community Cohesion and PREVENT*, Research Report 0085 for the Department for Education. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/182300/DFE-RR085.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/182300/DFE-RR085.pdf).

<sup>22</sup> For discussion, see Holmwood and O’Toole, *op cit*, pages 78 ff.

<sup>23</sup> Department for Education (2011) ‘Freedom of Information Release’, 28 February. Available at: [www.gov.uk/government/publications/community-cohesion/community-cohesion](http://www.gov.uk/government/publications/community-cohesion/community-cohesion).

<sup>24</sup> *Op cit*, page 3.

<sup>25</sup> *Op cit*, page 5.

A Home Office Report on the Prevent Strategy in 2011 stated that there was no particular concern about extremism in publicly-funded schools.<sup>26</sup> Instead, it was observed that the expansion of academies and free schools, along with separate arrangements for independent schools, meant that the regulatory frameworks lacked clarity and mutual coherence and that might be a source of future problems. The main concern was the unregulated sector of special provision for some faith communities and for home-schooled children which provided fewer hours than would bring them into the existing inspection regimes.<sup>27</sup>

The changes to the Prevent strategy after the Birmingham Trojan Horse affair, then, might appear to be nothing more than a re-focusing of pre-existing concerns and a visible exercise by politicians in appearing to do something while carrying on with essentially the same policies. One other change in the strategy was to flag an equal concern with other forms of terrorism than that associated with Islamism. The 2015 strategy declared an equal interest in far-right terrorism (as would come to be exemplified by the murder of MP Jo Cox in June 2016), dissident Irish republican groups, and animal rights activists.

However, it is clear that Islamic terrorism represents a special case and we should question the very use of this term, as the crime of 'terrorism' has come to be seen as special, when, in fact, it involves crimes that can be tried and punished under old laws that can adjudicate upon murder. Indeed, it is this which is part of the explanation of why the word 'terrorism' is frequently not adjoined to violent actions committed by lone actors without connection to Islam. The French philosopher Guy Debord shows how the state exaggerates and enhances terrorism by the narratives it uses. One consequence of this is to play to one's enemies and we see this with the enhanced publicity about every incident supposedly committed in the name of Islam.<sup>28</sup> In the British case, the 'terror' threat is associated with a suspicion concerning a whole community on the basis of its religious beliefs and practices, which are different from those of the majority community. This dangerous approach is based upon the inductive fallacy: some Muslims have committed violent acts, therefore many other Muslims will do so.<sup>29</sup>

A similar identification of a community under suspicion does not apply to right wing extremism, for example. Indeed, the changes have occurred in a context in which attitudes previously associated with the far right have become mainstream, including criticisms of multiculturalism and claims that British Muslims have failed to integrate. For example, in February 2011, David Cameron, gave a speech at the Munich Security Conference where he

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<sup>26</sup> HM Government (2011) *Prevent Strategy*. Available at:

<https://www.gov.uk/government/publications/prevent-strategy-2011>.

<sup>27</sup> These concerns were also mirrored in a report from Policy Exchange, a think tank with particular influence with the Secretary of State for education, Michael Gove. See, John Bald, Alice Harber, Neal Robinson and Elena Schiff (2010) *Faith Schools We Can Believe in: Ensuring that tolerant and democratic values are upheld in every part of Britain's education system*, Policy Exchange. Available at:

<https://policyexchange.org.uk/publication/faith-schools-we-can-believe-in-ensuring-that-tolerant-and-democratic-values-are-upheld-in-every-part-of-britains-education-system/>.

<sup>28</sup> Guy Debord (2010) *Comments on the Society of the Spectacle*. London: Verso.

<sup>29</sup> See, Alison Scott-Baumann and Sariya Cheruvallil-Contractor (2015) *Islamic Education in Britain: pluralist paradigms*, London and New York: Bloomsbury.

argued that “state multi-culturalism had failed.”<sup>30</sup> One aspect of its failure, he argued, was that the country had tolerated the growth of “segregated communities behaving in ways that run completely counter to our values”.

He provided no evidence of this claim, albeit that it had been in circulation since the Cattle Report on riots in English cities in 2001 from which the concern for community cohesion first arose.<sup>31</sup> Academic research shows that ethnic segregation is largely a consequence of the actions of members of the white majority community moving away from residential areas with ethnic minority populations.<sup>32</sup> Its effects on schooling, moreover, are reinforced by the government’s school choice policies, especially in a situation where academic success in a school with a high proportion of ethnic minority pupils does not, by that token, make it more attractive to white parents.

Segregation does not itself mean that communities do not share values. British Muslims, for example, show a very high commitment to the ‘values’ promoted as ‘British’, higher, in fact, than other groups. As Karlsen and Nazroo, put it, “many Muslims, and those with other minority ethnicities and religions, do not see a contradiction between being British and maintaining a separate cultural or religious identity”.<sup>33</sup> They cite similar findings from other studies which have also identified a positive association between Muslim affiliation and positive national identities. Nor are the outcomes affected by the intensity of religious commitments. There is a positive correlation between British identification and higher religiosity.<sup>34</sup> These associations have remained strong across the period since 2001. It poses the dilemma that, whereas ‘increased religiosity’ is seen as a possible indicator of radicalisation, religion, may, in fact, be a protection against it.

Indeed, Neil Basu, the UK’s most senior counter terrorism police officer has recently stated that, “policies that go towards more social inclusion, more social mobility and more education are much more likely to drive down violence ... than all the policing and state security apparatus put together. It is much more likely to have a positive effect on society.”<sup>35</sup> In this context, a recent Education Policy Institute report on pupil performance makes interesting reading beyond the headlines about pupils from poor backgrounds falling

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<sup>30</sup> David Cameron, Speech at Munich Security Conference, 5 February 2011. Available at: <https://www.gov.uk/government/speeches/pms-speech-at-munich-security-conference>

<sup>31</sup> Home Office (2001) *Community Cohesion: A Report of the Independent Review Team Chaired by Ted Cattle*. Available at: <http://tedcattle.co.uk/pdf/communitycohesion%20cattlereport.pdf>.

<sup>32</sup> Ludi Simpson (2012) ‘More segregation or more mixing?’, Manchester: Centre on Dynamics of Ethnicity. Available at: [www.ethnicity.ac.uk/medialibrary/briefingsupdated/more-segregation-or-more-mixing.pdf](http://www.ethnicity.ac.uk/medialibrary/briefingsupdated/more-segregation-or-more-mixing.pdf).

<sup>33</sup> Saffron Karlsen and James Y Nazroo, James (2015) ‘Ethnic and religious differences in the attitudes of people towards being “British”’, *Sociological Review*, 63(4): 774.

<sup>34</sup> Ayse Guveli and Lucinda Platt (2011) ‘Understanding the religious behaviour of Muslims in the Netherlands and the UK’, *Sociology*, 45: 1008–1027.; Nancy Foner and Richard Alba (2008) ‘Immigrant religion in the US and Western Europe: bridge or barrier to inclusion?’, *International Migration Review*, 42: 360–392.

<sup>35</sup> Cited by Vikram Dodd, ‘Counter-terrorism chief calls for greater social inclusion’, *The Guardian*, August 6<sup>th</sup>, 2019. Available at: <https://www.theguardian.com/uk-news/2019/aug/06/counter-terrorism-chief-calls-for-greater-social-inclusion>

behind.<sup>36</sup> The report uses data on White British pupils as a whole as the reference group and then makes a series of comparisons. One is of disadvantaged pupils (measured by reference to the pupil premium and receipt of free school meals) with the baseline. Other comparisons are of ethnic minority pupils to the baseline. This latter comparison will be affected by the population characteristics of the different groups. For example, there are likely to be fewer pupils from advantaged backgrounds in most ethnic minority groups compared with the White British category. Thus, the fact that most ethnic minority groups either outperform (Chinese, Indian, African, Bangladeshi) or come very close to (Pakistani) the White British average is startling, yet it was unremarked in the press.

White and Black Caribbean, Black Caribbean, Irish traveller and Gypsy/ Roma were all underperforming, as were disadvantaged British White pupils. The latter got most media coverage. No comparisons were made with disadvantaged pupils within other ethnic minorities. They will, of course, be doing less well than the average for their group, but the implication is still that they are significantly out-performing disadvantaged British White pupils. This has significance for the debate about 'integration' and vulnerability to radicalisation. In the context of this data, British Muslims (Pakistani/ Bangladeshi/ some African) would appear to be integrated with British values of education achievement and opportunities.

In short, the particularities of cultural difference do not conflict with commitments to 'democracy, the rule of law, individual liberty, and respect and tolerance for different faiths and beliefs'. This should not surprise us. From the perspective of liberal constitutionalism, it is precisely such principles underpinning participation in the public sphere that enable living with difference in multicultural societies. What has changed is the attitude of politicians toward multiculturalism itself and to the role of religion.

If the criticism of multiculturalism is based upon false claims, it has real consequences. The context of David Cameron's comments was the rise of UKIP and its threat to the electoral base of the conservative party. Nigel Farage, for example, has declared that 'parts of Britain are like a foreign land', where the objection is to ethnic minority cultural differences, not primarily their failure to abide by liberal constitutional principles.<sup>37</sup> However, the claim that they do fail to accept those principles allows the racialised substance of far right claims to remain invisible. Indeed, the former head of counter terrorism at the Metropolitan Police, Sir Mark Rowley has recently suggested that 'lack of integration' by British Muslims is the primary cause of 'far right' extremism. He writes, "Extremists including the far right are

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<sup>36</sup> Education Policy Institute (2019) *Education in England: Annual Report 2019. Research Area Vulnerable Learners and Social Mobility*, July 31<sup>st</sup>. Available here: <https://epi.org.uk/publications-and-research/annual-report-2019/>.

<sup>37</sup> Andrew Sparrow (2014) 'Nigel Farage: parts of Britain are 'like a foreign land'', *Guardian*, 28 February. Available at: <https://www.theguardian.com/politics/2014/feb/28/nigel-farage-ukip-immigration-speech>. UKIP's 2017 Election manifesto, for example, included a section called 'Britain united under one law for all', which criticised multiculturalism in the name of 'women's rights' and proposing to end extremist Islamism in schools. See, UKIP 2017 Manifesto: Britain Together. Available at: [https://d3n8a8pro7vhmx.cloudfront.net/ukipdev/pages/3944/attachments/original/1495695469/UKIP\\_Manifesto\\_June2017opt.pdf?1495695469](https://d3n8a8pro7vhmx.cloudfront.net/ukipdev/pages/3944/attachments/original/1495695469/UKIP_Manifesto_June2017opt.pdf?1495695469)

preying on the grievances and the tension caused by a lack of integration and that enables them to grow their cause and that is a real concern... We have a country that has one identity, that has one set of laws and one set of principles underneath that so that is what this country is about and integration is a part of buying into that."<sup>38</sup>

In this way, the contexts in which far-right extremism and Islamic extremism are addressed are very different. In the first case, hostile attitudes toward religious difference and migration are normalised, while in the second case, religious difference itself is placed in a context of extremism and potential threat to British values. This explains how the Birmingham Trojan Horse affair was framed in public debates and, at the same time, how it also became the primary example of the problem at hand. It reinforced the narrative of self-segregation and lack of integration within some Muslim communities. This was most evident in Dame Louise Casey's review for the Ministry of Housing, Communities and Local Government into Opportunity and Integration, which relied heavily on evidence derived from reports conducted into the Birmingham Trojan Horse affair.<sup>39</sup>

A second consequence was that it pushed the Prevent strategy further in the direction of countering *non-violent* extremism, including the new duty on schools to promote 'fundamental British values'. In the foreword to the new strategy, the Prime Minister, David Cameron, referred to "sickening displays of neo-Nazism, Islamophobia, antisemitism and, of course, Islamist extremism" and went on to state that, "terrorism is a symptom; ideology is the root cause."<sup>40</sup>

It is this that marked the move toward the criminalising of expressions of non-violent ideology, and that have culminated in the Counter Terrorism and Border Security Act 2019.<sup>41</sup> What should be clear, however, is that it is only one *community* that is seen as posing a general risk – British Muslims - on the basis of their religious beliefs and practices. At the same time, despite identifying 'sickening displays' of Islamophobia, there is resistance to providing a definition against which such displays could be judged, with the claim, as we have seen, that to do so would threaten measures to address social cohesion.

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<sup>38</sup> Mark Evans (2019) 'Former counter terror chief warns a lack of integration from some communities is fuelling far right extremism', *Telegraph* 7 November. Available at: <https://www.telegraph.co.uk/news/2019/11/07/former-counter-terror-chief-warns-lack-integration-communities/>.

<sup>39</sup> Dame Louise Casey (2016) *The Casey Review: a review into opportunity and integration. An independent report for the Department of Communities and Local Government*, 5 December. Available at: <https://www.gov.uk/government/publications/the-casey-review-a-review-into-opportunity-and-integration>.

<sup>40</sup> Home Office (2015) *Counter-Extremism Strategy*, 19 October. Available at: <https://www.gov.uk/government/publications/counter-extremism-strategy>.

<sup>41</sup> This was set out in the conservative party election manifesto for the 2017 election: "We will consider what new criminal offences might need to be created, and what new aggravated offences might need to be established, to defeat the extremists. We will support the public sector and civil society in identifying extremists, countering their messages and promoting pluralistic, British values" (page 55). See, *Forward Together: Our Plan for a Stronger Britain and Prosperous Future*. Conservative and Unionist Part Manifesto 2017. Available at: <https://www.conservatives.com/manifesto>.

## The 'No Outsiders' curriculum for primary schools

We have already indicated that the Equality Act 2010 has emerged as having particular significance in how 'fundamental British values' are to be exemplified and non-violent extremism is to be combatted. This was already foreshadowed in the Counter Extremism Strategy of 2015 where then home secretary, Theresa May, wrote in her foreword that, "Where non-violent extremism goes unchallenged, the values that bind our society together fragment. Women's rights are eroded, intolerance and bigotry become normalised, minorities are targeted and communities become separated from the mainstream."<sup>42</sup>

This was followed up in the Conservative party manifesto for the 2017 election, which stated that, "Our enjoyment of Britain's diversity must not prevent us from confronting the menace of extremism. Extremism, especially Islamist extremism, strips some British people, especially women, of the freedoms they should enjoy, undermines the cohesion of our society and can fuel violence. To defeat extremism, we need to learn from how civil society and the state took on racism in the twentieth century" (2017: 55). In effect, the argument is that civil society organisations – for example, those associated with women's rights and LGBT rights - will be encouraged to mobilise against community practices that are understood to be hostile to those rights.<sup>43</sup> In effect, this is an appeal to 'femo-nationalism' and 'homo-nationalism', familiar from the Netherlands and Denmark.

The most vivid recent illustration of this approach involves a curriculum at Parkfield primary school in Birmingham. The school was not implicated in the Trojan Horse affair, but it is located in Saltley, one of the areas where some of the schools were based. The school had introduced a curriculum called 'No Outsiders' which is oriented to the Equality Act 2010.<sup>44</sup> It uses lessons on gender identity and same-sex relationships to teach about diversity and difference more generally, which, of course, includes ethnic and religious difference.

Nearly all of Parkfield school's pupils are of Muslim heritage and there have been major protests against this curriculum, including demonstrations outside the school by parents, with up to 600 pupils withdrawn from the school for a day in protest.<sup>45</sup> Their concerns have been declared 'bigoted' and against British values,<sup>46</sup> with one Conservative local councillor calling the protests a 'hate crime'.<sup>47</sup> The teacher who developed the curriculum, Andrew

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<sup>42</sup> *Ibid.*

<sup>43</sup> The manifesto statement goes on to declare that, "we will establish a Commission for Countering Extremism to identify examples of extremism and expose them, to support the public sector and civil society, and help the government to identify policies to defeat extremism and promote pluralistic values." (page 55)

<sup>44</sup> Andrew Moffat (2015) *No Outsiders in Our School: Teaching the Equality Act in Primary School*, London: Routledge.

<sup>45</sup> Nazia Parveen (2019) 'Birmingham school stops LGBT lessons after parents protest', *Guardian*, 4 March. Available at: <https://www.theguardian.com/education/2019/mar/04/birmingham-school-stops-lgbt-lessons-after-parent-protests>.

<sup>46</sup> Kenan Malik (2019) 'There is never a reason for bigotry at the school gates', *Guardian*, 10 March. Available at: <https://www.theguardian.com/commentisfree/2019/mar/10/there-is-never-a-reason-for-bigotry-at-the-school-gates>.

<sup>47</sup> Carl Jackson (2019) 'Parkfield School LGBT row: Councillor calls for parents to be fined for withdrawing kids', *Birmingham Mail*, 7 March. Available at: <https://www.birminghammail.co.uk/news/midlands-news/parkfield-school-lgbt-row-councillor-15935577>.

Moffatt, was nominated for the Varkey Foundation Global Teacher Prize and has the support of Birmingham City Council (although the school in question is an academy and not under its jurisdiction) and of Ofsted, with a spokesperson saying that, “we support the right of school leaders to determine the curriculum as they see fit and in the interests of their pupils – free from hostile outside influence.”<sup>48</sup>

Much of the reporting of the case in the media associated it with a review of sex and relationship education underway at the DfE,<sup>49</sup> arguing that the school had an obligation to teach about gay relationships and to safeguard children from homophobic bullying. However, as the headteacher explicitly stated in a presentation posted on the school’s website (now taken down),<sup>50</sup> the ‘No Outsiders’ curriculum was part of the Prevent requirement to teach fundamental British values. Were the curriculum to have been about relationships and sex education (RSE) then current DfE guidance to schools states that schools should ensure that it “meets the needs of pupils and parents and reflects the community they serve.”<sup>51</sup> Indeed, this is itself set in the context of the Equality Act 2010, with the statement that, “Schools must ensure they comply with the relevant provisions of the Equality Act 2010, under which religion or belief are amongst the protected characteristics. All schools *may teach about faith perspectives*.”<sup>52</sup> Moreover, were the matter to be about LGBT relationships within RSE it would be a small part of the overall curriculum.

Under Prevent, the community is itself under suspicion and there is no similar recommendation of cooperation with parents and community. Indeed, In March 2016, a transgender equalities day was proposed at a rural primary school in East Sussex. This elicited protests from parents who threatened to withdraw children from the school, alongside considerable media criticism of the actions of the headteacher. The latter justified the event in relation to British values and sex and relationships education. The initiative was abandoned and Ofsted did not intervene to support the headteacher. The school was a Church of England state aided school with few ethnic minority pupils.<sup>53</sup>

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<sup>48</sup> Sally Weale (2019) ‘Ofsted chief backs teaching about same-sex couples after parent protests’, *Guardian* 21 February. Available at: <https://www.theguardian.com/education/2019/feb/21/ofsted-chief-backs-teaching-of-same-sex-couple> No Outsiders: Researching approaches to sexualities equality in primary schools-after-parent-protests.

<sup>49</sup> Department for Education (2019) *Relationships Education, Relationships and Sex Education, and Health Education in England: Government consultation response*. February. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/780768/Government\\_Response\\_to\\_RSE\\_Consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/780768/Government_Response_to_RSE_Consultation.pdf). The extension of protests to Anderton Park primary, where the ‘No Outsiders’ curriculum is not taught, are associated with sex and relationship education.

<sup>50</sup> Hazel Pulley (no date) ‘Increasing Resilience in Pupils and Creating an Alternative Narrative’. Available at: <http://discoversociety.org/wp-content/uploads/2019/03/hazelpulley.pdf>.

<sup>51</sup> Paragraph 13. Department for Education (2019) *Relationships Education, Relationships and Sex Education (RSE) and Health Education Draft statutory guidance for governing bodies, proprietors, head teachers, principals, senior leadership teams, teachers*. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/781150/Draft\\_guidance\\_Relationships\\_Education\\_Relationships\\_and\\_Sex\\_Education\\_RSE\\_and\\_Health\\_Education2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/781150/Draft_guidance_Relationships_Education_Relationships_and_Sex_Education_RSE_and_Health_Education2.pdf).

<sup>52</sup> Paragraph 21, op cit.

<sup>53</sup> See, Ellis Morgan and Yvette Taylor (2019) ‘Dangerous education: the occupational hazards of teaching transgender’, *Sociology*, 53(1): 19-35.

But is the Parkfield case otherwise as straightforward as the weight of liberal opinion would suggest? The curriculum itself derives from an ESRC-funded research project on approaches to 'sexualities inequality' in primary schools which ran across 16 primary schools in England between 2006-2008.<sup>54</sup> Moffat was one of the researcher-practitioners involved. The project was strongly influenced by queer theory – as proposed by Lee Edelman and Judith Butler, in particular.

It aimed to 'disrupt' gender and sexual 'binaries' in the classroom and to destabilise heteronormative assumptions. The project was ambivalent about the liberal discourse of rights believing it could reinforce existing norms, but advocated its 'strategic' use, on the grounds that spaces for a more radical 'queering' of the curriculum could be created. Elizabeth Atkinson (lead investigator on the project) and Moffat, for example, wrote about the way in which the use of liberal pluralist and essentialist discourses about different gender identities might, "shore up the norm through the acceptance of tolerance of the margins, and ... prevent the exploration of other more radical starting points for queering the classroom."<sup>55</sup>

One of the project aims was to develop 'effective means of challenging heteronormativity'. As the project report describes, it promoted, "classroom interventions stemming from an LGBT rights perspective with a clear social justice agenda", but these were "complemented by less visible, unplanned moments informed by queer theory that offered the possibility of deeper processes of interruption/ disruption of the norm." This challenged the "thinking of the teachers, pupils, parents and community members who interacted with them."<sup>56</sup>

The approach of the 'No Outsiders' curriculum has an academically respectable pedigree, but it is very far from the endorsement of liberal values that its supporters in Birmingham City Council, Ofsted and the media suppose. It does not represent the different protected characteristics of the Equality Act 2010, or even their status as values. It explicitly seeks to challenge those values through a radical sexual politics. Indeed, were it to be the sex and relationships curriculum the media believes it to be, its proposal to *challenge* pupils would be in breach of DfE guidelines – *challenging* (extremist) views, is the language of the counter extremism strategy, not of sex and relationships education which is about *supporting* children.

If the curriculum is not about relationships and sex education, it is also odd to see it being promoted as a model for understanding equalities in the sense intended by the guidance to promote fundamental British values. It is hard to see how a curriculum constructed on the principles of disruption and deconstruction can be used to facilitate equalities more

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<sup>54</sup> Elizabeth Atkinson (2009) *No Outsiders: Researching approaches to sexualities equality in primary schools: ESRC Full Research Report*, RES-062-23-0095. Swindon: ESRC. Available at: <https://www.researchcatalogue.esrc.ac.uk/grants/RES-062-23-0095/read>.

<sup>55</sup> Page 97. Elizabeth Atkinson and Andrew Moffat (2009) 'Bodies and minds: essentialism, activism and strategic disruptions in the primary school and beyond' in Renée DePalma and Elizabeth Atkinson eds (2009) *Interrogating Heteronormativity in Primary Schools: The 'No Outsiders' Project*, Stoke on Trent: Trentham Books..

<sup>56</sup> Atkinson, *op cit*, page 19.

generally, including rights of religious expression, and it is precisely the latter which are attenuated within it.

Equally importantly, the theorists whose work was used in the project are emphatic about the dangers of using their work this way. Edelman, for example, criticises how the figure of 'the child' is used to enshrine a heteronormative construction of a politics of progress and the future.<sup>57</sup> Judith Butler is equally critical of the way in which arguments from feminism and queer theory are used against different religious groups, especially Muslims. Indeed, she argues that there is at work a hegemonic conception of time which proposes a liberal and secular present as a model for the future, which is set against a 'pre-modern temporality' assigned to religious others, especially Muslims.<sup>58</sup>

In this context, religious values are constructed as backward and the state can take on the stance of 'safeguarding' children from the religious values of their parents (as argued by those who were opposed to the inclusion of religion and belief in the Equality Act 2010). In contrast, the 'disruption' of 'heteronormativity' for Edelman and Butler is directed against the coercive potential of liberal rights to be applied against religious minorities. In other words, their arguments are directed against the very use to which the 'No Outsiders' curriculum is being put. The curriculum, in their terms, is an example of what Jasbir K. Puar has called 'homo-nationalism'.<sup>59</sup>

There is no evidence that there has been a problem of sex and relationship education hitherto in any Birmingham school. In fact, despite all the concerns about Muslim parents represented through the Birmingham Trojan Horse affair, all charges of failing properly to teach sex and relationship education, as reported in the media, were dropped from the misconduct cases brought by the National College of Teaching and Learning (NCTL) which brought misconduct cases against the teachers. Indeed, the school at the centre of the affair, Park View, was designated a National Healthy School precisely because its curriculum in that area was commended as a model for other schools.<sup>60</sup> The parents at Parkfield have declared their commitment to tolerance for same sex relationships and their understanding that this is enshrined in British law, albeit that their own Muslim faith precludes assigning them equal validity. Moreover, were the curriculum to be about sex and relationships education it would be a small part of the overall curriculum at any school.

The apparent refusal to allow such a small part of the children's education to involve the recognition of same sex relationships is what seems appalling to many of those who repudiate the parents as bigoted. However, as described by Andrew Moffat, the 'No Outsiders' curriculum at Parkfield primary involved a *whole school approach* in which it informed all aspects of the activities of the school.<sup>61</sup> Thus, placards announcing the school's commitment to the Equality Act 2010 and its protected characteristics were affixed to the

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<sup>57</sup> Lee Edelman (2004) *No Future: Queer Theory and the Death Drive*, Durham: Duke University Press.

<sup>58</sup> Judith Butler (2008) 'Sexual politics, torture, and secular time', *British Journal of Sociology*, 59(1): 1-23.

<sup>59</sup> Jasbir K Puar (2007) *Terrorist Assemblages: Homonationalism in Queer Times*, Durham: Duke University Press.

<sup>60</sup> See, Holmwood and O'Toole, *op cit*, pages 151-2.

<sup>61</sup> See for example, Andrew Moffatt, *op cit*, which includes descriptions of the implementation of the curriculum, together with books used at different levels and lesson plans. The text also includes photos of placards on the railings, the entry system and posters within the school.

school railings,<sup>62</sup> a tap-screen sign in at the school involved a disagree/agree response to the same statement, and each daily assembly is set in the context of the Equality Act 2010. The pupils are described as 98.8% Muslim, but there are no books or lesson plans associated with 'No Outsiders' which mention Islam. The discussion of religious tolerance proposes that 'Christians are welcome here'. There are lesson plans on the Nazis in Germany to exemplify artistic freedom and lesson plans on the Holocaust, but not a single mention of Islamophobia or anything relating to the experience of pupils from Muslim backgrounds.<sup>63</sup>

LGBT identifying adults remember their schooldays, their anxieties and vulnerability toward bullying and rejection, including internalised shame. They remember suppressing some part of who they were and leaving it behind at the school gate. Of course, some selves always go unnoticed – those embodied in the white middle-class, perhaps – but poor, ethnic minority and religious selves – are approached with suspicion to be checked at the school gate. Some children get to bring their whole selves into school, others not; some parental selves enter schools with their children, others do not. Might this not, in fact, be a source of alienation from the school and a lesson in intolerance rather than tolerance? LGBT Muslims would still not bring their whole self to school. Their LGBT identity would be recognised, while their Muslim identity would remain a matter of suspicion.

In response to parental protests, Parkfield school offered to provide a version of the curriculum for 'faith communities'. What is troubling about this offer (not just the fact that this would be done independently of the communities in question) is that it revealed that the curriculum was potentially deficient with regard to its treatment of religious expression, at the same time as suggesting that such a deficiency is only problematic for schools with a high proportion of religious minority pupils, rather than being a problem for its use where pupils have 'secular' backgrounds. Indeed, Parkfield is the sponsoring school in a multi-academy trust of four primary schools (Turves Green, Green Meadow and Colmers Farm). Two of the schools have a high proportion of ethnic minority pupils (Parkfield and Green Meadow), the other two do not. The 'No Outsiders' curriculum is taught at Parkfield and Green Meadow, but currently not at the other two schools. The reason may be because the schools are recently incorporated into the trust, but such a difference potentially constitutes different treatment of pupils from Muslim religious backgrounds, which itself would be a breach of the Equality Act 2010.

It is right that children be taught to tolerate others who are different and that homophobic (and other) bullying be challenged in schools through education. But are parents with concerns about how British values of tolerance are to be taught really to be treated as an 'hostile outside influence'? Does the liberal state have a right to the explicit disruption of the parents' (heteronormative) family values in the context of *schooling primary-age children under the Prevent agenda*? Has the Government forgotten that conservative values

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<sup>62</sup> This puts into context the media reports of placards placed by parents on railings at the school.

<sup>63</sup> It might be argued that this is covered in other parts of the curriculum, say religious education. However, it should be noted that the curriculum is offered as a way of teaching 'British' values in other schools, including those with a largely white British intake.

are part of British life and the expression of religious beliefs is also protected under the Equality Act 2010?

While parents at Parkfield school express their religious view that LGBT relations are not valid, they assert that they are opposed to discrimination against individuals and recognise their right to pursue their own life commitments. No evidence has been provided to the contrary. What seems to be involved in accusations that they are homophobic is that the faith-based view is itself homophobic and that it constitutes a 'collective' harm. This is an issue which was to the fore in the Al-Hijrah example, to which we now turn.

### **Al-Hijrah School**

Al-Hijrah school is an Islamic faith-school in Birmingham for pupils aged 4-16, which separated pupils in all lessons, breaks, and in movement around the school from year 5. In effect it operated as two separate schools for boys and girls albeit on the same site. In the independent sector, this is a type of school referred to as a 'diamond' school providing co-education in early years up to age 11, then separating pupils by gender from ages 11-16, before returning to co-education at sixth-form, as would be the case when pupils moved on from Al-Hijrah after their GCSEs.<sup>64</sup>

The school was academically weak and, although it had been improving, in 2016 a special Ofsted inspection focused on its practices of gender segregation, declaring them to be unlawful under the Equality Act 2010.<sup>65</sup> This was notwithstanding that these practices were openly advertised to parents and were fully visible to the authorities, including Ofsted in previous inspections. The school sought a judicial review of the 2016 Ofsted report, arguing 'bias' and that Ofsted had not demonstrated that the separate education of boys and girls had been to the detriment of either group. The school authorities were granted permission for review in November 2016 on the second of the grounds. Ofsted, in turn, appealed against this decision.<sup>66</sup>

Ofsted (or, more properly, HM Chief Inspector of Education, Children's Service and Skills) was joined by the Secretary of State for Education, as 'first intervener', and the Human Rights Commission as 'second intervener'. Significantly, in the light of the government's encouragement of civil society actors to combat extremism, Southall Black Sisters and Inspire (a Muslim women's rights organisation concerned with extremism) acted as third 'interveners'. The latter were allowed to present written evidence, but not to make direct representations to the court. Their written evidence included the claim that gender

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<sup>64</sup> See, for example, Katherine Jeffery, 19 February 2013, 'What is a diamond school', Posted at HMC (Headmasters and Headmistresses Conference of independent schools). Available at: <https://www.hmc.org.uk/blog/what-is-a-diamond-school/>. Ironically, given the findings in the Al-Hijrah case, it is argued to be especially advantageous for girls.

<sup>65</sup> Ofsted Report Al-Hijrah School, 14-15 June 2016. Available at: <https://files.api.ofsted.gov.uk/v1/file/2731875>.

<sup>66</sup> HM Chief Inspector of Education, Children's Services and Skills v The Interim Executive Board of Al-Hijrah School (2016). Available at: <https://www.judiciary.gov.uk/wp-content/uploads/2016/11/x-v-ofsted.pdf>. For an account of the case, see, Rajnaara Akhtar (2018) 'Case Commentary: Ofsted V Al Hijrah The Case of Segregated Schools and Sex Discrimination', *Denning Law Review*, 30: 167-183.

segregation went beyond being a harm to *individual* children and constituted a *collective* harm to women.

Judgement was made in October 2017, with the ruling that there was indeed a detriment, in principle, and that gender segregation was unlawful under the Equality Act 2010.<sup>67</sup> The Court of Appeal did not find that there was a *collective* harm. However, it did rule that individual girls and boys were deprived of the possibility of interacting with members of the opposite sex. They, therefore, suffered some detriment as individuals and were discriminated against. Lady Justice Gloster dissented from the idea that there was no need to address the issue of the collective harm and provided a minority opinion.

It is not material to the judgement that Ofsted (and the local authority) had been aware of the practices at the school and had failed to question them previously. What we want to draw attention to is how the law is constructed and also the nature of the evidence put forward in support of the idea of individual and collective harms. We will see that Britain's wealthier citizens are accorded privileges denied to its poorer citizens, a circumstance compounded by the higher proportion of ethnic minorities in the latter category and their greater religiosity.

Ofsted's inspection report in 2016 stated that Al-Hijrah's gender segregation policy, "does not accord with fundamental British values and amounts to unlawful discrimination" and, further, that it, "does not give due regard to the need to foster good relations between the genders, and means that girls and boys do not have equal opportunities to develop confident relationships with boys and vice versa. This is contrary to fundamental British values and the Equality Act 2010."<sup>68</sup>

In both its inspection report and in its appeal, Ofsted (and other interveners) draw a parallel between racial segregation in South Africa and in the US. In particular, reference is made to the judgement of the US Supreme Court in 1954 against the Topeka County (Kansas) Board of Education – popularly known as *Brown v Board of Education*. This case led to the formal desegregation of schools in the US and its citation implies that the lessons that can be drawn from it are unequivocal and self-evident.

Despite being a milestone case, there is a considerable difference of opinion about its consequences. The African American scholar and educationalist, Charles M Payne, for example, argues that *de jure* desegregation did not give rise to *de facto* desegregation and, in many respects, the education of African American children was worse after *Brown v Board of Education* than it was before.<sup>69</sup> Moreover, the judgement was focused on the 'psychic harm' done to African American children by segregation, rather than on the equal freedom of parents to choose a school for their children's education. The latter was the issue at stake for African American parents and for the National Association for the Advancement of Colored People (NAACP) who supported de-segregation. It was the

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<sup>67</sup> [2017] EWCA Civ 1426, on appeal from [2016] EWHC 2813. Available at: <https://www.11kbw.com/wp-content/uploads/Approved-Judgment-Interim-Executive-Board-of-Al-Hijrah-School.pdf>.

<sup>68</sup> *Op cit*, pages 3 and 6.

<sup>69</sup> Charles M Payne (2004) "'The whole United States is Southern!': Brown v. Board and the mystification of race', *The Journal of American History*, 91(1): 83-91

supposed psychic harm that the judgement sought to ameliorate, not the harms of racialised injustice as such. The latter harms are structural, not interpersonal; they include labour market disadvantages, poverty, and housing segregation, among others.

*Brown v Board of Education* did nothing to address the structural issues. Indeed, it implied that ‘psychic deficit’ might be part of the explanation for the unequal outcomes. In effect, a structural problem was addressed as a behavioural and a cultural problem, and, as a consequence, the victim (the African American child and his or her culture) was blamed. Worse, according to Payne, this became a new orthodoxy among white Americans and, in this way, ‘southern attitudes’ became generalised in a language that removed overt racism, but reproduced its effects. So long as negative racial attitudes were not directly expressed, the disadvantages experienced by African American children could be understood as deriving from their own behaviours and culture and not from discrimination. Similar issues are in play in the discussion of the education of ethnic minority children in Britain, perhaps most especially those from Muslim heritage backgrounds. And, of course, these are the issues of institutional racism that are addressed in the Macpherson Report.<sup>70</sup>

In her minority opinion (supported by an editorial in the Guardian),<sup>71</sup> Lady Justice Gloster makes the case for the ‘collective harm’ that gender segregation in a school represents for girls. She does so in the context that the main judgement included recognition that, “women have been and remain ‘the group with minority power in society’ in terms of the distribution of wealth and influence.”<sup>72</sup> She goes on to propose that single sex education creates attitudes and sentiments that sustain later social networks where women lose out more than men and are disproportionately excluded from networks of power and influence. This, she argues, represents an outcome of the ‘expressive harm’ (the ‘psychic’ harm of *Brown v Board*) that segregation represents. She also states that, the “fact that there has been no reported judgment to date on expressive harm in domestic law does not concern me... Evidence is not needed to inform the court of the historic, and indeed recent and continuing, struggles of women for equal right.”<sup>73</sup>

It is significant that Lady Justice Gloster focuses on ‘expressive’ harm, because the evidence on single-sex schooling suggests that women benefit from it in terms of future salary while there is no difference for men between co-education and single sex education.<sup>74</sup> Structural obstacles to gender equality – for example, the organisation of the working day, the availability of affordable child care, etc – are neglected, in favour of interpersonal issues of social networks (despite the fact that women’s struggles have generally addressed the former). Moreover, it is unlikely that a school serving a poor community in Birmingham has direct responsibility for the reproduction of interpersonal gender relations that diminish

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<sup>70</sup> *Op cit*, section 6.6.

<sup>71</sup> Editorial (2017) ‘The Guardian view on school segregation: the origins of inequality’, 13 October. Available at: <https://www.theguardian.com/commentisfree/2017/oct/13/the-guardian-view-on-school-segregation-the-origins-of-inequality>. It is also supported by Amir Paz-Fuchs, and Tammy Harel Ben-Shachar (2018) ‘Separate but equal reconsidered: religious education and gender separation’. Posted online, 10 May, forthcoming in *Human Rights Law Review*. Available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3176713](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3176713).

<sup>72</sup> *Op cit*, paragraph 131.

<sup>73</sup> *Op cit*,

<sup>74</sup> See Akhtar, *op cit*, page 178.

women's power and influence more generally in society. Of course, this is not to say that women in poor communities, or Muslim women, do not also experience structural inequalities, including those deriving from patriarchal practices specific to their own communities as pointed out by Southall Black Sisters.

However, this then raises the issue of how best to mitigate such inequalities. For example, there may be cultural as well as structural constraints on women's employment opportunities. These can be offset by ensuring that girls secure good educational outcomes, as, indeed, was the defence put forward by the trustees of Al-Hijrah school and initially accepted in the judicial review of the Ofsted report. This does not, in itself, entail disparagement of cultural attitudes, unless it is assumed that Muslim parents do not value education. In fact, in the Trojan Horse affair one of the arguments levelled against Muslim parents and governors by the Kershaw Report, for example, was precisely that they were too zealous in criticising schools for their failure to achieve better educational outcomes for their children.<sup>75</sup> What is at issue, then, is the extent to which one community has become the focus of special attention when it expresses concerns about the education of its children.

Notice that the wider educational system is also not at issue, neither in the Court of Appeal's judgement, nor in the minority opinion of Lady Justice Gloster. For example, nothing is said about single sex education itself, or the different status of private schools for boys and girls and the reproduction of elites. The Equality Act 2010 exempts private schools and single-sex, publicly-funded schools from its provisions. A private decision of parents in favour of single sex education is upheld in law provided that they are able to pay for it, notwithstanding that the aggregation of such decisions would necessarily produce an 'expressive harm' to women on Lady Justice Gloster's arguments.

Indeed, such decisions would also produce the individual harms that were identified by the judgement – children at single sex schools are deprived of the opportunity to socialise with members of the opposite sex. Notice, too, that Ofsted charged the leadership team at Al-Hijrah with practices of segregation that were *in breach of British values* (and were unlawful in terms of the specifications of the Equality Act 2010). Clearly, however, British values do countenance gender segregation in education and, indeed, endorse them at the highest level of society. Moreover, that form of gender segregation is protected in law.<sup>76</sup>

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<sup>75</sup> Paragraph 28. Birmingham City Council (2014) *Investigation Report: Trojan Horse Letter (The Kershaw Report)*. 14 July. Available at: [https://www.birmingham.gov.uk/downloads/file/1579/investigation\\_report\\_trojan\\_horse\\_letter\\_the\\_kershaw\\_report](https://www.birmingham.gov.uk/downloads/file/1579/investigation_report_trojan_horse_letter_the_kershaw_report).

<sup>76</sup> Indeed, Pragna Patel of Southall Black Sisters (SBS) wrote separately that, "many observers misunderstood SBS and Inspire's intervention in the Al-Hijrah case as an attack on single-sex schools. That misses the point that gender segregation in minority communities is part of a wider fundamentalist project aimed not at empowering but disempowering girls." Pragna Patel, 11<sup>th</sup> January 2018, 'The story of a feminist victory against fundamentalists and gender segregation in UK schools', *Open Democracy*, Available here: <https://www.opendemocracy.net/en/5050/feminist-victory-fundamentalists-gender-segregation-uk-schools/>. This makes the argument of 'expressive harm' specific to minority religions, described as fundamentalist on the basis of seeking to practice segregation.

Publicly funded education has to meet different standards, but only in schools that are declared to be co-educational. The Trust responsible for Al-Hijrah school, for example, could have applied to create two separate schools for boys and girls in two adjacent buildings, or in a single building properly divided and offering similar facilities, as indeed, is the case with other schools in Birmingham (for example, schools associated with the King Edward VI Academy Trust and its single sex, selective grammar schools) and be exempt from criticism under the Act.<sup>77</sup>

In fact, the judgement elided the issue of ‘fundamental British values’ by declaring that, *in so far as it is protected in law*, gender equality is a British value, albeit not enjoined upon the well-off where the law makes exemptions. Sending your child to, say, Eton College, does not represent a failure to prepare him for life in modern Britain, even where the gender segregation it entails is more extensive because of the residential nature of the school. Moreover, such schools are strongly implicated in the reproduction of inequality, including gender inequality, and necessarily act as a limit on equal opportunities.

We have already seen that the Court of Appeal’s judgement had sought to restrict it to the individual right of girls and boys to socialise with members of the other sex. However, from the particular liberal perspective that motivates Lady Justice Gloster, those rights should also protect children from (oppressive) cultural values, whether religiously enjoined, or not. This is a classic justification of secular education and would imply that there should be no faith schools at all. However, given the centrality of Anglican and Roman Catholic education in the development of public education, such arguments come to focus on ethnic minorities and faiths other than Christianity. Ethnic minorities are the object of suspicion involving the need, in their case, to protect the rights of children against the choices of their parents. Here, the issue is that of supposed ‘illiberal cultural norms’, and these are associated by Lady Justice Gloster with ‘fundamentalist’ religious interpretations of Islam (and some Christian and orthodox Jewish interpretations of their religions, too), though, of course, faith schools other than those charged with ‘fundamentalism’ offer single-sex education).

Both Parkfield primary school and Al-Hijrah school are located in the area of Birmingham associated with the Trojan Horse affair. We will now turn to the issues it raises and how it has created the framework for thinking about the education of pupils from Muslim backgrounds and also provided the framing of the Parkfield and Al-Hijrah cases. As we have seen, it was also the only example of what the *Prevent Strategy 2015* termed as ‘entryism’, whose risks the new strategy sought to mitigate.

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<sup>77</sup> It might be noted here that Ofsted recently withdrew its downgrading on grounds of gender segregation of a Jewish faith school King David’s school in Manchester from outstanding to failing after the threat of legal challenge. No explanation was given, but possibly derived from the fact that the school ran three streams, one co-educational and two segregated by gender, which suggested that pupils and their parents could choose co-education. See, John Roberts (2019) ‘Ofsted quashes Jewish school’s ‘inadequate’ rating’, *Tes* 7 October. Available at: <https://www.tes.com/news/ofsted-quashes-jewish-schools-inadequate-rating>.

## Park View Educational Trust and the Birmingham Trojan Horse affair

Claims of a ‘plot to Islamicise’ schools in Birmingham became a major media story in March 2014, after it appeared that a letter to Birmingham City Council purporting to describe the plot had been dismissed for fear of creating difficulties with Muslim communities there. The initial reporting sparked rapid interventions first by the Government and, subsequently, by Birmingham City Council (BCC) in the form of special investigations of 21 schools by Ofsted, a report by the Education Funding Agency (EFA) on the Park View Education Trust (PVET) and its three schools (and also, separately, on Oldknow school, which had a Memorandum of Agreement with PVET), which came to be regarded as the locus of the ‘plot’. A further report was commissioned by the then Secretary of State for Education, Michael Gove – the Clarke Report – as well as a report commissioned by BCC – the Kershaw Report.<sup>78</sup> The fact of two such reports reflected the division of overall responsibilities – the DfE was responsible for academy schools, BCC for those that remained under local authority control, including academy schools prior to them changing their status.

The Clarke Report was unequivocal. There was, it said, “a sustained and coordinated agenda to impose upon children in a number of Birmingham schools the segregationist attitudes and practices of a hardline and politicised strand of Sunni Islam. Left unchecked, it would confine school children within an intolerant, inward-looking monoculture that would severely inhibit their participation in the life of modern Britain. In the context of schooling, it manifests itself as the imposition of an aggressively separatist and intolerant agenda, incompatible with full participation in a plural, secular democracy.”<sup>79</sup> It went on to argue that the plot was incubated at Park View school which, “sought to export its Islamising blueprint. Several members of Park View staff moved onto other schools in the area. This was often accompanied by attempts to change the school ethos and introduce compulsory faith practices into a non-faith school, in many cases without the approval of the headteacher.”<sup>80</sup>

Following the recommendation of the Clarke report, a number of professional misconduct cases were brought by the National College of Teaching and Leadership (NCTL) against the teachers.<sup>81</sup> The teachers, including its non-Muslim white female executive principal, were all associated with PVET.<sup>82</sup> Richard Kerbaj and Sian Griffiths reported in the *Times*, that more than 100 ‘Islamist’ teachers were involved in the ‘plot’ and that the NCTL were already

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<sup>78</sup> Clarke Report (2014) Report into Allegations concerning Birmingham Schools arising from the ‘Trojan Horse’ Letter. London, House of Commons. HC 576. Available at:

<https://www.gov.uk/government/publications/birmingham-schools-education-commissioners-report>;

Kershaw Report, *op cit*. For discussion of the various reports, see John Holmwood and Therese O’Toole, *op cit*.

<sup>79</sup> Clarke Report, *op cit*, paragraphs 5.1 and 5.2.

<sup>80</sup> *Ibid*, paragraph 6.5.

<sup>81</sup> This was an executive agency of the Department for Education responsible for teaching standards, which was replaced in April 2018 by the Teaching Regulation Agency with similar functions

<sup>82</sup> The schools were Park View, Nansen and Golden Hillock. A fourth school, Oldknow, was not formally part of PVET, but had a Memorandum of Understanding with it.

considering 30 separate cases.<sup>83</sup> In the event just 4 cases were brought against twelve teachers associated with four schools.

It was not only that the *reach* of the alleged plot was now dramatically reduced, so, too, was its *significance*. No charges of extremism were brought against the teachers, nor were there charges of bullying and intimidation of other staff.<sup>84</sup> The misconduct, apparently, was that of ‘undue religious influence’ in the schools. Even this would prove to be problematic. There was a failure to define the meaning of *undue* in the context of what, otherwise, is a statutory requirement in England to teach religious education and for there to be daily acts of collective worship in all publicly funded schools, whether designated as faith schools or not.

The Clarke Report, itself, was treated as ‘background’ and was not presented in evidence, with it being claimed that all witness statements were independent of it. The cases began in September 2015 and dragged on until they collapsed in May 2017 as a consequence of serious impropriety by lawyers acting for the NCTL,<sup>85</sup> including, inter alia, the revelation that witness statements for the prosecution had been drawn up in the light of statements given to the Clarke Report. Clearly it was not merely ‘background’ as had been asserted. This was something that had been vigorously denied by lawyers for NCTL and it meant that those statements and any other unused evidence from the Clarke Report in the possession of the NCTL legal team should have been subject to disclosure to the defence.

What was absent in the Clarke report and in all the media commentary was any interest in the *mechanisms by which a school could be taken over* (whether or not any ‘Islamists’ were involved). The fact that Park View school had been a failing school in 1996, but by 2012 was in the top 14% of schools in the country was also absent from nearly all media reports and official investigations. Indeed, the dominant narrative was that good headteachers were beset and bullied by parents and governors seeking improvement (notwithstanding the absence of any such charges in the NCTL hearings).

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<sup>83</sup> Richard Kerbj and Sian Griffiths (2015) ‘100 teachers face ban’, *The Times*, 5 April. Available at: <https://www.thetimes.co.uk/article/100-islamist-teachers-face-ban-s7b8j8skjvz>. They concluded the article with the comment, “News of the NCTL investigations comes as Tower Hamlets council in east London, from where several teenage girls have fled to join Isis in Syria, issued new guidance to parents. Tens of thousands of leaflets have been distributed, advising parents to “lock away” their children’s passports if they fear the youngsters may be planning to travel to Syria over Easter.”

<sup>84</sup> Charges were brought in one case, but dropped during the hearing. Some of the more lurid claims put forward by Clarke either did not make it through the NCTL checking process, or were challenged in the hearings, with the witnesses to them accepting the defence version. For example, the recording of an Al Qaeda ‘terrorist video’ was, in fact, a recording from a Panorama programme, done at the request of West Midlands police in advance of a session at the school on the dangers of radicalisation. The claimed teacher handout saying that wives had to consent to sex with their husbands was something some boys had printed off the internet with which to taunt girls. It was accepted that a special school assembly had been called to challenge the episode where it was said to be against both British law and Islamic teaching.

<sup>85</sup> NCTL (2017) *Teacher misconduct panel outcome: Mr Monzoor Hussain, Mr Hardeep Saini, Mr Arshad Hussain, Mr Razwan Faraz, Ms Lindsey Clark*. Available at: <https://www.gov.uk/government/publications/teacher-misconduct-panel-outcome-mr-monzoor-hussain-mr-hardeep-saini-mr-arshad-hussain-mr-razwan-faraz-ms-lyndsey-clark>

At the heart of the affair was a successful school and *it was its leadership team that was attacked by Government and media*. The educational success of Park View occurred in the context of 98.9% of its pupils coming from Muslim heritage backgrounds, with 74% in receipt of free school meals and just 7.4% with English as a first language. The school was designated a National Healthy School for its effective teaching of sex and relationship education, as we have seen. It was also designated a National Support School indicating the special expertise of its senior teachers and governors who were expected to lend their expertise to other schools.

It is precisely these achievements that made it the focus of the improvement strategies of both the local council and the DfE. The ‘takeover’ of other schools, and the formation of the Park View Education Trust itself, then, was at their behest and signed off by the Secretary of State for Education, Michael Gove. In other words, it followed the procedures in place at the DfE, for which minutes and other documentation were available to the Clarke Report. These represented a substantially different narrative to that of the ‘plot’ described and affirmed by both the Kershaw and Clarke Reports. In all cases, the ‘takeover’ of schools – their incorporation into a multi-academy trust under the sponsorship of Park View - was with the express approval of DfE and BCC officials on the basis of the effectiveness of the practices in place at Park View and the explicit understanding that the practices and experienced staff on secondment would be introduced into other schools.

Indeed, the success of Park View school reflects the real lessons of *Brown vs Board of Education*. One of the consequences of de-segregation in the US was to undermine separate schools for African American children and move the children into formerly white schools (a process resisted through ‘white flight’, residential segregation and differential funding for schools).<sup>86</sup> The academic performance of African American pupils declined, not least because their teachers from the closed-down African American schools were not brought into the formerly all-white schools. As a result, there was an absence of role models (and of teachers who could challenge the racist and lazy expectations of some existing white teachers) which had a detrimental impact on the performance of Black pupils. *Brown v Board of Education* identified ‘psychic harm’, but it did not ameliorate it. Instead, it reinforced the idea that incorporation into the white culture of schools would be associated with academic success.

Studies of African American and Latino pupils in the US suggest, instead, that success in schools derives from building self-confidence among pupils. This, in turn, involves positive cultural identification both with the dominant culture and that of their own ethnic (or religious) group. This is what Telles and Ortiz describe as ‘bi-cultural identification’.<sup>87</sup> They find that a lack of positive identification with their own ethnic group amongst pupils leads to a decline in academic performance (as does a singular identification with that ethnicity), as pupils internalise the dominant culture’s low valuation and expectations of them. Similarly,

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<sup>86</sup> For a recent discussion of the ‘color-blind’ way in which educational policies in the US bring about racialised outcomes, see Ursula Hackett and Desmond King (2019) ‘The Reinvention of Vouchers for a Color-Blind Era: A Racial Orders Account’, *Studies in American Political Development*, Online first.

<sup>87</sup> Telles, Edward E. and Vilma Ortiz (2008) ‘Finding America: Creating Educational Opportunity for our Newest Citizens.’ In Brian D. Smedley and Alan Jenkins (eds.) *All Things Being Equal: Instigating Opportunity in an Inequitable Time*. New York: The New Press.

Yasui and her colleagues show that positive ethnic identification is associated with psychological adjustment, while Wong, Eccles and Sameroff show that if pupils perceive themselves to be discriminated against, then this is associated with declining grades and weaker psychological resilience, which are mitigated by stronger ethnic identification.<sup>88</sup> This was a view that was also put forward by the Swann report of 1985, *Education for All*.<sup>89</sup>

The Swann report recommended that schools and curricula should reflect and provide for the cultural identities of children, as well as tackle direct and indirect discrimination, in order to raise the educational performance of minority ethnic children. The report also noted: “Far more can and should be done by schools to respond to the 'pastoral' needs of Muslim pupils, to ensure that there is a real respect and understanding by both teachers and parents of each other’s concerns and that the demands of the school place no child in fundamental conflict with the requirements of his [sic] faith.”<sup>90</sup>

It is here that the experience of Park View school becomes relevant. Unlike Al-Hijrah school, it was academically highly successful. Although part of the dominant Trojan Horse narrative was that religiously-motivated governors and parents had put pressure on successful headteachers (for example, the then Chief Inspector, Sir Michael Wilshaw made this claim),<sup>91</sup> it was the successful headteacher of Park View, Lindsey Clarke, and her senior team, who were pilloried, including by Sir Michael. Significantly, nothing unlawful under the Equality Act 2010 was claimed against the school. The school did have separate classes for girls and boys in physical education (and for one other lesson scheduled for when the other group was taking PE), but this followed normal practice and DfE guidelines.

The school also had a policy that ruled out the physical expression of personal relationships among pupils while at school, something that was regarded as ‘moralistic’ and an indication of conservatism. However, this was a policy that Sir Michael Wilshaw had also enacted when he was headteacher at Mossbourne school. More recently ‘best friends’ and ‘hugs’ have been banned in many primary schools without them being condemned in the same way.<sup>92</sup> In a different context, the school’s rules might have been regarded as ‘feminist’, rather than ‘Islamic’, and indicative of a proper safeguarding approach in seeking to protect pupils from harassment and sexual bullying. Indeed, in September 2016, the House of Commons Women and Equalities Committee published a report on the topic,<sup>93</sup> including concern

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<sup>88</sup> Yasui, Miwa, Carole La Rue Dorhan and Thomas J. Fishion, Thomas J. (2004). ‘Ethnic identity and psychological adjustment: A validity analysis for European American and African American adolescents’, *Journal of Adolescent Research*, 19: 807-825; Wong, C., J. Eccles and A. Sameroff (2003). ‘The influence of ethnic discrimination and ethnic identification on African American adolescents’ school and socioemotional adjustment’. *Journal of Personality*, 71: 1197–1232.

<sup>89</sup> Swann Report (1985) *Education for All: Report of the Committee of Enquiry into the Education of Children from Ethnic Minority Groups*, London: HMSO. Available at:

<http://www.educationengland.org.uk/documents/swann/swann1985.html>

<sup>90</sup> *Ibid*, page 773-4, paragraph 6.10.

<sup>91</sup> Gary Marks (2014) ‘Trojan Horse: Sir Michael Wilshaw's statement in full’, *Birmingham Mail*, 9 June.

Available at: <http://www.birminghammail.co.uk/news/midlands-news/trojan-horse-sir-michael-wilshaws-7240705>.

<sup>92</sup> Peter Wilby (2010) ‘Is Mossbourne academy's success down to its traditionalist headteacher?’, *Guardian*, 5 Jan. Available at: <https://www.theguardian.com/education/2010/jan/05/mossbourne-academy-wilby-profile>.

<sup>93</sup> Education Select Committee (2015) ‘Extremism in schools: the Trojan Horse affair’. 11 March. Available at: <https://www.publications.parliament.uk/pa/cm201415/cmselect/cmeduc/473/47302.htm>.

about behaviour that tended to be accepted as ‘low level banter’, which was widely reported.<sup>94</sup> Susie McGuinness, writing in *The Daily Telegraph*, has recently advocated a ‘zero tolerance’ policy in schools.<sup>95</sup> In this context, it is significant that Amanda Spielman has instructed Ofsted Inspectors to question primary school girls who wear the hijab, suggesting it could be seen as ‘sexualising’ them,<sup>96</sup> while the recommendations of the Women and Equalities Committee have yet to be implemented.

The claim in the professional misconduct cases was that the school had allowed undue religious influence and had acted as if it were a ‘faith’ school rather than a ‘secular’ state school. However, all schools in England are required by law to teach religious education and to have a daily act of worship. The latter need not be Christian and can be varied in line with the background of the pupils – in community schools ‘determinations’ for other than Christian worship are the responsibility of local Standing Advisory Committees on Religious Education (SACREs). Park View had had a ‘determination’ for Islamic collective worship since 1996. This had been due for renewal (something that happens every 5 years) in 2012, albeit that the Department for Education, which had taken over responsibility for determinations for all academy schools, had not put in a place a mechanism to do it.

It is hard to escape the conclusion that the problem of Park View was the very fact that it had an ‘Islamic ethos’, rather than a ‘Christian ethos’ (or a secular ethos, disregarding formal legal requirements), and that this elicited suspicion, especially concerning the ‘values’ expressed within the school. Yet this judgement was made despite the success of the school in terms of the academic performance of its pupils. For example, Tim Boyes, CEO of Birmingham Education Partnership, appointed by Birmingham City Council to oversee schools after the Trojan Horse affair, suggested, “the problem that sits behind Trojan Horse is not about Islamic extremism, it’s about schools unhelpfully locked into the closest parameters of their neighbourhoods.”<sup>97</sup>

Yet, the very academic success of the school suggests that it had transcended parameters of inequality that are usually associated with underperformance. The community in which it was located - Alum Rock - was, in the Casey Review’s terms, deprived and residentially segregated with a high proportion of Muslims, but its school was providing an exemplary education. Ofsted inspection reports during that period emphasise how the school had worked with the local community to build confidence and engagement with the school and its academic aspirations for the children. Its pupils, including girls, were well-prepared for life in modern Britain, in particular for jobs and for further and higher education. Ofsted, in

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<sup>94</sup> Editorial (2016) ‘The Guardian view on sexual harassment in schools: action is needed’, *Guardian*, 13 September. Available at: <https://www.theguardian.com/commentisfree/2016/sep/13/the-guardian-view-on-sexual-harassment-in-schools-action-is-needed>.

<sup>95</sup> Susie Guinness (2017) ‘A zero tolerance policy is the only way to stop sexual harassment in schools’, *Telegraph*, 21 September. Available at: <http://www.telegraph.co.uk/women/life/zero-tolerance-policy-way-stop-sexual-harassment-schools/>

<sup>96</sup> Richard Adams (2017) ‘Inspectors to question primary school girls who wear hijab’, *Guardian*, 19 November. Available at: <https://www.theguardian.com/education/2017/nov/19/school-inspectors-to-question-primary-school-girls-who-wear-hijab>.

<sup>97</sup> Emma McKinney (2015) ‘Trojan Horse One Year On: Headteacher who warned the government five years ago reveals plans to create ‘families’ of schools’, *Birmingham Mail*, 23 April. Available at: <http://www.birminghammail.co.uk/news/trojan-horse-one-year-on-9095037>.

its January 2012 report, had judged its students to be “very thoughtful, independent and confident young people.”<sup>98</sup>

In the context of concerns about pupil achievement, a recent Education Policy Institute report on pupil performance makes interesting reading beyond the headlines about pupils from poor backgrounds falling behind.<sup>99</sup> The report uses data on White British pupils as a whole as the reference group and then makes a series of comparisons. One is of disadvantaged pupils (measured by reference to the pupil premium and receipt of free school meals) with the baseline. Other comparisons are of ethnic minority pupils to the baseline. This latter comparison will be affected by the population characteristics of the different groups. For example, there are likely to be fewer pupils from advantaged backgrounds in most ethnic minority groups compared with the White British category. Thus, the fact that most ethnic minority groups either outperform (Chinese, Indian, African, Bangladeshi) or come very close to (Pakistani) the White British average is startling, yet it was unremarked in the press.

The situation was similar in Birmingham at the time of the Trojan Horse affair. The Kerslake Report on the performance of Birmingham City Council deferred any discussion of education, but it did publish a statistical appendix which included data on Birmingham compared with comparable cities (Leeds, Liverpool, Manchester, Newcastle Upon Tyne, Sheffield, and Glasgow) as well as the country as a whole.<sup>100</sup> Birmingham was more diverse than other cities, and England as a whole, with higher levels of deprivation, higher unemployment and a higher number of people claiming in-work benefits. Yet it was above the national average and outperformed all other cities for the proportion of schools with outstanding Ofsted inspection outcomes and 5 GCSEs at A-C grades. After the Trojan Horse affair, it has fallen back to just below the national average, just as the individual schools at the centre of the affair have fallen back in their performance to just below the average for Birmingham.

In the light of the EPI data, Asian heritage parents and their children would appear to be integrated with British values of education achievement and opportunities.<sup>101</sup> This has arisen as a consequence of inclusive school policies that involve dialogue with parents and

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<sup>98</sup> Page 4. Ofsted (2012) *Ofsted Inspection Report, Park View Business and Enterprise School*, Inspection number 376921, 11–12 January. Available here: <https://files.api.ofsted.gov.uk/v1/file/1889019>.

<sup>99</sup> Education Policy Institute (2019) *Education in England: Annual Report 2019. Research Area Vulnerable Learners and Social Mobility*, July 31<sup>st</sup>. Available here: <https://epi.org.uk/publications-and-research/annual-report-2019/>.

<sup>100</sup> Kerslake Report (2014) *The way forward: an independent review of the governance and organisational capabilities of Birmingham City Council: Supporting Analysis*. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/390167/Birmingham\\_Evidence\\_Pack\\_for\\_publication\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/390167/Birmingham_Evidence_Pack_for_publication_FINAL.pdf).

<sup>101</sup> For similar findings, see, Steve Strand. (2015) *Ethnicity, deprivation and educational achievement at age 16 in England: Trends over time*. Report to the Department for Education. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/439867/RR439B-Ethnic\\_minorities\\_and\\_attainment\\_the\\_effects\\_of\\_poverty\\_annex.pdf.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/439867/RR439B-Ethnic_minorities_and_attainment_the_effects_of_poverty_annex.pdf.pdf).

respect for their cultural and religious values. However, the representation of British Muslims as religiously backward and the perceived problem of the accommodation of religious difference has, however, had serious consequence of increased withdrawal of children from schools and the use of educational establishments providing tuition below the hours that would make them subject to Ofsted inspections.<sup>102</sup> The former Chief Inspector of Schools, Sir Michael Wilshaw drew attention to this as being one consequences of the measures taken after the Birmingham Trojan Horse affair.<sup>103</sup> The failure to resolve issues arising from religious difference has potentially serious consequences for children and their achievement. A recent report in the Times Newspaper, using the Freedom of Information Act, states that over 400 pupils have been withdrawn from schools in Birmingham in the last year, a rise of 15% over the previous year.<sup>104</sup>

## Conclusion

The failure to reconcile the different rights associated with the Equality Act through a dialogue that secures inclusive schooling has serious consequences for parents and children, including a serious impact upon their opportunities. The evidence we have presented is that the particularities of religious commitments and cultural difference do not conflict with commitments to ‘democracy, the rule of law, individual liberty, and respect and tolerance for different faiths and beliefs’. This should not surprise us. From the perspective of liberal constitutionalism, it is precisely such principles underpinning participation in the public sphere that enable living with difference in multicultural societies. What has changed is public attitudes toward multiculturalism itself and to the role of religious expression, representing the latter as potentially backward and in need of education.<sup>105</sup>

In this report, we have traced the way the Prevent agenda has utilised a concept of ‘fundamental British values’ against a religious ethos in the schooling of Muslim pupils. This has been directed to a lesser extent against other religious minorities, such as orthodox Jews (Charedi schools, in particular). The arguments are, however, available to be used against the schools of other minority religious groups, so far exempted from particular

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<sup>102</sup> David Foster and Shadi Danechi (2019 *Home Education in England*, House of Commons Library Briefing Paper No 5108. Available at: <file:///C:/Users/johnh/Downloads/SN05108.pdf>

<sup>103</sup> Sir Michael Wilshaw, 14 July 2015, ‘Advice letter from Sir Michael Wilshaw, Her Majesty’s Chief Inspector, on the latest position with schools in Birmingham and Tower Hamlets’. Available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/444746/Advice\\_letter\\_from\\_HMCI\\_on\\_the\\_latest\\_position\\_with\\_schools\\_in\\_Birmingham\\_and\\_Tower\\_Hamlets.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/444746/Advice_letter_from_HMCI_on_the_latest_position_with_schools_in_Birmingham_and_Tower_Hamlets.pdf).

<sup>104</sup> Neil Johnston, *The Times*, September 20 2019, ‘LGBT protests: Pupils pulled out of schools over gay relationship classes’. Available at: [https://www.thetimes.co.uk/edition/news/ministers-put-gay-lesson-anger-in-too-difficult-box-896qtpkpg?wgu=270525\\_54264\\_15694001555171\\_da771b1da2&wgexpiry=1577176155&utm\\_source=planit&utm\\_medium=affiliate&utm\\_content=22278](https://www.thetimes.co.uk/edition/news/ministers-put-gay-lesson-anger-in-too-difficult-box-896qtpkpg?wgu=270525_54264_15694001555171_da771b1da2&wgexpiry=1577176155&utm_source=planit&utm_medium=affiliate&utm_content=22278)

<sup>105</sup> In this context, Chief Inspector of Education, Children’s Services and Skills, Amanda Spielman, stated at a conference on fundamental British values in education: “Most children spend less than a fifth of their childhood hours in schools and most of the rest with their family. And so if children aren’t being taught these values at home, or worse are being encouraged to resist them, then schools are our main opportunity to fill that gap.” Amanda Spielman (2018) ‘Speech at the Church of England Foundation for Educational Leadership’, 1 February. Available at: <https://www.gov.uk/government/speeches/amanda-spielmans-speech-at-the-birmingham-school-partnership-conference>.

scrutiny. Civil society groups, especially those associated with women's rights and LGBT rights have also been mobilised to represent religious faith as backward and illiberal and, as we have seen, that argument is also put forward by groups antagonistic to religion within schools.

The Equality Act 2010 has been utilised, notwithstanding that its point of reference is the Human Rights Act 1998 which senior conservative politicians (including, Theresa May) have declared they wish to abolish (since its purpose was to incorporate into UK law the European Convention on Human Rights). The Human Rights Act of 1998 includes the right to freedom of thought, conscience and religion, which in turn endorses the provisions of the UN Declaration of Universal Human Rights Act (1948) and Article 18 of its Social and Political Covenant, paragraph 4. This states that its signatories will have, "respect for the liberty of parents ... to ensure the religious and moral education of their children in conformity with their own convictions."

Government policy under Prevent, now seeks to displace that right, in the name of safeguarding children from the religious convictions of their parents. They have done so in the context of a manufactured concern with a problem of integration of British Muslims and an Islamophobic representation of Islam as a backward religion at odds with British values. A publicly-funded school organised on 'liberal' principles, it is argued, can function to educate parents as well as children, but will, at least, safeguard children from parental values.

This argument was recently made by the Chief Inspector of Education, Children's Services and Skills, Amanda Spielman, at a conference on fundamental British values in education: "Most children spend less than a fifth of their childhood hours in schools and most of the rest with their family. And so if children aren't being taught these values at home, or worse are being encouraged to resist them, then schools are our main opportunity to fill that gap." She went on to argue that, "this, I believe, was where the so-called Trojan Horse schools failed. Not only were there issues with promoting British Values in many of those schools, but in some cases members of the community were attempting to bring extreme views into school life. The very places that should have been broadening horizons and outlooks were instead reinforcing a backward view of society."<sup>106</sup> As we have suggested, there is, in fact, no evidence for this view.

However, just as the privileges of the wealthy remain intact through the (liberal) exemption of privately purchased education in the independent sector, so it is acknowledged that the full state takeover of religious schools in the publicly funded sector would be too expensive, requiring the compensation of the Anglican and Roman Catholic churches for their assets invested in education. Moreover, it would go against the otherwise dominant direction of the privatisation of education through the academies programme. The circle is squared by declaring that Christian religion is, by and large, unproblematic and that the problem lies only with other religions. Thus, Spielman states further, "one of [the] values as articulated in the definition of British values is 'mutual respect for and tolerance of those with different faiths and beliefs and for those without faith'. It is a happy fact that almost every Church of

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<sup>106</sup> Amanda Spielman (2018) 'Speech at the Church of England Foundation for Educational Leadership', 1 February. Available at: <https://www.gov.uk/government/speeches/amanda-spielman-speech-at-the-birmingham-school-partnership-conference>.

England school we visit takes that value seriously.”<sup>107</sup> The implication is that there will be a particular focus on minority religions associated with Britain’s ethnic minority populations and that their freedoms of religious expression will be under particular scrutiny. This is an approach which would itself be at odds with the Equality 2010 Act’s provisions for equal and non-discriminatory treatment.

The Birmingham Trojan Horse affair destroyed the livelihoods and reputations of highly committed and professional governors and teachers and brought its local Muslim communities into deep disrespect. Its highly committed and professional teachers and governors have, nonetheless, had their reputations and livelihoods destroyed. In the name of British values, they have been denied due process that the commitment to the rule of law would seem to prescribe.<sup>108</sup>

The Prevent strategy risks civil liberties for everyone by its attempt to criminalise values and beliefs, and to conflate traditional, even conservative, values with extremism. This has particularly negative consequences for British Muslims. We should not be surprised that it is itself built upon an injustice and a failure to respect due process in the treatment of governors and teachers. The one breach of human rights about which the government and its liberal supporters have remained silent is that of the ‘Right not to be punished for something that is not against the law’, something set out in Article 7 of the Human Rights Act 1988.

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<sup>107</sup> *Ibid.*

<sup>108</sup> Of the twelve teachers made subject to professional misconduct panels, one was acquitted and the cases against ten others were discontinued. Only one teacher was found guilty prior to the revelation of undisclosed evidence in the other cases.