

## INDIVIDUALISATION

Individualisation marks a shift in our social relations which values individual autonomy over social inter-connectedness. It emerges most clearly from the work of Ulrich Beck – but perhaps we can trace in the debate about individualisation some of the concern in earlier Marxist theory about the drift from social solidarity towards an atomisation through which individuals are separated one from another and social cohesion weakened. The proponents of individualisation, however, suggest that their notion of the primacy of the rights of the individual rests on ensuring a modicum of social equality which in turn would generate a greater sense of security among the populace with the result that individualisation becomes both possible and desirable.

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### The emergence of individualisation from the modernity/postmodernity debate

There is a debate among social theorists as to whether or not the process of modernity is yet complete and whether or not we have moved into postmodernity. For this discussion click this link to [postmodernity](#).

While the different concepts suggest that they are entirely different, it seems to me that modernity and postmodernity are rubbing along together simultaneously in a number of contexts. The modernists consider that there are too many aspects of the differentiation of modern society which have not yet been resolved for us to declare that we have succeeded in progressing to another phase; whereas the postmodernists consider that we moved into postmodernity when citizens became thought of as being consumers rather than producers, when our social ideologies were sufficiently deconstructed so that it became possible to liberate individuals to behave differently, and when it was possible to observe that traditional patterns of work, family and personal life had changed sufficiently radically.

Individualisation is based on a theory of late modernism. There are two parts to their system: risk theory and individualisation theory. In defining “late modernity” in his best known work *The Risk Society*,<sup>1</sup> Ulrich Beck presents a category of risks faced by society which have been created entirely by human progress – such as global warming. In this sense, late modernity is a period of social change prompted by the need to cope with the risks generated by modernity itself.<sup>2</sup>

There are also a large number of existential risks created by human progress which relate to the choices and challenges posed to individuals by the possibilities which are offered to them by modernity.<sup>3</sup> The impact on important social phenomena like the family, work patterns and so on has created a new realm of risk and of crises for individuals.<sup>4</sup> This sort of observation is a common feature of much social theory and sociology. What is important is that Beck argues that it offers positive opportunities to individuals to dictate their own biographies in contradiction to traditional social patterns which have tended, it is suggested, to dictate to individuals far more the narrow range of options which were open to them.<sup>5</sup>

Beck and Beck-Gernsheim have developed a tapestry of ideas relating to individualisation out of these threads. Already present as a second current in *The Risk Society*, these ideas have been pulled together in the recently-published collection titled *Individualization*.<sup>6</sup> It is to those ideas I now turn.

### **Beck and Beck-Gernsheim’s individualization theory**

The book published by Ulrich Beck and Elisabeth Beck-Gernsheim as *Individualization* is in truth a collection of papers covering issues as diverse as the progression of norms beyond traditional social myths, the staying power of outmoded “zombie categories” of social ideology,<sup>7</sup> the political impact of globalisation, the possibilities for women in a life lived for themselves rather than simply for others, changing demographics in family structures, society’s inability to care for its elderly, and the philosophical progenitors of freedom in our politics from De Tocqueville and Nietzsche (discussed below).

#### *Individualisation constituting a break from tradition*

In essence, individualisation theory recognises that traditional socially-imposed models of lifestyle, ethics and so forth have been displaced by a “standard deviationism” in

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<sup>1</sup> Beck, *The risk society*, Sage, 1992.

<sup>2</sup> See generally, Beck, Giddens and Lash, *Reflexive modernity*, Polity, 1994.

<sup>3</sup> Giddens, “Risk and responsibility”, [1999] 62 M.L.R. 1.

<sup>4</sup> Beck, *The risk society*, Sage, 1992.

<sup>5</sup> E.g. Giddens, *The third way*, Polity, 1999.

<sup>6</sup> Beck and Beck-Gernsheim, *Individualization*, Sage, 2002.

<sup>7</sup> That is, ideas which are out-of-date but to which people nevertheless cling out of habit, ideology or sentiment.

which we each develop our own idiosyncrasies and our own biographies. In other words we do not need to behave in the way our parents or society tell us to: rather, we can choose our own way.

Globalisation necessarily adds to this hotchpotch of lifestyles, ambitions and so forth: we see and collect new ideas from around the world and add them to our lifestyles. How many kitchens do not have Italian pasta, Columbian coffee or Chinese food in a silver take-away tray? Buddhism, Hinduism and crystal divination can be found cheek-by-jowl in our major cities. Globalisation, for all of its economic and political problems, has added a new zest to the lives of individuals. No longer is there necessarily the same homogeneity as we were always led to believe we would find in any given city: we were tutored to find a single religion, a single skin colour, and a single worldview. Of course that overlooks the fact that, for example in great cities like London, there has always been a much greater integration of races, cultures and religions – Shakespeare’s London, Johnson’s London and my London were all diverse, vibrant and filthy.

The underlying political message of individualisation is that our politics can be reinvigorated by celebrating this individualisation and by allowing each individual an equal voice in our social development rather than the rough approximations of traditional democracy which allows people only to choose from a narrow range of set menus. Beck’s conception is optimistic, in contrast (as will emerge below) to Bauman who sees in this process only a weakening of security and of communal bonds with a resultant creation of greater anomie than ever.

*The process of individualisation; “the average exoticism of everyday life”*

The core of the thesis is that the traditional is on the wane. Societies in which inhabitants lived within walled towns, shared common values and had broadly equivalent life experiences and expectations are now a figment of history.<sup>8</sup> There is no longer a simple, single shared religious faith in most countries, for example.<sup>9</sup> Key changes have been wrought by the rise of feminism, the alteration of family structures and the fact that economy is organised globally to an extent it was not before.

The core to individualisation theory is an understanding that there is no longer, in Western societies, anything which could properly be described as a normal person. Rather, “everyone is into something”, and each of us is said to identify herself by reference to her own context, her own mythology and her own foibles. Beck quotes Hans Magnus Enzensberger’s exuberant examples of what he terms the “average exoticism of everyday life”:<sup>10</sup>

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<sup>8</sup> The extent to which this is true for everyone is question by dissentient voices like Bauman, considered below.

<sup>9</sup> Beck and Beck-Gernsheim, *Individualization*, Sage, 2002, 9.

<sup>10</sup> *Ibid.*, 13.

'It is most obvious in the provinces. Market towns in Lower Bavaria, villages in the Eifel Hills, small towns in Holstein are populated by figures no one could have dreamed of only thirty years ago. For example, golf-playing butchers, wives imported from Thailand, counter-intelligence agents with allotments, Turkish Mullahs, women chemists in Nicaragua committees, vagrants driving Mercedes, autonomists with organic gardens, weapons-collecting tax officials, peacock-breeding smallholders, militant lesbians, Tamil ice-cream sellers, classics scholars in commodity futures trading, mercenaries on home leave, extremist animal-rights activities, cocaine dealers with solariums, dominas with clients in top management, computer freaks community between Californian data banks and nature reserves in Hesse, carpenters who supply golden doors to Saudi Arabia, art forgers, Karl May researchers, bodyguards, jazz experts, euthanasiasts and porno producers. Into the shoes of the village idiots and the oddballs, of the eccentrics and the queer fish, has stepped the average deviationist, who no longer stands out at all from millions like him.'<sup>11</sup>

The pattern is familiar. Put like this – although it may feel a little like a television scheduler's blueprint for post-watershed documentaries – there is a familiar ring to the notion that each one of us is different. Or, possibly, that everyone else is different from how we perceive ourselves when safe behind our own front doors; different from what we might think of as “normal” even if that definition of normality is by reference simply to the way we choose to live our own lives. Rather than it being a passive observation that people are different, maybe individual citizens should determinedly seek out their own differences as part of forging an identity.

It might not be too far-fetched to suggest that among the only things which make us the same are the facts that we are expected to be subject to the same laws, that our common biology makes us react in broadly similar ways to medical treatment and the same problems of phenomenology<sup>12</sup> apply to us all. The question is therefore, in relation to equity, how should the law account for these differences between us as individuals or are there sufficient and suitable reasons for the law to treat us all as identical units when we appear before the justice system.

### *Identities in a runaway world*

The notion of a runaway world is familiar in this order of social theory.<sup>13</sup> Beck is concerned that individuals are left “to wander between functional worlds”<sup>14</sup> in an increasingly differentiated society. The weakness of the welfare state is then said to be in its continuation in making individuals and not groups the recipients of benefits and thus

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<sup>11</sup> Enzensberger, 1992, 179.

<sup>12</sup> That is, how do we account for ourselves as embodied entities encountering the world from inside our own minds through our five senses.

<sup>13</sup> Beck and Beck-Gernsheim, *Individualization*, Sage, 2002, 22; Giddens, *The Runaway World*, Profile, 1999.

<sup>14</sup> Beck and Beck-Gernsheim, *Individualization*, Sage, 2002, 23.

underlying the principle that people are required to organise more of their own lives.<sup>15</sup> The result is “elective biographies” for citizens and a resultant atomisation of social relations which leaves individuals responsible for their own lives more and more.<sup>16</sup> The new social connection must be based on “altruistic individualism” rather than on any pre-existing social connections.<sup>17</sup> The changes are most evident for women<sup>18</sup> and in the proliferation of family models as alternatives to the nuclear model.<sup>19</sup>

### *Philosophical bases for individualisation*

Beck and Beck-Gernsheim set out their individualisation as being concerned with a very different sense of modernity from many of the key philosophical conceptions of that idea:

‘The question is: what is modernity? The answer is: not just “instrumental rationality” (Max Weber), “optimal use of capital” (Karl Marx), or “functional differentiation” (Talcott Parsons, Niklas Luhmann), but supplementing and conflicting with these, it is *political freedom*, citizenship and civil society ... meaning morality and justice are not pre-ordained ... Quite the reverse is true. Modernity has an independent, living and simultaneously ancient and highly up-to-date wellspring of meaning in its midst: political freedom. ... Modernity accordingly means that a world of traditional certainty is perishing and being replaced, if we are fortunate, by legally sanctioned individualism for everyone.’<sup>20</sup>

Therefore the centrepiece of individualisation is political freedom, based in part on changing social aspirations towards a better quality of life rather than simply higher incomes or greater consumption.<sup>21</sup> This is a form of lifechoice which may sound familiar to any university academic: you take less money than you might earn otherwise but hope to get a better lifestyle and more control over your own time in return. Within this hankering for freedom, it is said, there is also a greater understanding of the need for increased co-operation and an understanding that one’s choice of lifestyle may impact on the environment and on the rights of others.

The roots of this freedom are identified first with de Tocqueville who saw in American democracy the need for a great level of political freedom so that individuals will come to feel deeply connected with that polity and so develop social attachments organically.<sup>22</sup> The question bound up with this notion of freedom is whether people will hanker after freedom in this way unless they also have a sense of security which in turn may require some level of equality. Beck enthuses over the need for equality to act as a base for political freedom. His conception of equality here is that sort which is necessary to

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<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*, 24.

<sup>17</sup> *Ibid.*, 28.

<sup>18</sup> *Ibid.*, 54.

<sup>19</sup> *Ibid.*, 85.

<sup>20</sup> *Ibid.*, 157.

<sup>21</sup> *Ibid.*, 161.

<sup>22</sup> *Ibid.*, 172.

promote a sense of security and which does not require an homogeneity among people but rather constitutes an equality which ensures the basis of their political freedoms. This, it is suggested, tallies with the conception of equality of access to legal rights and so forth which is considered below. This understanding of equality is loosely connected in Beck's narrative with Nietzsche's creative individualism whereby this political freedom will set people free to express themselves and to create their own lifeworlds.<sup>23</sup>

Among the questions they leave unanswered are the way in which the individual is shaped by the social, how we account for globalisation's apparent contentment to ignore the plight of the poor around the world, how individuals currently excluded from social goods are to be included within them, why they think that atomised individuals can always be relied upon to act altruistically when the experience of the poor indicates that that is far from the case, and how exactly we can expect patterns of individual goals to mesh into communal spirit. These issues will be considered in the following discussion.

### *Individualisation has no answer to poverty and social exclusion*

What is equally problematic is the evidence of social exclusion which theorists such as Bourdieu have been astute in pointing out to the individualists, arguing that a welfare state is the only viable solution to social problems rather than more individualisation. Beck's response to this criticism is to reflect that more community is not necessarily a positive thing by pointing to the German experience in the 1930's of persecuting minorities. This is not, it is suggested a full response to Bourdieu's assertion that the phenomenon of poverty nevertheless constitutes a very great challenge to this idea of individualism. Beck deals with Bourdieu's complaint by compacting (incorrectly in my view) Bourdieu's approach with that of the American communitarians,<sup>24</sup> for whom community is an artificial result of imposing conservative norms of behaviour on societies on pain of loss of benefits and other social goods. By examining the communitarian approach to these issues it is easier for Beck to suggest that enlightened individuals making their own lifechoices are more likely to subscribe to broadly permissive approaches to such questions.<sup>25</sup>

### **The socially-constructed individual**

What remains within the concept of individualisation is an understanding that being individual in the sense of being distinct and apart from all other people would be

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<sup>23</sup> Beck and Beck-Gernsheim are at their weakest perhaps in making clear their own political programme, once they have declared themselves to be stepping out into the political arena. Their polemic, as the argument becomes at this stage, is directed against pessimists of the new era – indeed it is probably generally addressed at anyone who considers us to be experiencing that form of dystopian postmodernity associated with *Bladerunner* as opposed to a late modernity in which the modern world is throwing up new opportunities for us.

<sup>24</sup> E.g. Etzioni, *The moral dimension*.

<sup>25</sup> Beck and Beck-Gernsheim, *Individualization*, Sage, 2002, 166.

insufficient. Human beings are necessarily weaned through a process of inter-action with other human beings, as considered below.

Within Beck and Beck-Gernsheims' terms, individualisation relies on a level of security to be successful. It is said that for individuals to be sufficiently free to become the sorts of individuals which they model, then they need to feel sufficiently secure. In times of insecurity, the concern for freedom retreats behind a desire that society provide a bulwark against insecurity. The welfarism which grew in the wake of the 1939-45 war in the West is something which sought to remedy that insecurity and to provide a metaphorical "social family" which would carry the individual from cradle to grave.

With the confidence of western society in its democracy and in the absence of the total wars of the first half of the twentieth century in mainland Europe, the popularism of welfarism and the obligation to pay for such welfare became electorally less popular than an individualism floated on (promises of) greater economic security.

However, Beck and Beck-Gernsheim point out that this security in itself is not possible without a measure of equality such that everyone understands themselves to be secure precisely because they occupy the same entitlements as each other in relation to society's basic goods. The nature and extent of this equality is not explored in detail. It is an interesting notion that individualisation is not a process which could possibly proceed without sufficient equality to reassure people that there is a level of security for them as individuals.

This possibly surprising turn in the theory raises two further questions. First, to what extent is the individual socially-generated? Second, to what extent can we say that there is sufficient social confidence in the minimum levels of equality necessary to found security?

The thinking underpinning much social theory at the turn of the millennium was that the onset of civilisation had constituted a decisive turn in the relations between individual human beings and the societies of which they formed a part. In Freudian terms this constituted an uncomfortable match of instinctive desires with socially-imposed restrictions.<sup>26</sup> Means of socialisation were developed by those societies which entered an industrial revolution, although the changes themselves were evident before the process of industrialisation and urbanisation.

The changes, principally, were connected with the training which was required of individuals before they would be considered suitable for the roles which were either selected for them or which latterly they selected for themselves.<sup>27</sup> For example, training to become a lawyer, to take holy orders or simply to be apprenticed to a trade all took young people and subjected them to a regimented period of training.

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<sup>26</sup> Freud, *Civilisation and its discontents*, Penguin.

<sup>27</sup> Elias, *The society of individuals*, Continuum, 1998.

The broadening of access to schooling and subsequently of compulsory schooling created a novel hiatus between childhood and adulthood because it introduced between those two stages a period of time when the biological adult was still considered not to be an adult because he or she was still undergoing schooling or training. In the twentieth century such people became the more important demographic of teenagers with their own youth culture and so forth.

What is significant is that this period of training inculcated into the young many of the values of the dominant social ideology,<sup>28</sup> only vesting them with the badges of success once they had graduated from school or training.<sup>29</sup> At one level failure to be properly inculcated led to exclusion from the technical social sub-groups which controlled law, medicine and other professions, whereas at another level to deviate significantly from these social norms gave rise to a risk of incarceration as part of the great confinement of the late medieval period.<sup>30</sup>

Thus the socially-conditioned human being was generated over time, not simply as a passive recipient of feudal power but as a contributor to industrial society. Such societies became dependent upon the technical expertise of individuals skilled in their own areas of expertise and not simply another unit in a general pool of unskilled labour.<sup>31</sup> Behind that social conditioning, however, human beings remained individual in that they continued to perceive the world through their own eyes, to hear the world through their own ears and feel the world through their own touch. The difficulties of phenomenological philosophy are grounded in this awkward combination of social conditioning and individual perception.

As Elias conceives of the middle ground between these two poles, individuals are socially generated in that they require inter-action with other human beings to wean them initially, conversation with other human beings to develop their language faculties and so forth.<sup>32</sup> The individual is necessarily linked to society, that is to other human beings, from the moment of birth. It is impossible to conceive of human beings, in both senses, without the presence of other human beings.

### **Who is the subject?**

The individual is then the most complex problem we face. Our understanding of the individual before the law may have gone through a number of ages. The first age might be said to be a recognition straightforwardly that the individual is entitled to appear as a claimant or a defendant before the law and to have the principles of that law applied in such litigation.

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<sup>28</sup> *Ibid.*

<sup>29</sup> Foucault, *The archaeology of knowledge*, Routledge.

<sup>30</sup> Foucault, *The birth of the clinic*, Routledge.

<sup>31</sup> Elias, *The society of individuals*, Continuum.

<sup>32</sup> *Ibid.*

### *Freudian individual*

For many socio-legal thinkers, the individual may have been created in a second age in which the Freudian concept of the self places us in front of the law precisely so that our basest desires and uncontrollable urges are capable of some control by this civilisation.<sup>33</sup> For Marcuse writing after the second world war we were beyond the possibility of the Freudian individual because modern society had created a mass such that the ambitions and personalities of the mass of society became commoditized (that is, they became identical). In this age people became consumers of property rather than skilled producers of their own lives. However, in the 1960's theorists would begin to identify a shift back to individualisation whereby this mass of people were broken down back into individuals sufficiently empowered to forge their own life projects. In both of these movements, of course, the movement of society is less like a movement of the whole population in a single box and more like a comet whereby groups move in a lump at first but the majority of the population only catch up with the general trend over time; by which time the vanguard may have switched again.

Interestingly by the 21<sup>st</sup> century we seem to be caught amusingly between the two poles: all marketing focuses on treating the consumer as an individual, just as politics treats individuals as individuals, while in fact the products which are being pumped at those individuals is in fact a process of selling identical life projects to all of these individuals in an identical way. Take *Topshop* or *H&M* for example: if you ever spend a part of Saturday afternoon in one of those hell-holes (particularly if you are waiting for a friend to try on the umpteenth top) you will see trendy people and straight people, pubescent teenagers and forty-somethings clinging to their youth, moneyed and non-moneyed people all seeking a cheap addition to their wardrobes (either because it's all they can afford or because their wardrobes are ever growing): all of them are in their mind's eye creating their very person, individual looks by purchasing the same mass produced crap which they have been prompted to buy when reading magazines produced by the same few magazine companies. So now we become individual by following the same rapidly revolving trends. Oh, the irony!

### *Deconstruction of the self*

The third age, then, beyond the Freudian second age, belongs to the postmodernist's deconstruction of the self. That is a legacy with which we are still wrestling. To say that the individual no longer exists and that there are no more truths, *pace* Nietzsche, leaves us nothing to believe in, not even a raft in the storm.

### *From the individual to "the masses"*

When the state caught ahold of this notion of the individual as a tempest of uncontrollable urges, it attempted to control those urges. In Marcuse's terms this was done by destroying the notion of the individual and replacing her with "the masses" in which the Freudian father is replaced by the urges fed to us by mass industry, the political system and possibly by the Weberian bureaucratic machine. The result was the creation

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<sup>33</sup> Freud, *Civilisation and its discontents*, Penguin.

of the “one-dimensional man” who is fed opinions, aspirations and desires by the state. When this idea of the mass was unpacked by the monetarist, libertarian politics of the Reagan-Thatcher era we became addicted to our own individuality.

### *Solidarity through shopping*

It is a commonplace now to suggest that this increased individuality offers us less quality of self than we might have had in an era of shared aspirations. Solidarity has arguably been replaced by shopping.<sup>34</sup> The self which we seek is now a self which we buy rather than a personal project which we create.

### *No subject in post-structuralism*

The post-structuralists decided that the subject was no more. Foucault’s history was a history, in the Nietzschean conception, without a subject. For Foucault, power was the positive force which made thoughts transform into effects, actions into reactions. The removal of the focus on the individual permitted his well-known parallel between Bentham’s Panopticon, a design for a prison the structure of which meant that prisoners would behave as though being watched constantly even if they were not being watched, and the effect of discipline on individuals through their schooling, prisons and so forth.<sup>35</sup> Collectively these become, for Foucault, technologies of the self in which it is possible to exert power through the development of governmentality which is an extension of mere sovereign power into a web of more subtle and localised expressions of control.<sup>36</sup>

### *Systems theory and communicative action*

The removal of the subject as the central locus of this form of social thought was at the heart of the differences between Luhmann’s enthusiasm for understanding society as being made of systems which communicate one with another<sup>37</sup> and Habermas’s preference for communicative action in which individuals would take part in reaching a consensual position in which all of their needs were accounted for.<sup>38</sup>

### *Structuration theory*

This determination to exclude the individual is an approach criticised by Giddens<sup>39</sup> who in his theory of structuration prefers to conceive of social activity comprising interactions of active individuals who may nevertheless not be knowledgeable about the effects of their actions. This is akin to Marx’s view that “men make history, but not in conditions of their own choosing”. Instead Giddens defends the liberal, bourgeois capitalism which arose in the modern era as not necessarily putting the factory on a par

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<sup>34</sup> Bauman, *Liquid modernity*, Polity, 2000.

<sup>35</sup> Foucault, *Discipline and punish*, Penguin.

<sup>36</sup> Foucault, *The history of sexuality*, Penguin.

<sup>37</sup> Luhmann, *Social systems*.

<sup>38</sup> Habermas, *Theory of communicative action*, Beacon Press.

<sup>39</sup> Giddens, *Profiles and critiques in social theory*, Macmillan, 1981, 218.

with the prison in the way that Foucault tends to do; Foucault's thought frequently replaces Marx's focus on the place and means of production as the central feature of social action with the prison, the clinic and the school.<sup>40</sup>

## **Virilio's theory of the individual lost in the machine**

### *The importance of military technology*

One of the most challenging visions of the place of the individual in a technologically-advanced, global world is that of Paul Virilio. In a series of books over the last three decades, Virilio has explored the nature of the human being before technology. In *Speed & politics*,<sup>41</sup> Virilio traced the history of the technologies of warfare from hand-to-hand combat on the battlefield, to missiles which could reach further than a man's arm, to explosive projectiles which overshoot the individual soldier completely. The nuclear age, clearly, removed the notion of a traditional theatre of battle with the development of inter-continental ballistic missiles which could destroy entire cities, making them uninhabitable for some considerable time and necessarily embroiling the civilian population in what had been for a period of time a purely professional activity between professional soldiers.

This idea of overshooting the individual is key to Virilio's thought. The technology of transportation has also removed the locus of activity from the action of individuals and even from movement in the city centre by virtue of cars, aeroplanes and satellites which carry human beings, information and power over the heads of the civic population. Where once control of the city streets was the essential locus of power, technology now allows communications, movement and so forth to bypass the static dynamic of the street. The individuals become "dromomaniacs" in Virilio's terminology.

### *The human being rendered an invalid by technology*

The apotheosis of the human being before technology now is the jet fighter pilot. Cocooned inside the most sophisticated, the fastest and the most deadly machine, the pilot becomes an invalid precisely because he is unable to move himself other than through the medium of his machine. The motor functions of technological man is therefore neutered by the most powerful machine.<sup>42</sup>

## **The shortcomings of individualization**

### *The disintegration of citizenship*

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<sup>40</sup> *Ibid.*

<sup>41</sup> Virilio, *Vitesse et politique*, Editions Galilee, 1977.

<sup>42</sup> Virilio, *Polar Intertia*, Sage, 2000.

The question is how we understand this individualisation, either as a threat or as an opportunity. We have heard from Beck and Beck-Gernsheim. The counter-view is perhaps best summarised by Zygmunt Bauman in his foreword to *Individualization* when he says: “the other side of individualization seems to be the corrosion and slow disintegration of citizenship”.<sup>43</sup> His concern is principally a weakening of the ethical self which Beck requires to drive the altruistic connections which he hopes will come from this individualised society.

### *Replacing production with consumption*

In place of social connections have come an increased focus on consumption mixed with a decreased focus on people as producers. In consequence, our focus is turned inward onto our own wants – wants which we satisfy through consumption and through the acquisition of artificial identities which are fed to us through mainstream media.

The more we respond to these media and the magazine culture, the more of these magazines (whether in hard copy, on the internet, or those staccato television and radio programmes aimed at those with goldfish attention spans also called “magazines”) are produced. As considered below, when we talk of equity as a means of dealing with each case on its merits we need to be concerned as to the possibility that such phenomena do mirror the greater focus on self, which is also observable in human rights law.

## **The central place of equality in Beck’s individualization theory**

### *The various senses of equality*

“Equality” is term used by Beck and Beck-Gernsheim in constructing their notion of individualisation. The content of the term “equality” has always been a vexed one, whether choosing between “equality of opportunity”, in relation to people having equivalent opportunities in life after which they are left to their own devices as to how they exploit them, or “equality of outcome”, which seeks to ensure that all people are equal throughout their lifetimes although with difficult questions as to how one achieves equality logically between adults and children, physically able and physically disadvantaged, lazy and resourceful.

### *From equality to inclusion*

The notion of equality has transformed into a concept of “inclusion” in Giddens’s work,<sup>44</sup> and to a notion of “equal worth” in Blairite public policy.<sup>45</sup> For Giddens, inclusion relates to an ability for all citizens to participate socially by virtue of a social investment state which will educate them so that they have opportunity, but which will also nurture them through the rest of their lives where that initial injection fails. Blair is concerned to

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<sup>43</sup> Bauman in Beck and Beck-Gernsheim, *Individualization*, Sage, 2002, xviii.

<sup>44</sup> Giddens, *The Third Way*, Cambridge, Polity Press, 1998.

<sup>45</sup> Blair, *The Third Way* Fabian Pamphlet 588.

provide opportunity and prosperity by ensuring policy which gives equal democratic worth to citizens. While both these conceptions have an impact on the economic context in which citizens live, it is apparent that equality is given a more spiritual (and a less economic) spin.

Ironically, it is in relation to access to justice that the notion of equality has the greatest claim to truth. It is in the sphere of legal affairs that equality is an easy concept to apply. It is an uncontentious statement in democratic societies that everyone should be equal before the law. It also follows that the standard of equality is something which can be different in different contexts.<sup>46</sup>

### *The libertarian viewpoint*

In opposition to the egalitarian socialist and social democratic viewpoint, is one based on the autonomy of the individual which emphasizes liberty rather than social structure. The libertarian position emerges from Nozick, who has referred to the autonomous subject as:-

“a being able to formulate long-term plans for its life, able to consider and decide on the basis of abstract principles or considerations it formulates to itself and hence not merely the plaything of immediate stimuli, a being that limits its own behaviour in accordance with some principles or picture it has of what an appropriate life is for itself and others.”<sup>47</sup>

This individualist subject makes decisions and choices in a way that is unfettered. The measure of that freedom is therefore in its equal application. None should be more free than others to make these choices.

### *By contrast: equality and social justice*

The question arises then as to whether or not this is a useful way of considering equality. To be equally free to make mistakes or to succeed, necessarily means that equality is a transitory value which will apply to selected groups of people only for a short period of time until their lifechoices make them either unequal or simply different. The antithesis to Nozick’s libertarian position is that of the social contract championed by Rawls. In *A Theory of Justice* Rawls extended a conception of equality and social justice combined:-

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<sup>46</sup> Rather than resiling from principle, it is important to measure the appropriate social good and to conceive of the appropriate level of equality for the purpose. Thus in relation to welfare state benefits, employment-related benefits replace income in a way that makes the recipient unequal in terms of receipt of social goods but more equal in terms of income than unemployment would otherwise mean. However, access to the National Health Service is equal to all in that there are no eligibility criteria. Therefore, it is necessarily the case that there is no such thing as total equality in society in any event - it is not suggested that those in employment ought to be entitled to unemployment benefits as well as the unemployed. Therefore, in relation to access to justice it is important to understand the appropriate context of equality.

<sup>47</sup> Robert Nozick: *Anarchy, State and Utopia*, Blackwell, 1974, 49

“Justice is the first virtue of social institutions ... in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests.”<sup>48</sup>

In the calculus of providing social justice through law, it is contended that only social institutions will create an environment in which individual citizens will be empowered to shape their own rights and responsibilities. There is a trade-off between individual autonomy and the systemic pressures which come to play an important part in the discourse about rights in particular contexts.

The context of equality which is most apposite in a society where citizenship is predicated on a balance of rights and responsibilities conceived of and enforced by law, is equality of access. As Held imagines the operation of this principle:-

“Democracy ... entails a commitment to a set of empowering rights and duties. To deny entitlement capacities in any significant domain of action is to deny human beings the ability to flourish as human beings and it is to deny the identity of the political system as a potentially democratic system. A democratic legal state, a state which entrenched and enforced democratic public law, would set down an axial principle of public policy - a principle which stipulated the basis of self-determination and equal justice for all and, accordingly, created a guiding framework to shape and delimit public policy.”<sup>49</sup>

This third context of equality is equality of provision focuses on the rights of citizens to receive public services. As an echo of the universality principle, it argues for the all citizens to have equal rights to use public services as a result of their citizenship.<sup>50</sup> Equality of access is central to a properly functioning legal system. Equality of outcome is not a useful concept in this context. The outcome of an application to court will be dependent on the merits of the case, the availability of credible witnesses, and the opinion of the judge on the proper interpretation of the law. The only meaningful outcome is in the context of a dispute being heard by a court, or otherwise processed by the justice system, in accordance with principles of fairness and procedural propriety.

Equality of access is closer to equality of opportunity. Each citizen is to be entitled to access legal services, regardless of wealth or other factors. The opportunity in this case is the access to advice and possibly representation in the resolution of a dispute or in the development of a legal right. In the context of law it is easier to achieve equal opportunity from the outset, and then leave it to the court to reach a decision on principles of fairness. The only weakness is in respect of cases which do not reach a court

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<sup>48</sup> Rawls, *A Theory of Justice*, Oxford, 1972, 4.

<sup>49</sup> Held, “Inequalities of Power, Problems of Democracy”, *Reinventing the Left*, ed. Miliband, Polity, 1994, 58.

<sup>50</sup> The National Health Service is a good example of this. Regardless of income, a citizen is entitled to treatment regardless of the cost of that treatment. Where the principle has broken down in practice is by the introduction prescription charges and flat rate charges by dentists for services.

or tribunal and which are settled by the parties either on the basis of a realistic assessment of their chances of success or after bargaining.

Access to social goods is all important if the theory is to be reflected in the experience of individuals. In the same way that, just because all are free to go to court, few can afford to without legal aid, not everyone can make a return on their equal life chances. In working towards equality of opportunity, we must address the power structures that prevent equality of opportunity.

### **Individualisation – from public services to consumer services**

Perhaps the most interesting example of the advance which has been made from interconnected tribespeople towards autonomous individuals can be illustrated by reference to healthcare. The earliest forms of hospital, invented by the Arab peoples, were designed to separate the sick from the healthy part of the population by isolating them in hospital as well as seeking to treat their illness. The impetus therefore was to protect the human herd from infection. A similar idea underlies healthcare policies in relation to vaccination against illness: the metaphor of protection of the herd from the spread of infection is the most common form of expression, with the protection of individuals from suffering from illness as an example of those people's distinct well-being.

By contrast, modern hospitals in the United Kingdom are considered to be service providers: to re-iterate the key language here, it is said that hospitals provide healthcare services. The focus is no longer on the protection of the tribe nor on the advance of the common weal but rather on the preservation of individual consumers who are in the process of acquiring those healthcare services.

This process of “acquisition” may be by means of private payment or alternatively by means of one of the many obscure forms of “choice” which political discourse uses to describe the provision of such services by public bodies today. The use of consumerist jargon is important: everyone expects to have rights, to be able to exercise those rights and to be entitled to listened to when they complain about any perceived infraction of those rights. Even though it is not supposed that all healthcare (and this is just an example of general access to public services available to all citizens) is bought privately, nevertheless the metaphor used is that of consumerism – in itself a dangerous development which encourages individuals to think of themselves as having entitlement through acquisition rather than through status. It is the negation of human rights, for example, because it suggests that entitlement is not innate in a person's humanity or alternatively (in the case of civil liberties) in their status as a citizen, but rather those entitlements are acquired only a result of some mooted exchange or bargain.

Whether or not payment is required, consumerism nevertheless supposes a form of autonomy which can be considered to be a contract – with features characteristic of a contract such as the limitation of liability, the allocation of risk by the stronger bargaining party, and the formalising of any moral responsibility between actors by subsuming such

moral obligations to the precise terms of the contract – rather than one which attaches to a person.