

D66 cherishes fundamental rights and shared values, as stated by one of its guiding principles. But what are these rights and values, where do they come from, and what should we do when they conflict? In 2012, the Mr. Hans van Mierlo Stichting will publish an essay on this topic. Main author Sanne Taekema gives a preview.

By **Sanne Taekema**

# Cherish fundamental rights and shared values

A civil servant in Groningen refuses to marry homosexual couples. Although he respects homosexuals as persons, he feels that he cannot perform a marriage ceremony between two persons of the same sex because this is contrary to his religious beliefs about the sanctity of marriage. Is such a refusal an intolerable form of discrimination of homosexuals or is the civil servant a conscientious objector who rightly claims an exception to his duties?

An example such as this shows the difficulty of living up to the idea that we should cherish fundamental rights and shared values. Not all values are shared; conflicting rights may seem equally fundamental. D66 has adopted 'Cherish fundamental rights and shared values' as one of its guiding ideas (a so-called 'richtingwijzer'). Next year, the Hans van Mierlo Stichting will publish an essay which explores the meaning of this idea. What are fundamental rights and shared values, and how do we cherish them? In this article, I will give a short preview of that essay.

A starting point for an investigation of rights and values is to search for their joint beginnings. Although we see the individual as the moral cornerstone of our political theory, it is undeniable that human beings are social animals.

Without companionship and teamwork, we would not be who we are: both positively, through bonds of affection, and negatively, through envy and competition, our individual lives are tied to those of others. In that social context, we can see the origins of both values and rights. Values arise out of what is good for a community. One individual comes up with a creative idea and others see that it moves the group forward. At first, those things that are important in a struggle for survival are valued, but very soon values start to encompass things that enhance the quality of life, like music and art. Similarly, people give certain needs priority and importance by seeing them as the subject matter of rights. A newborn baby needs care and protection, which are things to be provided for by his family and community,

things which may be claimed as a right. Thus, both shared values and individual rights originate in the interplay between individuals and the groups in which they live. One of the most highly valued aspects of our present society is the space allowed for individuals to do what they want. This makes the distinction between the private and the public an important one. Individuals have their own private sphere in which they have the freedom to think, say and do what they want as long as they do not hurt others. In the public sphere, persons interact on the basis of implicit codes of conduct, norms of politeness and respect. In the public sphere, moral norms regulate how we behave and how we criticize deviance. Think of the Golden Rule: 'Do not do unto others what you would not have them do unto you'. The distinction between the private and the public is notoriously hard to make: the idea of a private sphere once served to exclude domestic violence and rape within marriage from public scrutiny, while nowadays this conduct clearly is of public concern. It is important,

however, to retain the thought that all individuals need a space of their own. The public sphere is the space in which shared values play a central role, not only as such – that is, as underlying implicit commitments to what matters to us – but also as the subject of dialogue between individuals who hold different values. Here, we encounter a second distinction to be made between the public and the political: in the public sphere, individuals associate and interact with others, governed by moral norms but free to discuss their values and to discover what may be shared. In the political sphere, values as such are not at issue, they serve as the background for debate, for policy decisions and for legal rule-making. The openness of dialogue in the public sphere, on the basis of mutual respect and the willingness to revise one's own opinions, is crucial to a society which indeed wants to cherish shared values and pluralism as one of those values.

Rights constrain politics: individuals' fundamental interests are protected by legal rights in order

to ensure that they are not too easily diminished in the political sphere. Whereas values permeate the whole of the public sphere, the primary function of rights is to determine the scope of the relationship between individuals and government. Fundamental rights entail a claim upon the government by the individual: social and economic rights are a claim of support and provision for basic needs, civil and political rights are a claim to respect freedom of action. These two categories of rights have a different character. Social rights can call for rights such as protection of vulnerable groups and interests, children's rights to education, the right to health care for the sick, and everyone's right to protection of the environment. Civil rights guarantee independent individuals that the government will not unduly interfere with their life choices. Different though they are, fundamental rights are interdependent. Hunger makes the freedom of speech look like a luxury, so that the right to food, water and shelter may seem primary. However, to claim those social rights, the civil and political rights to express oneself, to associate and assemble, to demonstrate and to petition are essential.

Awarding a right is a particular way of protecting a fundamental interest, because having a right not only serves an individual's basic interest, but also gives him the power to decide for himself whether or not he wants to claim that right. The essence of a right is that you cannot be forced to exercise it, it is up to you whether you want to make use of it or not. This also creates a moral obligation not

to claim a right when it is not really necessary. Because – as Ronald Dworkin phrased it – rights serve as trumps, individuals have a responsibility to use them sparingly.

This responsibility gains significance when rights are pitted against each other. The use of rights against the government serves an important political and legal function: it serves to keep government power in check. Using a right against a fellow citizen has a very different meaning, and raises the stakes of the argument. By claiming that another individual violates your right, you are in effect saying that your interest is a fundamental one, to be respected at all times. When your opponent does the same, it may become hard to back down. The language of rights is not one that lends itself well to mutual accommodation and balancing.

So how do we cherish fundamental rights and shared values? The main thing is to make them the subject of conversation. In the private sphere, this may mean introspection: critically reviewing your own established values. In the public sphere, most importantly, it means engaging in dialogue, being prepared to reconsider values and to discover common ground where you may not expect it. Is it really a problem if a man from another culture refuses to shake a woman's hand?

Might it not be the case that shaking hands is simply one form of respectful greeting, which may be replaced by another form? In the political

sphere, it may mean deciding not to regulate, not to make policy, but to leave room for public debate and engagement. Cherishing something does not mean declaring it an absolute truth or indubitable value; it means being prepared to defend what you hold dear, while recognizing at the same time the need for examining the limits of that value.

Conflicting rights illustrate the impossibility of regarding fundamental rights as absolutes. Both the moral equality of all, regardless of their race, ethnicity or sexual orientation, and the freedom of religious belief are fundamental. Both the right to non-discrimination and the right to profess one's religion deserve to be respected. Determining where one right has to give way to another is difficult and not necessarily a matter of a discussion of principle. In an interview the civil servant refusing to marry homosexual couples said he was always able to explain to same-sex pairs who came to him satisfactorily why he could not be the one to marry them. It may be that the question of an objecting civil servant need not be solved by politics as a matter of principle, but left to the wisdom of individuals respecting one another's beliefs.

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The Mr. Hans van Mierlo Stichting, the think tank of D66, will publish five essays on the five guiding principles of D66 (in Dutch):

- 1) **Vertrouw op de Eigen Kracht van Mensen** (published in 2009)
- 2) **Denk en Handel Internationaal** (2012)
- 3) **Beloon Prestatie en Deel de Welvaart** (2013)
- 4) **Streef naar een Harmonieuze en Duurzame Samenleving** (2012)
- 5) **Koester de Grondrechten en Gedeelde Waarden** (2012)

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