**Human Rights Laws and anti-discrimination legislation: part of the struggle and part of the solution?**

Since the middle of the 1980s in the United Kingdom there has been a call for disabled people to have full human and civil rights. In my opinion there remains far too little understanding as to why the demand for “Rights *Not* Charity” ended up as mainly being about campaigning for legislation. As someone who was involved from almost the beginning, I want to provide some historical background to this campaigning and in the process suggest that there are two differing ways of interpreting what “disability rights” means.

My starting point is that I have always considered campaigns for anti-discrimination legislation and demands for protection of disabled people’s human rights laws as being only part of the struggle to bring about the end of the inequality they encounter through their positioning within society. I have held this view because of my belief that the social approach towards understanding disability as a problem located within the *nature* of given societies, not the existence or degree of impairment belonging to an individual.

The original social model of disability developed from the ideas of the Union of the Physically Impaired Against Segregation by Mike Oliver. It was based upon the view that within capitalist social relations people with impairments have historically experienced exclusion from or marginalisation within mainstream social activities as a result of how ideological, economic, social and cultural processes have created disablement. The outcome being that the structures, systems and values of society have ultimately led to people with impairments either ‘not being taken into account’ or being oppressively ‘taking into account’ through assigning them to lifestyles based on dependency and economic inactivity. Further, it was argued, that the way in which disabled people have been both seen and treated has constituted a form of social oppression.

During the last quarter of the twentieth century, disabled people challenged how social and welfare policies have maintained their inequality. The growth of the Independent Living Movement also witnessed a clamour for greater rights. (Hasler, 2003) Not surprisingly, given the upsurge in the Civil Rights Movement within the USA, it was here that the first breakthrough came in giving disabled people basic rights with the passing of the Rehabilitation Act (1973). However, it was not until the 1990s that the legal case for legislation in terms of anti-discrimination legislation and civil and human rights beyond employment and social care was put.

The reason it took so long can be partly explained by the fact that disabled people were largely viewed as ‘invisible’. In Britain, for example, there appears to be a conflict between those who see citizenship as a platform for ‘rights for all’ and the more traditional view propagated by Marshall who expressed the view that:

 Citizenship is a status bestowed on those who are

 full members of a community. All who possess the

 status are equal with respect to the rights and duties

 with which the status is endowed” (Marshall, 1950: 28).

He spoke of three types of rights, those being civil, political and social none of which he saw as applying to disabled people. (Sally Witcher, 2005) Western societies today, for example through the United Nations and European Union, do speak of disabled people has having rights, however, evidence would suggest that current practices and issues of accessibility prevent the majority of disabled people worldwide from being able to exercise their rights.

This is the background to why disabled activists through Disabled People’s International begun to press the United Nations for a Convention on the Rights of Disabled People. The aim of the Convention was not to grant disabled people ‘new rights’ but instead offer a framework, based upon the social approach towards disability, which would enable governments to apply human rights in meaningful ways for disabled people. We now have a Convention, however, there remains many outstanding issues. It needs to be remembered that the term ‘people with disabilities’ is used differently to how it is applied in the UK. This problem is compounded by the fact that there is a certain ambiguity at play; does the United Nations actually work within the social approach or have they fallen in line with the World Health Organisation’s definition of ‘disabilities’ which collapses together impairment, body functioning and social restrictions? (WHO, 2001) Add to the mix the way in which the UN’s committee on the UNCRDP criticised the British government last year for violating disabled people’s rights. What does this tell us about enforcement?

Within this context I would like to define more clearly my understanding of what “disability” means before examining in more detail what is understood by “rights”. In the UK there is a tendency to talk about ‘disabling barriers’ however it is important to understand that this is shorthand for saying “the social restrictions imposed on top of our impairments by the organisation of society”. This is the reasoning behind why we identify as “disabled people”.

The concept of “rights” is not straight forward. Hurst (2004) suggests the talk of legal protection for disabled people have involved three themes; ‘human rights’ ‘civil rights’ and ‘anti-discrimination legislation’ because they share a common objective. However, she explains there are differences between them. Human rights, she points out ‘are all those rights that are inherent in an individual’s humanity’ (Hurst, 2004: 297). This begs the question, for example, in the context of the European Convention on Human Rights, how can people be seen as having these rights or access to the legal processes involved, if they are not even seen as being ‘human’? (Clement and Read, 2005: 26)

This notion of ‘inherent in an individual’s humanity’ could also be judged as highly questionable when placed in the context of social oppression. (Armstrong and Barton, 1999) For example, Hurst goes on to say civil rights are what citizens can expect through national laws interpreted by courts, therefore, anti-discrimination legislation ensures the human right, not to be discriminated against, is grounded in civil law. However, because the premise on which this legislation is based is social change, it does not give an absolute right not to be discriminated against. Decisions are qualified by ‘the effect that these changes might have on an employer or service provider’. (Hurst, 2004: 297) Given this situation, the ability of legislation to deliver the goods for disabled people can be called into question. As

William Peace (2006: unpaged) points out:

The ADA, a law designed to protect the civil rights

of people with disabilities, has been gutted by the

courts. The result is lip service paid to disability

rights; as a rule, people with disabilities are

perceived to be isolated narcissists rather than an

oppressed minority. The implications are clear:

people with disabilities place unnecessary and

selfish demands on society.

This also raises another weakness with the civil rights approach. It may be worth considering that the law ‘is not, therefore, an actor in itself but only the instrument of the human actors whose interests it represents’. (Gooding, 1994: 29) The ADA was a blueprint for much of the anti-discrimination legislation across western societies and as a result the focus is on the treatment of individuals, thus combining the dominant ideologies based on individualism within the law and current practices as they relate to disabled people. (Gooding, 1994; Oliver, 1990)

Speaking of the research he undertook for the book, Disabled People in Britain and Discrimination: A case for anti-discrimination legislation, Barnes (1991) said:

 It shows that the negative attitudes and discriminatory

 practices which effectively deny basic human rights to

 disabled people are ingrained in the core institutions of

 our society. (Barnes, 1991: 2)

The case put did not focus primarily on individual forms of discrimination, but rather the institutional form because ‘institutional discrimination is evident when the policies and activities of all types of modern organisations result in irregularity between disabled people and non-disabled people’. (Barnes, 1991: 2) When Britain did adopt legislation in the form of the Disability Discrimination Act in 1995 it was not along the lines advocated by Barnes or the Disabled People’s Movement. Gooding states, despite the fact it was a historic step towards recognising disabled people’s rights, it nevertheless ‘failed to establish the clear principle of equal treatment which should be the essence of law countering discrimination’. (Gooding, 1995: 1)

In the USA, Marta Russell (1998) argued that the ADA felt a backlash prompted by capitalist opposition which she concluded ‘not only stifled any potential benefits that might have resulted from ADA enforcement, it has promoted the backlash among groups of workers who have become fearful that their own interests are in jeopardy as a result of the Act's enforcement powers’. (Russell, 1998: 1) Russell thus puts forward the case that under capitalist economic and social policies, whether from a progressive or conservative form, they will fail to adequately create the conditions necessary for economic and social justice for disabled people. In a similar fashion, Barnes and Oliver (1995) state:

 … even fully comprehensive and enforceable civil

 rights legislation, will not, by itself, solve the problem

 of discrimination against disabled people.

 (Barnes and Oliver, 1995: 114)

How then should the campaigns for ‘rights’ be appraised? Vic Finkelstein (2001) argues that the radical (materialist) social model is about creating a society which enables disabled people to be ‘human’, whereas the idealistic rights models merely seeks to help access ‘rights’ within the existing competitive market society. I believe this suggests there exists a conflicting *interpretation of what constitutes social oppression*. The radical social model argues that what happens to disabled people ‘is an integral part of the way our society is organised and structured’ (Finkelstein, 2001: 4) Only by overthrowing the very *nature* of society itself can people with impairments be liberated along with humanity as a whole. The alternative approach, through legal ‘rights’, seeks to ‘free’ disabled people by *transforming* existing structures and granting them an equality of opportunities by dismantling disabling barriers. (Hasler, 2002)

Whilst it is understandable for disabled people to want to end their social exclusion and be rid of discriminatory practices, one has to question the politics behind the belief that the entitlement to rights would automatically confer ‘social acceptance’ or lead to an end to social oppression. Richardson (1997: 1269) can now write that disabled people over the past two decades have challenged traditional ways of seeing and responding to disability by ‘arguing that disability is created by social barriers and barriers in the built environment’. I would argue this is misleading.

In attempting to make the concept of social oppression understandable, disabled activists have simplified it to one of being a question of encountering or removing ‘disabling barriers’. The implications of this are many. In my view it can reduce ‘the problem of disability’ to be simply about obtaining ‘rights’ and removing disabling barriers. This simplistic approach has also spawned the idealistic notion of a ‘barrier free’ society which has been used to undermine the social model. (Shakespeare, 2006)

Despite serious and justifiable criticism of their ability to revolve the problem of disability, what the campaigns for rights did achieve was to politicise disabled people by galvanising them into a social movement which meant they, and their issues, became more visible within mainstream socio-political circles. (Oliver, 1996) The shift from passive acceptance of what is done to them to a visible struggle for empowerment has also helped change the existing landscape in social policy and practice to some degree. (Young and Quibell 2000: 748).

**Conclusion**

Depending upon one’s analysis of the problem of disability, campaigns for civil and human rights can be viewed in a variety of ways. Governments have addressed these campaigns as being a plea for ‘fairer treatment’ within the status quo and therefore little concrete action will be taken to resolve the real problem.

The weakness of seeing disabled people as automatically having a ‘shared agenda’ is that it does not address the fact people with impairments come from an array of socio-political backgrounds and this distorts how as disability activists address the implications of differing interpretations of what disability is, what social oppression means and therefore results in conflicting views regarding what campaigns for ‘rights’ could achieve. As disabled activists I believe we need to combine fighting for improvements within existing structures whilst at the same time seeking ways to transform them. I recognise both of these tasks are extremely difficult in the present climate, but we must look at ways we can employ the Convention on the Rights of Disabled People as leverage when putting our demands for social justice forward and resisting the attacks upon our rights during this age of austerity. It may be time once again to ask: to what extent are human rights laws and anti-discrimination legislation part of the struggle and part of the solution?

As someone who sees the problem of disability as being the social restrictions imposed upon people with impairments, then my take on ‘disability rights’ differs from the way, for example, the American disabled people employed it in their struggles or how it has come to be co-opted into the British way of thinking. From a social [model] perspective ‘disability rights’ means ‘self-determination’; the right *not* to be subjected to discriminatory practice or social exclusion, the right *not* to be dependent upon charity and the right *not* to be de-humanised. These rights do not require legislation, they require social change and greater respect for the whole of humanity and for the planet we inhabit. Perhaps Finkelstein is correct when he says:

 … we cannot understand or deal with disability

 without dealing with the essential nature of society

 itself. To do this disabled people must find ways of

 engaging in the class struggle where the historical

 direction of society is fought, won or lost. (Finkelstein,

 2001: 5)

**Bibliography**

Armstrong, F. and Barton, L. (1999) ‘Is there anyone there concerned with human rights?’ Cross-cultural connections, disability and the struggle for change in England. In F. Armstrong and L. Barton (eds), ***Disability, Human Rights and Education: Cross-cultural perspectives***. Buckingham: Open University Press.

Barnes, C. (1991) ***Disabled People in Britain and Discrimination: a case for anti-discrimination legislation***, C. Hurst and Co Ltd.

ClementsL. and Read J. (2005) The Dog that didn’t bark **in Disability Rights in Europe: From Theory to Practice**. Edited by Anna Lawson & Caroline Gooding, Oxford and Portland, Oregon: Hart Publishing, 2005

Finkelstein, V. (2001) THE SOCIAL MODEL RPOSSESSED, Manchester Coalition of Disabled People

Gooding, C. (1996) **Blackstone’s Guide to the Disability Discrimination Act 1995**, London, Blackstone Press.

Gooding, C. (1994) **Disabling Laws**, **Enabling Acts**, London, Pluto.

Hasler, Frances. (2003) "Philosophy of Independent Living." Internet publication URL: www.independentliving.org/docs6/hasler2003.html.

Hurst, R. (2004). Legislation and Human Rights. In Barnes, C., French, S., Swain, J., & Thomas, C. (Eds.), ***Disabling Barriers – Enabling Environments*** (pp. 195-200). London: SAGE Publications.

Marshall, T.H. (1981) **The Right to Welfare and other essays**, London: Heinemann

Oliver, M. (1990) **The Politics of Disablement**, London, Macmillan

Richardson M (1997) Addressing barriers: disabled rights and the implications for nursing of the social construct of disability.
**Journal of Advanced Nursing** 25 (6), 1269–1275

Russell, M. (1998) **Backlash, the Political Economy, and Structural Exclusion**, Berkeley Journal of Employment and Labor Law, University of California

Russell, M. 2002: What disability civil rights cannot do: employment and political economy. ***Disability and Society***, 17 (2): 117-135.

Shakespeare, T. (2006) **Disability Rights and Wrongs**, Oxford, Routledge

Union of the Physically Impaired Against Segregation (1974) **Fundamental Principles of Disability**, London, UPIAS

Witcher, S. (2005) **DISABLED PEOPLE CITIZENSHIP AND PUBLIC LIFE,** Discussion paper to Disability Working Group, Satellite Group 3, Scottish Executive’s Equality Unit. <http://www.scotland.gov.uk/Topics/People/Equality/disability/dwg3paperjun05>

World Health Organisation, (2001) **International Classification of**

 **Functioning, Disability and Health (ICF)**, Geneva:

<http://www.who.int/classifications/icf/en/>

# Young, I. M. (1990) Justice and the Politics of Difference, New Jersey, Princeton University Press

Young, D. A. and Quibell, R. (2000) Why rights are never enough: rights, intellectual disability and understanding. ***Disability and Society***, 15 (5), 747-764.