

What next? Disability, the 1995 Disability Discrimination Act and the Campaign for Disabled Peoples' Rights.

(This is the text of the Walter Lessing Lecture (part 2) presented by Colin Barnes at the Skill (National Bureau for Disabled Students) Annual Conference (2 March 1996). It also appears in the Skill journal Issue no 55, pp. 7-9).

In Britain, as in most 'developed' societies, discrimination against disabled people is a major problem. It is something which effects almost everyone; the latest estimates suggest that one in four adults report having a long term illness or impairment (HMSO, 1996). There is little doubt that these figures will increase dramatically over the next few years if only because of our rapidly ageing population. The likelihood of acquiring an impairment and, as a consequence, encountering disability: the social oppression of people with perceived impairments, increases considerably with age. But the new Disability Discrimination Act (DDA) will do little to resolve the problems faced by Britain's disabled people. Indeed, the coming of this particular piece of legislation may even have made the situation worse. There are several reasons for this; only some of which are discussed below.

First and foremost, there is the very nature and complexity of the problem of discrimination. Disabled people face a particularly pervasive and pernicious form of institutional discrimination which is embedded in the very fabric of our society. This is not to suggest that all societies discriminate against people with perceived impairments - there is ample anthropological evidence that they do not - but the oppression of disabled people is endemic to western culture and can be traced back to the ancient Greeks (Barnes, 1996; Garland, 1995).

Institutional discrimination against disabled people pervades every area of social life. It is evident in our abortion laws, health care system, education system, employment, welfare payments, the built environment, the leisure industry and

the media (Barnes, 1991; 1992). Eugenic abortion is legal in Britain right up to the point of delivery if there is any suspicion that the unborn child is 'handicapped'. Selective health care policies mean that disabled children and adults are often denied essential operations or treatment. Children with 'special educational needs' are still denied the right to be educated in an 'ordinary' mainstream school alongside non-disabled peers (Mason and Rieser, 1995; Shakespeare, 1995).

Unemployment and underemployment are consistently higher among disabled workers than among non-disabled contemporaries - the situation is particularly acute among young disabled adults. As a consequence, over three quarters of disabled people and their families are dependent on benefits as their only source of income. Much of the built environment - housing, transport and public buildings and amenities - remains inaccessible to disabled people. There is a general view among the leisure industry that the presence of disabled people in cinemas, pubs, clubs, restaurants and other places of entertainment is bad for business, and the communications media continue to present a particularly distorted view of the experience of both impairment and disability (Barnes, 1991; Zarb, 1995).

The problem is significantly more complex for disabled women, disabled people from minority ethnic and racial backgrounds, and disabled lesbians and disabled gay men. This is because in addition to disability they often experience other forms of institutional prejudice such as sexism, racism, heterosexism, and institutionalised homophobia.

To begin to dismantle such a complex problem effectively, requires the introduction of a fully comprehensive anti-discrimination policy along with an appropriate and independent enforcement mechanism. To be truly effective such an initiative must be accompanied by a meaningful freedom of information act; the policies and practices of doctors, professionals, planners and politicians must be made open and accountable,

both locally and nationally, if institutional discrimination against disabled people, or, indeed, anyone, is to be eradicated (Barnes, 1991; Oliver, 1990).

The new DDA falls far short of such a policy. It is based on a traditional medical approach to disability; impairment is the cause of disablement rather than the way society is organised. Hence, the idea that disabled peoples' legitimate requests for adjustments and change are somehow unrealistic and unnecessary is retained. The Act establishes three 'new rights' (sic): anyone defined as a disabled person must not be discriminated against in; a/ employment; b/ the provision of goods, facilities and services; and c/ the selling or letting of land. But these are not universal rights as various exemptions apply. For example, some people with learning difficulties are not covered by the Act, and the section on employment does not apply to firms with less than twenty people. This means that many of Britain's employers are not effected by the new law. Moreover, discrimination is justifiable in certain circumstances; if, for example, 'adjustments' to work practices to accommodate disabled workers are judged to be 'unreasonable'.

Under the Act existing statutes on education are amended but they do not give disabled children and students the right to an integrated education. The DDA gives the Secretary of State the power to introduce regulations for minimum access standards for transport and the built environment, but the time scale for implementation is likely to be unacceptably lengthy (NOG, 1996).

This is one of the key problems with the DDA. By issuing Regulations, Codes of Practice and the like the Secretary of State has the power to restrict even further what is and what is not covered by the new law and how effective it will be. Indeed, by producing new Regulations the Government can effectively change the whole meaning of the DDA. For instance, the Act allows Regulations to define who is and who is not disabled; if Regulations say that Asthma is not

an impairment then this will have the same power as if the Act had said it (Rights Now, 1996).

There is no enforcement mechanism whatsoever - this means that individuals must challenge unfair discrimination themselves. Instead, there is a new National Disability Counsel (NDC) - its role is to 'advise' the Government on implementing the new law but not with reference to employment. This responsibility will fall to the existing National Advisory Council on Employment of People with Disabilities (NACEPD). The chair of the NDC works on disability issues one day a week; the other sixteen members one day a month.

Paul Miller, Commissioner at the American Equal Opportunity Commission, the key enforcement agency for the Americans with Disabilities Act enforcement division, described the 'lack of teeth' in the DDA as a 'social disgrace'. He, rightly, points out that:

'Enforcement is critical to any civil rights act. There has to be parity with other civic rights issues.... otherwise you send the message that disability discrimination is not as serious as race and gender discrimination; you create a second tier of oppression'
(Rights Now, 1996, p. 3).

The Government's view is that the DDA will ensure that the public are more conscious of disability issues. But there is substantial evidence that the public are already aware of discrimination against disabled people but that does not stop it happening. Indeed, the very existence of the DDA will create in the public mind the impression that the problem is actually being addressed. As a result, many people will conclude that the continuing struggle for effective civil rights legislation is unwarranted.

Furthermore, the coming of the Act has split what many people perceive to be 'the disability movement'. Since the late 1980s the campaign for disabled peoples' rights has been characterised by an uneasy alliance between organisations 'of' and the more traditional organisations 'for'

disabled people. The former are organisations controlled and run by disabled people and the latter are those which are controlled and run by non-disabled people. Organisations of disabled people have been at the centre of the struggle for disabled people's rights since the late 1970s. Meaningful support from organisations for disabled people was forthcoming only in the late 1980s when it was clear that the campaign was unstoppable.

Moreover, less than a month after the DDA entered the statute books six major organisations 'for' disabled people broke ranks and elected to work with the Government to help implement the new Law. Despite protestations to the contrary by prominent representatives of these organisations, such action can only serve to undermine the on going struggle for the introduction of meaningful and effective civil rights legislation.

Additionally, with the coming of the DDA the Government has repealed several key elements of the 1944 Disabled Persons (Employment) Act. These include the Green Card registration scheme and the employment quota system. Ministers have also made it clear that they intend to limit rather than expand the recently introduced, 1994, and relatively successful 'Access to Work' scheme on the basis that the DDA will reduce the need for this type of initiative. Experience shows that these developments are unlikely to enhance the job prospects of disabled job seekers in an employment market increasingly skewed in favour of employers.

What then can be done about this disturbing but not wholly unexpected situation (see Barnes and Oliver, 1995)? Firstly, colleges and universities have a responsibility to put disability and the discrimination against disabled people at the top of their agendas. This means the adoption of an inclusive education policy similar to that adopted by a growing number of primary schools (see Mason and Rieser, 1994). Disability issues would then become an integral part of every curriculum. Two obvious examples are the inclusion of the history of society's marginalisation of disabled people

in history classes, and the deconstruction of disablist imagery in literature and the media in English and Cultural Studies courses. There is a need for positive role models in further and higher education so we must develop appropriate strategies to encourage disabled people to apply for teaching and research posts. Student enrollment requirements can and should be made more flexible to accommodate disabled students. Moreover, in further and higher education disability issues are usually allowed to slip to the bottom of the equal opportunities agenda; we must ensure that this situation is reversed.

Finally, individuals and organisations involved directly in disability should make it clear wherever and whenever possible that the DDA is grossly inadequate, and that there is an urgent need for the introduction of a more comprehensive civil rights policy for disabled people. They should also lend their support to disabled people's organisations, both national and local, who are actively working for a change in the law. This is a major human rights issue which can no longer be ignored by anyone who professes to care about the nature of the society in which we live.

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