

Disability Human Rights, Law, and Policy

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It has been common for decades to identify the “human rights approach” to disability advocacy as the single most important political development in the struggle for equal participation by people with mental and physical disabilities. Although true enough, it is important to be clear what the human rights approach is, what it entails, and how it manifests itself in legal and policy terms. After a brief characterization of the approach, this chapter considers four models of the legal expression of human rights for persons with disabilities that can be found around the world. Given the variety, the question arises which is the best, or at least the better, approach. As this is an extremely difficult question to answer directly, two prior issues are considered instead: (1) the relative merits and drawbacks to a voluntary as opposed to an enforceable legal approach to human rights and (2) whether we should be content with the current antidiscrimination focus as a long-term strategy. It is suggested that a legal and policy approach, which emphasizes the universality of disability, rather than its special, minority status, has much to recommend itself as a basis for the theory and practice of disability human rights.

THE HUMAN RIGHTS APPROACH TO DISABILITY POLICY

International efforts to recognize basic human rights for individuals with physical and mental disabilities were the product of political action and lobbying, initially in the United States and throughout the world from the early 1960s on (Anspach 1979; Driedger 1989; Scotch 1984, 1989; Shapiro 1993). This call for a human rights approach to disability law and social policy was played out and continues to be played out against a background of specific entitlements and other social policy provisions found primarily in the areas of health, rehabilitation, transportation, education, and employment. Many of these provisions were originally overtly political responses to the needs of disabled veterans (Liachowitz 1988; Stone 1984). As a result, around the world, disability programs and policies have tended to be reactive and piecemeal responses to specific social conditions rather than fully coordinated and integrated into overall social policy. In addition, disability policies have been more responsive to the needs and ideologies of service providers and bureaucrats than to people with disabilities themselves.

The disability rights movement was rooted in the protest of those with disabilities who rejected this way of meeting their needs. Initially at least, what was demanded was not more programming or even specific entitlements but a reorientation of the very foundation of disability

law and policy. What was needed, they argued, was an explicit recognition of the human rights of persons with disabilities. Evidence of international human rights abuse, although neither tracked by agencies such as Human Rights Watch or Amnesty International nor within the authority of the United Nations (UN) to monitor, was evident to those in the field. Change for the better, it was argued, would flow once it was acknowledged that people with disabilities are not given their rights as a matter of charity or the goodwill of others; they are entitled to them as equal members of society.

As most disability activists are aware, there is an extensive academic literature on rights, one that raises substantial controversies about the nature of rights and their strategic usefulness. The genesis, at least in the English-speaking world, of what is sometimes unkindly called “rights rhetoric” (Glendon 1991) are seventeenth- and eighteenth-century accounts of natural rights that formed part of the social contract account of the nature of the state and its relationship to its citizens (Strauss 1950). The rhetoric of natural rights, inalienable and absolute, suffuses the American Bill of Rights and the French Declaration of the Rights of Man and has also been picked up by other countries, even when their historical and philosophical traditions are quite different. Philosophers agree that there are in fact four basic categories of rights—moral, legal, civil, and human—with different rationales and intellectual histories.

Of these, only legal rights (functionally defined as entitlements enforceable by courts or tribunals) are uncontroversial because, given their nature, it is a factual matter whether someone has or fails to have a legal right recognized by a court or other authoritative tribunal. An entitlement is a claim that an individual can make that is backed up, at least in principle, by the full weight and authority of a state’s judicial system. An entitlement has actual, practical value; it is a key to resources or opportunities. Of course, we commonly speak of what we or others are “entitled to” even when we know or ought to know that there is no effective legal recourse that could be called on if we are denied what we believe we are owed. When we use the notion in this fashion, we are making a moral or political statement (roughly, our moral entitlement that there *ought* to be a legal entitlement). Moral entitlements are similar to the other kinds of rights that are, to the extent that they are not enforceable, normative constructs, whose existence depends not on some authoritative fiat or enforcement mechanism but on historical, cultural, and political consensus.

The traditional sociological distinction between civil rights and human rights is that the former, but not necessarily the latter, are inextricably bound to citizenship and so are bound to the existence of a state. On the highly influential account of T. H. Marshall (1950), indeed, the link between citizenship and civil rights is analytic: You cannot have one without the other (Barbalet 1988; Marshall 1950). The strategic virtue of this linkage, on which disability advocates relied heavily, was that one could demand civil rights by making the wholly unobjectionable demand that people with disabilities, despite their differences, are at least citizens and are owed the rights that are incidents of citizenship. At the same time, however, limitations on citizenship are commonplace, and it was tempting to seek a rhetorically stronger basis for rights—hence the appeal to universal human rights, those rights that are fundamental entitlements owed to humans as such, independent of cultural or political context. Rights such as those enumerated in the 1948 United Nations *Universal Declaration of Human Rights*, it was argued, were so utterly basic that their denial amounted to a travesty of justice. At the same time, since these rights were so general (and unenforceable), it was difficult to credit them with more than rhetorical significance (Nickel 1987).

Even in theory, especially for the political left, the notion of universal human rights was not an easy one to embrace unreservedly. Many saw that inasmuch as the modern notion of a right is historically and conceptually linked to private property, claims of universality entail an unshakeable commitment to some version of “possessive individualism,” if not capitalism itself (Giddens 1982; Macpherson 1985). Some feminists worried about the patriarchal baggage of rights talk and advised theorists to look elsewhere (Smart 1989). Others on the left, however, argue that the only realistic prospect for social change is to embrace the entitlement-creating notion of a right, with all its dubious history (Taylor-Gooby 1991), or else to supplement sociological theory by adding an account of human rights to produce a more complete and consistent

understanding of modern society (Turner 1993). For their part, disability advocates sometimes argued that rights discourse was simply too influential and powerful to ignore (Gooding 1994) or that the disability movement needed to concentrate on human rights issues, and “whether it’s left-wing rights or right-wing rights doesn’t matter” (advocate Stephen Bradshaw, quoted in Campbell and Oliver 1996:101).

This human rights approach, advocates realized immediately, required a very different conception of the notion of disability than was standardly used in the medical community. Turning to decades of work by sociologists and sociopsychologists, advocates adopted what is often called the “social model” of disability. On this model, disability is the outcome of an interaction between intrinsic features of the individual’s body or mind (impairments) and the complete social and physical context or environment in which that the person carries out his or her life (Imrie 1997). To be disabled is to have limitations in the activities one can perform. Whether an activity can be performed, however, is a function of the presence or absence of environmental factors: physical or social obstacles that limit or prevent performance, on one hand, or resources that facilitate performance, on the other. Disability is not a feature of an individual’s body or mind; in short, it is a socially constructed complex of relationships, some intrinsic to the individual and some part of the physical and social world.

Historically, disability policy was either a charitable response to perceived miseries (ad hoc responses to social emergencies or the needs of the medical profession) or, in more recent days, an attempt to cater to the economic doctrine of maximizing social output. Each of these approaches produces distinct and characteristic disability law and policy (Bickenbach 1993). However, underlying each approach is the assumption, rarely stated, that disability is entirely an attribute of a person: Disability is an abnormality, a lack, and a limitation of capacity. By contrast, disability advocates insisted that disability is a social phenomenon shaped by historical, cultural, linguistic, political, and economic forces—following some early work in social psychology (Wright 1983). Disability advocates were thus able to argue that disability law and policy should not be a matter of charity, professional need, compensation, or economic necessity but instead must be grounded in human rights.

The social model of disability plays a vital role in making the human rights approach plausible. On the social model, a person’s inability to perform certain actions or to participate fully in social roles such as parent, student, or employee is, in part, a consequence of social attitudes and policies that create barriers. It makes little sense to say that one has a right, of any sort, not to have functional impairments because many impairments are outcomes of aging and other natural process that are unavoidable. It does make sense to insist that one has a basic human right to be treated as an equal when one adds that social institutions and attitudes are responsible for creating disabling barriers that limit a person’s participation in life activities. The social model and the human rights approach, in short, are mutually reinforcing.

As with all political movements, the disability rights movement was soon forced to confront the practical problem of translating theory and political slogans into a practical agenda for achieving the goals of equal opportunity, full participation, and respect of difference. Mike Oliver (1990a, 1990b, 1996) has shown in his work both the promise and the tribulations of social movement dynamics for disability advocates. Realists argue that disability law and policy must be assessed, not by its theoretical foundations but by what it actually delivers. Others argue that however attractive specific reforms may be, they will be temporary and fleeting unless grounded in a solid commitment to human rights. The debate continues.

In any event, there remains a practical dilemma for reformers. Should one set one’s sights on the incremental but practically vital improvements in medical, education, employment, personal assistance, transportation, and housing policies—the things that actually affect a person’s day-to-day existence—or should one put one’s efforts in an expressed legal statement of human rights with the expectation that specific policy reforms will follow in due course? In other words, what precise legal expression of the human rights approach stands the best change of moving from political rhetoric to concrete results?

The question is a difficult one, both theoretically and practically. Around the world, only a handful of approaches to giving disability human rights legal expression have been adopted,

and it is useful to survey these before returning to this core question. To be sure, some countries do not explicitly recognize disability human rights at all, although their disability policies may in practice further the goals of these rights. Without extensive comparative work in disability policy and tools for assessing the effects of this policy, neither of which are currently available, it remains an open debate whether explicit legal recognition of human rights is essential for disability policy consistent with the values embodied in those human rights. Yet, it is possible, at least schematically, to survey existing models of legal recognition of disability human rights.

APPROACHES TO THE LEGAL EXPRESSION OF HUMAN RIGHTS

Underlying all forms of the legal expression of disability, human rights is a fundamental distinction between rights that are legally enforceable entitlements and those that are not. When a formalized enforcement mechanism is absent, a society's commitment to human rights becomes a matter of goodwill or moral suasion and so ultimately a self-imposed or voluntary commitment. Disability advocates, for their part, have long insisted that the recognition of human rights for persons with disabilities is empty and meaningless, if not insulting, without explicit mechanisms for enforcing these values. And for good reason.

The distinction between enforceable and voluntary is muddled somewhat by the very common reliance in all social policy on inducements and incentives (e.g., tax incentives), which are embedded in social welfare or other entitlement legislation. For an advocate of human rights, the prospect of voluntary but induced recognition could well be viewed as inadequate and insulting. Respecting other human beings as equal citizens should not be contingent on blunt self-interest. Although obviously true, this concern may be less worrisome when inducements or incentives augment negative enforcement mechanisms, such as fines or compensation. In the end, the underlying operational model of all social policy is compromise and adjustment. The ideals implicit in the human rights approach will always need to be blended with practical issues of public acceptance, whether or not there is an enforcement mechanism in place.

When human rights are enforceable, they can be enforced as a consequence of a complaint initiated and pursued by an individual or group, or the state or one of its agencies can be wholly in charge of identifying infringements of rights and remedying them. When the state is the enforcement and monitoring agent, two basic approaches may be taken. The state may, as an expressly political act, commit itself at the highest legal level to human rights and use this explicit commitment as a standard against which to assess its own laws and policies. Alternatively, the state may set specific goals in particular sectors that represent concrete, practical manifestations of human rights in those sectors. In what follows, these subtle distinctions will be ignored to focus on the major differences between fundamental approaches.

There are four basic types of legal expression of human rights for persons with disabilities:

1. enforceable antidiscrimination legislation,
2. constitutional guarantees of equality,
3. specific entitlement programs, and
4. voluntary human rights manifestos.

These are not mutually exclusive approaches since most countries around the world rely on a cluster of laws, policies, and programs that fit into more than one category. Nonetheless, they are distinct ways of putting human rights into law.

Antidiscrimination Legislation

As a general matter, antidiscrimination legislation identifies grounds for discrimination (race, gender, religion, or disability) and areas of protection (employment, education, housing,

and transportation). Antidiscrimination also sets out complaint and adjudication procedures and provides some form of enforcement mechanism, usually financial compensation. A post-war development, many antidiscrimination laws around the world are modeled on the U.S. Civil Rights Act of 1964. An important premise of this approach to human rights is that a violation of rights is a form of discrimination, treating people unequally on grounds or for unjustifiable reasons. Not hiring an individual who does not have the required educational background is not discriminatory; not hiring that individual because he or she is a member of a particular racial group is. The clearest example of discrimination is overt prejudice, when a person is intentionally treated unequally because others view him or her as inferior or unequal. Yet the notion of discrimination has, over time, evolved to include unintentional unequal treatment (tactic discrimination) or unequal treatment that results from the operation of rules or policies that are not themselves discriminatory in intention (systemic or indirect discrimination).

The earliest example of antidiscrimination legislation explicitly directed at disability was Section 504 of the U.S. Rehabilitation Act of 1973, which states that “no otherwise qualified handicapped individual . . . shall, solely by reason of his handicap” be discriminated against in any program or activity receiving federal financial assistance.

Historically in the United States, Section 504 was the result of two trends. One trend extended civil rights protections to other marginalized groups; the other broadened the range of social programming to benefit people with disabilities (Scotch 1984:7-11). By 1990, a considerably more refined and extended antidiscrimination act came on the scene, the Americans with Disabilities Act (ADA) (Kanter 1999). The ADA prohibits discrimination on the basis of disability in employment, in access to and benefit of public services, and in access to public accommodations, transportation and services, and communications. Though it is the antidiscrimination law in the United States, the ADA works in conjunction with several others, at the federal and state levels, such as the Fair Housing Act and the Individuals with Disabilities Education Act.

Parallel pieces of legislation can be found in other common law countries around the world. These include the Disability Discrimination Act 1992 (Australia), Disability Discrimination Act 1995 (United Kingdom), Human Rights Act 1993 (New Zealand), Disabled Persons Act (India), Israel’s Disabled Persons Act 1998, and Canada’s Human Rights Acts, at the federal and provincial levels. Most of this legislation was passed in the 1990s and, though derivative from the U.S. approach, display important differences in coverage, methods of adjudication, and the level of compensation awarded. There are legally interesting differences between the U.S. approach and, as examples, the approach taken in Australia and the United Kingdom (Doyle 1999; Jones and Marks 1999), but there is no need to survey these differences because it is what they have in common that is more relevant here. There are, in particular, two structural features worth highlighting.

First, antidiscrimination legislation takes pains to identify the difference between discriminatory and nondiscriminatory unequal treatment. The key to this distinction resides in a formula that has gained acceptance wherever antidiscrimination law applicable to disability is in effect. If an individual with a disability is treated differently (denied employment, access to medical care, or the opportunity to watch a movie), for reasons that relate to the disability, that is discrimination if it can be argued that there is no reasonable way of accommodating the difference that the disability creates so as to allow equal participation. What constitutes “reasonable” accommodation is defined in various ways for various areas but amounts to an accommodation that could be provided to the person with the disability without creating “undue hardship” for the discriminator (employer, the hospital, or the movie theater).

Second, by its nature, antidiscrimination legislation is primary reactive and complaint driven. That is, the legislation seeks to protect human rights by giving people a legal tool to use when they feel that their rights to equal participation and equal respect are being infringed. Antidiscrimination is “individualistic” legislation since the onus is on the individual to take the initiative to use the power it provides. It is assumed that, if they are given the legal mechanism for doing so, people will identify discrimination and take the necessary steps to redress it. The complaint and adjudication process is, as a consequence, adversarial. The complainant is required to raise the issue and make a case for discrimination; the other side has the opportunity

to respond. Given the formula just mentioned, this debate involves whether the complainant is a person with a disability in the required legal sense, whether the unequal treatment was associated with that disability, and whether the accommodations that are possible would constitute undue hardship on the alleged discriminator.

Because of these two features of antidiscrimination law, no matter what mechanism is put in place to facilitate the process, invariably the process of determining whether discrimination has occurred is a long and costly one that becomes entangled, very quickly, in complex and often subtle legal argumentation. When a great deal is at issue, as it is in class action suits in which a group of similarly situated people bring a single complaint against a discriminator, the process is far slower, more costly, and less likely to yield concrete benefits to the people who could use them. Often, to their own detriment, complainants find it necessary, in order to qualify for protection, to emphasize the differences that were used to disadvantage them (Minow 1990). These are some of the reasons why, despite the successes of the civil rights movement, some have argued that the antidiscrimination approach subtly works against the wider agenda of securing equality of participation (Michelman 1969).

In part, as a response to these concerns, a few antidiscrimination laws incorporate provisions that require state agencies to assist complainants by seeking educational or conciliatory solutions prior to adjudication. Canada's federal and provincial Human Rights Acts are a good example of this approach. Often too, the legislation will require proactive responses, usually on the part of the government, to prevent discrimination in the provision of goods and services. Although the jury is still out on this, some studies of the ADA suggest that the greatest benefit of the act is to motivate employers and service providers to anticipate discriminatory situations and deal with them before they become problems (Pfeiffer 1995).

The principal rationale of the antidiscrimination approach to disability human rights is that acts of discrimination are responsible for the inability of persons with disabilities to enjoy their human rights and achieve the goals of equal participation, opportunity, and respect for difference. Access to needed resources and full participation in social life, it is assumed, will result when artificial and irrational obstacles are removed. The state is obliged not only to remove barriers it creates but also to provide the mechanism for hearing and adjudicating complaints about other obstacles in social life. In the end, though, these are battles that individuals should wage and win, without the active participation of the states and its agenda.

Constitutional Guarantee of Equality

The constitution of a country describes its basic political and legal structures in provisions that are supreme over all other legislation or government action. If a piece of legislation or a policy is inconsistent with constitutional dictates, it is "void and without effect." Because constitutional amendment is invariably a long and difficult political process—sometimes revolutionary in effect—entrenching human rights into constitutional documents endows them with the strongest legal and political commitment possible. Yet constitutions are general, even abstract documents that must be interpreted to apply to specific cases, and, although they bind the state and its agencies, they rarely bind private citizens directly.

An example of a constitutional guarantee of equality that has had clear implications for persons with disabilities is Section 15(1) of Canada's Charter of Rights and Freedoms (1981). This section states,

Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Other constitutional provisions around the world have the same effect, without explicitly mentioning mental or physical disability as protected grounds. The Antidiscrimination Act of the

Polish Constitution and Article 1 of the Dutch Constitution prohibit discrimination on grounds of “religion, personal convictions, political opinion, race, sex” or “any other grounds”; the latter phrase is understood to include disability (Hendriks, 1999). The German Constitution more broadly stipulates that no one must suffer disadvantages because of disability.

In the case of Canada, several Supreme Court decisions have carefully interpreted the constitutional provision to create a strong protection for persons with disabilities (Rioux and Frazee 1999). Since successful adjudication using the charter has constitutional force, all levels of government are bound to act in accordance with court decisions. In theory as well, all other parallel provisions or programs that might be analogously offensive to the constitutional guarantee of equality should be reviewed and, if necessary, amended. Although individuals can initiate constitutional legal challenges, the federal government of Canada, as well as certain provinces, has found it in its interest to initiate constitutional reviews (or “references,” as they are called) of their own acts or policies to avoid future litigation.

Ultimately, when human rights are guaranteed constitutionally, enforcement is not restricted to providing compensation to one or a handful of individuals whose rights have been violated. Indeed, courts in Canada have become exceedingly creative in devising ways of altering offensive legislative provisions, up to the point of excising certain wordings and substituting others. The most prominent enforcement tool for courts is a declaration that a law is null and void (*ultra vires*), but, in practice, Canadian courts have taken to issuing far more subtle and effective judicial orders and remedies. Naturally, judicial “legislation” of this sort is highly dependent on the membership of the court and its political views, facts that draw considerable academic criticism.

Even setting aside this objection, the constitutional enforcement of disability human rights is not without its own problems. The discourse of human rights becomes specialized and removed from common understanding. An individual or group who wants to bring a case against a law or policy has the onerous task of bringing before the courts complex constitutional argumentation, and the defendant is the government, which can call on formidable resources in its defense. Even at its fastest, the process can take years, is extremely expensive, and can be dismissed, without comment, by a court that does not think the issues significant. Because cases involving the equality provision of the constitution will form part of the body of law interpreting the highest law of the land, there is an understandable reluctance on the part of judges to move too quickly or too far. Change, therefore, is slow.

Specific Entitlement Programs

Many countries, whatever else they have in place to give legal expression to disability human rights, have programs that create entitlements for persons with disabilities. As entitlements, these benefits are enforceable. A person who is eligible to receive the benefits or opportunities a program delivers can call on a court, tribunal, or other adjudicating body to enforce his or her claim to those benefits or opportunities. The fundamental difference between this approach to disability human rights and the previous two is that here the focus is on positive provision of resources and other facilitators to full participation rather than on the removal of discriminatory obstacles. The distinction between these two is often imperceptible in practice; nonetheless, there is an important difference in the form that the legal expression takes.

There is a considerable range and variety of entitlement programs. Income maintenance policies provide subsistence income; educational and preemployment development grants help to assist persons with disabilities into the workplace. Many countries provide subsidized or free transportation for persons with mobility or related disabilities or give financial supplements to purchase or repair assistive devices. The tax system has long been used to create entitlements that persons with disabilities can use to partially offset disability-related costs. In addition, most countries have social security programs in entitlement form, including permanent and temporary disability benefits, disability pensions, and work-related injury benefits.

Often, a state will indirectly create entitlements for persons with disabilities by providing incentives for private agencies to, for example, hire or train them. The German Severely Disabled Persons Act requires all public or private employers with 16 or more employees to fill 6 percent of open posts with disabled persons or else pay a compensatory levy for every unfilled compulsory place. France has had similar system, but with a wider scope, for several decades. Also in the employment sector, Israel's Employment (equal opportunities) Law 5748 (1988) provides for a subsidy for employers in industry who hire at least 20 extra new workers with moderate disabilities. Many states have followed the United States in using the tax credit approach to encourage employers to hire more persons with disabilities. The technique of requiring employers of a specified size to provide "action plans" for including more persons with disabilities into the workforce has been proposed in Australia and elsewhere. The worldwide variety in these entitlements is considerable.

The characteristic feature of all disability entitlements is their transitory nature. All entitlement programs arise from legislation that is subject to political and ideological trends, sometimes shifting the focus of the program radically. Governments are elected, and new or expanded entitlements are created. Then economic conditions are perceived to alter, or new governments with a different mandate are elected, and entitlements are wound down, restricted in coverage or in some other way revised to offer less tangible or useful benefits to persons with disabilities.

Another way to put this point is that disability entitlement programs answer to the same overall political and economic demands as all social policy. For governments, policymakers, and legislators, persons with disabilities are usually viewed as one of many constituencies and often one of the least politically influential. Recently, some welfare economists argue, in part as a response to the current neoconservative retrenchment from the welfare state, that the most efficient use of entitlements is to support supply side labor market trends, which in effect treat people with disabilities as means to larger economic ends. During periods of low unemployment, persons with disabilities should be entitled to generous income support packages to encourage them to leave the labor market. When the economy grows and more low-skilled employees are urgently required, these entitlements should be limited or removed to force persons with disabilities back into the labor market again (Culpitt 1992; Rothstein 1998).

Voluntary Human Rights Manifestos

The last legal expression of disability rights builds on a social commitment that is not enforced by any mechanism of the state, legal or administrative. One might say that these legal commitments are really manifestos or public statements of the moral entitlement that people with disabilities have to human rights. Manifestos serve the important function of bringing legitimate claims to public attention, and, in this sense, they do express a commitment. Voluntary manifestos are expressions of a sense of duty among members of society to ensure the independence of persons with disabilities and their full participation.

An example of this technique is Japan's Disabled Persons' Fundamental Law (1994). The purpose of this law was to lay out basic principles the state felt ought to govern all measures, public and private, for the benefit of persons with disabilities. Article 3 states that

the dignity of all disabled persons shall be respected and they shall have the right to be treated in such a manner. All disabled persons shall, as members of society, be provided with opportunities to fully participate in social, economic, cultural and other areas of activity.

Although the Disabled Persons' Fundamental Law also contains entitlements that are enforceable, the core rights provisions, such as Article 3, are not. The intent is to express societal values, to make these known and declare that all citizens have the obligation to put these values into

practice. Similarly, Hong Kong's Disability Discrimination Ordinance of 1996 identifies discrimination as a social problem and "prohibits" it but on a voluntary basis. Finally, China's Disabled Persons Act is a public statement that all aspects of social life should be open to persons with disabilities, though it also does not specify a complaint or enforcement mechanism.

It would be very easy to dismiss these examples as political window dressing or worse. However, that would be a mistake. If nothing else, cultural differences have to be taken in account. We in the West are comfortable with the notion that the obligation to respect human rights requires more than moral suasion. We tend to believe that the complex apparatus of legal enforcement must be part of the public affirmation of the values that support disability human rights. Yet this need not be true in other cultural contexts where social responsibilities are more quickly taken on by individuals. In such cultures, turning commonly held social values into enforceable obligations might appear unnecessary, if not disrespectful, of the citizenry. That a wholly voluntary scheme for preventing discrimination or ensuring equal opportunity is probably not a viable option in the West does not mean that it cannot be a more appropriate mode of legal expression of human rights elsewhere in the world.

In this light, it is relevant to consider the development of disability human rights at the international level, particularly as it occurred in the area of what might be called "transnational law" and as it has been shaped by the United Nations (Cooper and Whittle 1998; Whittle forthcoming; Whittle and Cooper 1999). This evolution reflects both the strengths and the weaknesses of international political organizations, which perforce rely on the voluntary approach. Although the United Nations has been a significant and persuasive force in the recognition and development of human rights in general and disability rights in particular, the prospect of enforcement has never been a viable possibility. Instead, the United Nations has used its moral authority in a public forum to generate momentum in several countries. This has resulted in domestic legal expression of rights, especially in the developing world. In addition, the United Nations is in the process of constructing what may turn out to be a new version of the voluntary model. This version concentrates on the standards by which all legislation and state action can be assessed for its tendency to obstruct or facilitate the cause of disability human rights.

The evolution of recognizing human rights for persons with disabilities by the United Nations exemplifies a different development of disability rights. After World War II, the United Nations sought to promote the rights of persons with disabilities by assisting governments in improving social welfare programs, particularly rehabilitation and training. Then, in direct response to initiatives from within the community of persons with disabilities in the 1960s, the United Nations initiatives embraced the notion of human rights for persons with disabilities, their full participation in all areas of society through an equalization of opportunities. In 1971, the General Assembly adopted the *Declaration on the Rights of Mentally Retarded Persons* (United Nations 1971) as the first international statement of disability human rights. This was followed in 1975 by the more inclusive rights document, the *Declaration on the Rights of Disabled Persons* (United Nations 1975). This proclaims the equal civil and political rights of persons with disabilities around the world and sets the standard for equal treatment and access to services to further social integration.

In that year, steps were also taken to proclaim 1981 the International Year of Disabled Persons, with the theme of "full participation and equality." The principal outcome of this event was the formulation of the *World Programme of Action Concerning Disabled Persons*, adopted by the General Assembly in December 1982 (United Nations 1982). The *World Programme of Action* was a global strategy to enhance disability prevention, rehabilitation, and equalization of opportunities. On the heels of this was the proclamation of the United Nations Decade of Disabled Persons, 1983-1992.

These public events and manifestos, perhaps because of the very restricted enforcement capabilities of the United Nations, led to the development of an alternative version of the voluntary model. This model can be found in the *Standard Rules on the Equalization of Opportunities for Persons with Disabilities* (United Nations 1994). The *Standard Rules* set out explicit standards of law and policy for member states, standards that, if adhered to in practice, are designed to achieve equalization of opportunities and equal participation for persons with disabilities in

all major areas of social life. It outlines, in detail, what policies and practices serve to guarantee rights to education, work, social security, and protection from inhuman or degrading treatment. Rule 15, in particular, mandates that all states have the responsibility to create the legal bases for all measures required to achieve the objectives of full participation and equality for persons with disabilities.

The *Standard Rules* is not a legally binding instrument, which is rare in international law in any event. Though a vitally important document for the recognition of disability human rights, it remains a manifesto that expresses moral and political values, rather than explicit legal protections and guarantees (Michailakis 1999). Work is now being done around the world, under the direction of the United Nations special rapporteur on disability, Bengt Lindqvist, to operationalize the rules more concretely so that countries around the world can have a tool for assessing their laws, policies, and practices. Yet, when this work is completed, the result will remain a recommendation to member states, not an enforceable demand. (It is perhaps for this reason that, parallel to the work done on the *Standard Rules*, proposals are now ahead for a general and legally more effective treaty on the rights of persons with disabilities.)

Looking over these four approaches, it is possible to see yet another dilemma for the disability policy reformer. It is safe to say that entitlement programs can be designed and launched to provide the resources and other requirements that stand a good chance of improving the lives of persons with disabilities. Yet the relationship these programs have to an underlying social commitment to human rights is tenuous and liable to be displaced by other social demands, real or perceived. Explicit antidiscrimination legislation or constitutionally entrenched disability rights are solidly imbued with a commitment to human rights but, in practice, because of their abstractness and the administrative costs they incur in both time and money, are less likely to result in practical and concrete benefits to persons with disabilities. On the other hand, voluntary manifestos, either nationally or internationally, are by far the most explicit affirmations of human rights for persons with disabilities; yet, these documents are not enforceable.

WHAT IS THE BEST APPROACH TO DISABILITY HUMAN RIGHTS?

These, then, are the predominant models of the legal expression of disability human rights. In time, it is hoped that multidisciplinary research into disability human rights will give us strong empirical reasons for favoring one model over another. Yet, before that kind of research can even begin, work needs to be done on ways to identify and measure the outcomes that are desirable. We need to be clear about the objectives of the human rights approach to disability policy that society is committed to and how we can measure when a society is getting closer or further away from those objectives. The grand goals of equal opportunity, full participation, and respect for difference are not controversial, but because they are so abstract, it is not always clear what, in concrete terms, they require.

Is there a best model of securing human rights for persons with disabilities? This large question needs to be divided into more manageable parts. We first need to ask whether it is plausible that human rights could be secured without relying on some form of legal enforcement. Then we should consider more closely the strengths and weakness of the antidiscrimination approach, which is the dominant model around the world. Finally, we should look at what underlies the entitlement approach and ask whether it is plausible that this approach, grounded in distributive justice, is a contender.

Enforceable or Voluntary?

It is arguable that manifesto statements of human rights are not only useless but also are counterproductive. When a state, the United Nations, or other international organization is-

sues such a proclamation, the impression may be given that a genuine commitment has been secured and nothing more needs to be done. No doubt, when manifestos are released with public fanfare and political speeches, attention is directed to the social condition of persons with disabilities, and that alone is valuable. However, if nothing further follows, if the world programs of action and international years and decades pass without notable change, then the manifesto may have actually pushed the real issues into the background and away from public scrutiny.

Yet is it really inconceivable that a purely voluntary manifesto of the rights of persons with disabilities could, at least in some cultural contexts, be an effective way of securing these rights? One of the frustrating features of this area of disability studies is that we do not know the answer to this question. We can surmise that voluntary provisions, especially at the national level, are probably political techniques for raising public awareness—and, perhaps as well, for defusing potential protest—without having to commit public resources. We might also suspect that there is no cultural setting in which individuals will readily take on obligations to accommodate people with disabilities and ensure that differences are respected and equality is achieved without some form of legal incentive or coercion. Still, we cannot say for sure. There are some recent anthropological investigations into cultural perceptions of social obligations toward individuals with disabilities (Ingstad and Whyte 1995), but it is far too early to be confident about any hypothesis.

Nonetheless, from the perspective of those countries that have developed disability policies and have expressed a commitment to human rights for persons with disabilities, there is little reason to believe that the voluntary approach has much to offer. It is not an inconceivable approach to human rights recognition; it is rather, on the best of our evidence, an approach that in current circumstances is unlikely to be successful.

Antidiscrimination as a Human Rights Objective

If the voluntary approach to human rights can be set aside as inadequate, the real controversy is among models of enforceable law, specifically between the antidiscrimination approach and the entitlement approach. Around the world, it is clear that the antidiscrimination approach is gaining popularity. Some countries, notably France, believe that such legislation is unnecessary, but even in France, there is a growing interest in the ADA and in following the lead of other members of the European Community (Waddington 1999). There are subtle and legally significant differences between the Canadian constitutional approach and the U.S. approach, but these differences do not cut to the heart of a basic political and legal distinction between antidiscrimination and positive entitlement that needs to be explored in some detail.

Nearly every jurisdiction that has or is planning to have an explicit protection against discrimination on the basis of disability also has a range of specific entitlement provisions. The debate is not over whether there should be entitlement provisions but whether the antidiscrimination law should be the primary focus of the political aim of protecting human rights. For some advocates of the antidiscrimination approach, it is often thought that concrete entitlements will be forthcoming, almost automatically, if a strong protection against discrimination is in place.

Are there problems with the antidiscrimination approach or inherent weaknesses that argue against this unexpressed preference for this mode of expressing the human rights approach? What is at stake, and what is the alternative? Should we be confident that a sustained, enforced, and successful public policy of antidiscrimination really is the most important human rights objective for people with disabilities?

There are certainly those who have claimed this. Some years ago, disability scholar Harlan Hahn (1993) argued that

all facets of the environment are moulded by public policy and . . . government policies reflect widespread social attitudes or values; as a result, existing features of architectural de-

sign, job requirements, and daily life that have a discriminatory impact on disabled citizens cannot be viewed merely as happenstance or coincidence. On the contrary, they seem to signify conscious or unconscious sentiments supporting a hierarchy of dominance and subordination between nondisabled and disabled segments of the population that is fundamentally incompatible with legal principles of freedom and equality. (Pp. 46-47)

In this passage, Hahn (1993) ably identifies the core sentiment underlying the antidiscrimination approach to disability rights. Because of their minority group status, persons with disabilities are denied the full enjoyment of their rights primarily because of institutional or systemic discrimination brought about by prevailing attitudes that suffuse all civic and social institutions. For Hahn (1987), "the primary problems confronting citizens with disabilities are bias, prejudice, segregation, and discrimination that can be eradicated thorough policies designed to guarantee them equal rights" (p. 182).

Hahn and others put their faith in the express legal protection of rights found in antidiscrimination law such as the ADA. Hahn, in particular, appreciates that courts and judges are not immune to the effects of precisely those prevailing "disabling images" and attitudes that lead to the denial of human rights. Yet he believes that, more than any other political or social mechanism, legally enforceable prohibitions against discrimination based on disability stand the best chance of guaranteeing disability human rights. Guaranteeing these rights will make possible, if not guarantee, the availability of the concrete resources and opportunities that people with disabilities require for full participation.

From the beginning of the movement, disability advocates in the United States adopted and made their own the culture of individualism, and Hahn reflects that stance. To reject stereotypes of infirmity and childlike dependency, they believed it essential that people with disabilities strive for independence and self-sufficiency. In this environment of individual rights and the rejection of paternalistic state agencies, human rights advocates have tended to be highly suspicious of entitlement programming, especially income support and welfare policies, and have argued instead for economic self-sufficiency, usually in the form of remunerative employment. The aim was to make people with disabilities competitive in the open labor market and to give them a fair and equal opportunity to get and keep a job.

This employment-focused political strategy and the need to encourage people with disabilities to make demands for full inclusion into existing economic structures led quite naturally to the view that full employment for persons with disability should have long-range economic advantages for the society at large. This suggested that what prevented the employment of persons with disabilities could not be the labor market itself but economically irrational stigma and prejudice of the sort that antidiscrimination legislation is well designed to remedy. Without intending to, American disability advocates sent messages that clearly resonated with the growth of neoconservatism that went on to dominate the political landscape during the 1980s and 1990s.

The antidiscrimination approach, in real terms, has shown itself to be a proven success. Yet at least two inherent weaknesses in this approach are relevant to the larger issue of which is the best long-range strategy for recognizing the human rights of persons with disabilities (Bickenbach et al. 1999).

First, the approach entails that people with disabilities see themselves and be seen by others as a minority group that has historically suffered discriminatory treatment of a fundamentally irrational and prejudicial nature. Unfortunately, the required analogy between disability and, say, race, gender, or religion, has always been forced and awkward. The social stigma and stereotyping that undoubtedly exist in the case of disability vary widely between mental and physical impairments. People with disabilities do not have common experiences, nor, the Deaf community notwithstanding, is there a unifying culture or language that people with disabilities can point to for establishing transdisability solidarity. One does not have to be an anthropologist to observe that the leaders of the disability movement have tended to be highly educated, white middle-class males with late-onset physical disabilities and minimal medical needs, a group that is hardly representative of the population of people with disabilities around the world.

Second, even if the minority model fit the facts and people with disabilities do constitute a “discrete and insular minority” (in the words of the preamble of the ADA), there is, as was already noted, both a practical and a psychological problem in the implementation of the model. Any observer of the operation of the ADA would be concerned about the inordinate amount of time and energy being spent determining whether the individual complainant actually qualified as a member of the minority for whom antidiscrimination protection is sought. In addition, the adjudication process demands that one embrace an adverse label to qualify for protection. What could be more demeaning than having to earn one’s human rights by showing that one is eligible to “special treatment” by virtue of being a member of a socially discredited group?

More problematic yet, legislative definitions of *disability* tend to combine in a confusing way the social phenomena of disability with the medical determinants of impairment. The ADA defines disability as a “physical or mental impairment that substantially limits one or more of the individual’s major life activities” (Sec. 3(2)). (Antidiscrimination acts around the world use similar definitions. For example, the U.K. Disability Discrimination Act of 1995, Section 1(1), defines disability as “a physical or mental impairment, which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.”) Although the legislative history of the ADA makes it clear that what was intended is a social conception of disability, nonetheless some ADA plaintiffs lose their complaints because they cannot provide sufficient or sufficiently unambiguous medical evidence about their impairments. This is particularly true for persistent pain, learning disabilities, and other forms of “medically hidden” impairments.

The problem here is not just a matter of the clarity or inclusiveness of legislative definitions of disability. It is rather that a potential complainant must also claim membership in the disability minority group and, to prove membership, is forced to rely on medical or rehabilitative conceptions of disability, thereby falling back on precisely the models of disability the human rights approach rejected. There is no choice but to medicalize disability because, in an adversarial context, self-identification would be immediately dismissed as self-serving, and a functional but nonmedical definition would be opened to the charge that the complainant was malingering.

There is another consideration. Antidiscrimination legislation is invariably the product of a political compromise in which irrelevant ideological positions can leave their imprint. This has yielded the peculiar result that some classes of persons with disabilities are excluded, not because they do not have or are believed to have medically ascertained impairments but rather because their condition is perceived to be a sign of moral fault. Thus, antidiscrimination legislation around the world follows closely the ADA practice of limiting coverage for persons who use illegal drugs and persons who are homosexual, bisexual, or transvestite. In addition, the ADA excludes mental conditions, such as compulsive gambling, kleptomania, and pyromania, from its list of legitimate impairments. The U.S. Supreme Court has gone on record affirming that outright discrimination against a recovered alcoholic is not a violation of antidiscrimination laws since the alcoholism was a “voluntary” disability, an indication of moral weakness and self-abuse (*Traynor v. Turnage* 1988). We have also seen a denial of ADA protection for a student with learning disabilities on the grounds that his functional need for more time and a quiet exam room is compatible with the unworthy disability of lack of motivation or the inability to overcome stress and nervousness (*Argen v. State Board of Law Examiners* 1994).

These results are well known and inevitable when the condition of inequality of people with disabilities is conceptualized solely as a matter of discrimination. Antidiscrimination legislation envisages a situation in which an individual is prevented from achieving goals by artificial barriers, founded on irrational beliefs, stereotypes, or prejudice about disability. While there is no doubt that these social evils exist, the real issue is whether they are the only or even the most important obstacles to equal opportunity and respect for difference. The antidiscrimination approach presumes that each individual has the motivational and other merit-creating abilities required for full participation in all areas of social life and can plausibly argue that he or she would succeed but for these artificial and irrational obstacles. Those with “moral failings” such as homosexuality, alcoholism, or lack of motivation would not succeed in any event, so discrimination is not an issue with them.

If nothing else, this presumption in practice clearly favors intelligent people with late-onset mobility or sensory impairments. Available statistics on complaints bear this out. The largest class of complainants under the ADA employment provisions has been people with lower back pain, and any redress for discrimination in employment on grounds of mental illness has been conspicuously absent (Baldwin 1997; Campbell and Kaufman 1997).

In short, antidiscrimination legislation tends to have little time for compulsive gamblers, alcoholics, or people who have mental or psychiatric problems and behave strangely, although all of these people have obvious impairment-related needs. It might even be argued that the antidiscrimination approach tends to produce another class of “inferior” people—namely, those people with disabilities for whom the absence of discrimination offers no benefit and for whom the kind of equality of opportunity that antidiscrimination legislation protects affords no relief. Their impairment-related needs go unmet, and they remain unemployed, uneducated, and powerless.

Finally, even if antidiscrimination law could be made to work effectively and without these drawbacks, the advocacy strategy that sets its sights entirely on antidiscrimination protection must, in the end, be judged to be of limited, ongoing value to people with disabilities. Undoubtedly, people with disabilities do face discrimination, and for that reason, antidiscrimination legislation is justifiable and important. Yet is that all there is to a recognition of human rights? Arguably not, especially when neutral forces such as economic factors create real disadvantages for persons with disabilities, because there is no insult and no insulter. There is a social evil; there is injustice and inequality. But of a different sort. Around the world, people with disabilities face nonaccommodating physical and organizational environments, lack of educational or training programming, impoverished or nonexistent employment prospects, confused and inadequate income support programs, underfinanced research for assistive device technologies, lack of resources to meet impairment-related needs, and policy neglect and minimal political influence. These are all social ills brought about by a maldistribution of power and resources. However, they are not forms of discrimination.

In the end, the underlying strengths and weaknesses of the antidiscrimination approach to securing human rights flow from the same source—namely, its implicit understanding of the root cause of inequality. That discrimination in private action and public policy creates obstacles is undeniable, although there have been surprisingly few empirical studies of the nature of such discrimination (Neufeldt and Mathieson 1995). Yet besides discrimination, there is another and arguably more fundamental cause of the inequality, one that also violates the human rights of people of disabilities. It is this cause that, however inadequate in practice, entitlement provisions seek to address—namely, distributive injustice.

Distributive Justice as a Human Rights Objective

What—at least ideally—is the objective of an entitlement program for which persons with disabilities can benefit, be it a training program for employment, a mandate for accessible public transportation, a voucher for vocational rehabilitation, or a subsidy to purchase an assistive device? The objective is to remedy an existing situation of inequality, in some particular arena or context, brought about by a failure to distribute resources in a way that meets needs. If opportunities do not exist or if resources are not available, this is an issue not necessarily of discrimination but of distributive injustice: an unfair or irrational distribution of resources and opportunities that has resulted in limitations of participation in social life for some.

Distributional injustice may be intentionally created but usually is an institutional or structural consequence of political and economic forces far too complex to be credited to the behaviors of any particular person or group. To be sure, we are currently witnessing the emergence of single individuals and corporations that are highly influential on their own in the world economy. Yet even these powerful entities are affected by background and impersonal economic forces. For people with disabilities, these forces can produce distributional injustice in part be-

cause of the variation, among people in general, in impairment-related needs and disability accommodations. As a rule, the higher the level of impairment need, the smaller the population cohort. This means that the economic marketplace tends to cater to the more trivial and common impairment needs (such as glasses for mild visual impairment or antidepressants for mild depression), while ignoring the more complex and less common needs (e.g., those for spina bifida or autism). In addition, there are far more disadvantages associated with mental and psychiatric impairments than the actual needs linked to those impairments would predict.

These distributional inequalities directly impinge on the lives and opportunities of people with disabilities around the world. Inequality in resource and opportunity allocation fundamentally violates basic human rights, insofar as inequality undermines the realistic achievement, within a social context, of equality of opportunity, respect for difference, and full participation. The concrete value of human rights, it can be argued, lies in the resources and opportunities that flow from a viable and enforceable social commitment to these rights. The range of particular entitlements is intended to address resource and opportunity inequality directly and, as such (at least in theory), can be argued to further human rights for persons with disabilities more directly and more concretely.

Unfortunately, the reality of the entitlement approach, as currently conceived, is not without its problems. The successes and failures of entitlement programs are very much a function of the kind of resource or opportunity involved, the overall costs of the entitlement, the number of people who benefit from them (and their relative political power), and how the program is perceived within each cultural and political environment. More important, entitlement programming for people with disabilities often falls victim to similar kinds of problems that limit the effectiveness of antidiscrimination law. As is widely known, a not inconsiderable portion of the costs of these programs is spent on determinations of eligibility that involve medical experts. Beneficiaries of these programs are stigmatized because, to qualify, they have to emphasize their inabilities rather than their strengths. Determinations of need are often made, for well-documented reasons (Stone 1984), by medical professionals who do not always understand nonmedical needs, such as for accommodation in the workplace. The resources that people with disabilities require are very often needed to overcome socially created obstacles that have little to do with their own functional limitations. Finally, as has already been noted, disability policy is notoriously volatile and reactive. Programs come and go, are extended or retrenched, and are always at the mercy of perceived demands on the state from other sectors.

These problems are well known, and many attempts have been made to isolate the underlying causes of what amounts to a persistent impasse in disability policy (Albrecht 1992; Barnes 1991; Bickenbach 1993; Oliver 1990a, 1990b, 1996; Stone 1984). It is undoubtedly true that disability policy in general has not received the attention it is due because of the relative lack of political power of persons with disabilities. At the same time, when people with disabilities organize to further their interests, governments treat them as “special interest groups,” which have to be discounted as self-serving or else played off against other groups. Ultimately, the problem with entitlement programs for persons with disabilities is that they are perceived to be for a minority, a special group with special needs and, as such, not part of the mainstream. This has not served the interests of human rights. And this indeed may be the underlying problem that needs to be addressed.

Universal Disability Policy: Integrated Entitlements

Is there an alternative way of grounding entitlement programs, one that can further the human rights agenda of persons with disabilities? One alternative has been suggested, although the ramifications for the human rights approach and its actual effect on social policy design have yet to be worked out. It uses the entitlement approach but abandons the minority model and integrates entitlements into overall social policy. The theory behind this “universalistic” approach can be found in some remarks made by the late American sociologist Irving Zola.

In an influential article, Zola (1989) argued that “an exclusively special needs approach to disability is inevitably a short-run approach” (pp. 405-6). What is needed for a more mature and enduring approach “are more universal policies that recognize that the entire population is ‘at risk’ for the concomitants of chronic illness and disability.” We need a political strategy that, as Zola put it, “demystifies the specialness of disability” because “by seeing people with a disability as ‘different’ with ‘special’ needs, wants, and rights in this currently perceived world of finite resources, they are pitted against the needs, wants, and rights of the rest of the population.” We must turn to a more durable strategy for expressing the human rights of persons with disability, a strategy he dubbed “universalization.” We need to acknowledge, he wrote, “the near universality of disability and that all its dimensions (including the biomedical) are part of the social process by which the meanings of disability are negotiated,” only then “will it be possible fully to appreciate how general public policy can affect this issue” (Zola 1989:406).

In some of his last published works, Zola commented on the demographic commonplace that around the world, as people live longer, the incidence of disability will increase. He argued that as a consequence, the aged and people with disabilities have a unifying political agenda that ought to be exploited (Zola 1988). Yet, at a deeper level, and independent of population figures, disability is not at all a distinguishing feature of a group of individuals, let alone a defining characteristic of a minority group. It is rather an essential feature of the human condition. For complex sociopsychological reasons, disability has been treated as if it were not a normal feature of what it means to be a human being but rather as an aberration or abnormality. This is the source of the problem with disability policy and the pursuit of human rights.

Supporting Zola’s universalistic strategy is his analysis of disability, not as dichotomous but as fluid, continuous, and entirely contextual. In this, Zola was in full agreement with the social model of disability that supports and is supported by the human rights approach. Moreover, as an advocate for the universalization of disability, Zola argued for the need to respect human difference and variation by widening the range of the normal, creating, so to speak, an inclusive sense of normality. Disability is a constant in human experience, a fundamental feature of the human condition, in the sense that no human being can be said to have a perfect repertoire of abilities suitable for all contexts. It would follow, then, that there are no immutable boundaries to the range of variation in human abilities. In other words, the ability-disability distinction is not so much a contrast as a continuum, and the complete absence of disability, like the complete absence of ability, is of theoretic interest only.

Disability is ubiquitous, Zola (1993) argued, in the obvious sense that human existence without disability is unimaginable: “The issue of disability for individuals . . . is not whether but when, not so much which one, but how many and in what combination” (p. 18).

In policy terms, this means that disability is not a “special” or exceptional condition that must be catered to or receive special treatment by the majority. It would be nonsensical to say that social policy has to be adapted to take care of the special case of people who need to breathe, eat, or seek the company of others. By the same token, Zola (1993) argued, it should be nonsense to say that social policy has to be especially adapted to deal with the fact that people have disabilities or that disability is an attribute of a person that qualifies him or her for special treatment or consideration. To universalize entitlement programming, we must first demystify the “specialness” of disability. Rather than identifying special needs that require specific legislation implemented by special agencies and served by specialists, we must begin with the premise that all people have needs that vary in roughly predictable ways over the course of their life spans.

In short, Zola’s (1993) vision was for a universal disability policy (which, ironically, would cease to be a *disability* policy) that provides a realistic grounding in human rights by fully integrating entitlement programs into the overall social policy of a society. Universal disability policy expands the range of the human normality to more realistically include human variation as it actually exists. Closest perhaps to the theory of universal design in the built environment (Mace, Hardie, and Place 1991; Story, Mueller, and Mace 1998), Zola’s vision was of social policy that can successfully benefit all human beings, given the full range of human variation.

Instead of catering to people who happen to fit within a relatively narrow range of the normal, we ensure that all environments, resources, and opportunities are suitable to as many as possible.

The core strategic issue of a universal disability policy would be that of democratically negotiating the range of normal human variation as the basis for an across-the-board universal design in social policy. There are predictable pressures to restrict the range of the normal, in favor of those who are powerful, and these pressures should be challenged. The more restrictive the range of normal human variation is conceived to be, the less likely that resources and opportunities will be equally distributed. The value of equality demands that no group should monopolize resources without justification, including those whose set of abilities happen to fall within some artificially restricted range of “normal” human variation.

The issues facing a person with a disability, Zola (1989) wrote, involve “the fit of [one’s mental and physical] impairments with the social, attitudinal, architectural, medical, economic, and political environment” (p. 406). Of those aspects of the environment over which humans have a measure of control, the “fit” is determined by how society distributes resources and opportunities. Some distributions are inherently unfair because they disproportionately benefit some people at the expense of others. Unequal or irrational distribution of resources and opportunities can be the result of discriminatory behaviors and social practices. However, when discrimination is not involved, the injustice may well remain, should the distribution of society’s resources and opportunities ignore the full range of human variation in need and cater instead to some frozen and arbitrary conception of the normal.

Universalism in disability policy, if the details can be worked out, represents a shift in the center of gravity for social policy. But more important, it may well be the key to the full and practically realizable expression of human rights for persons with disabilities. Fully integrated entitlement programs will serve the interests of all people, in relation to their impairment needs and in the areas of life in which those needs make the difference between limited and full participation. This is putting human rights into practice.

CONCLUSION

There are many descriptions of what constitutes a basic human right, but in the context of disability, proponents have usually argued that the human rights worth having embody the values of the respect for difference, equality of opportunity, and full participation in all aspects of social life. These values, though distinct, are also complementary. A respect for difference entails the recognition that although human beings come in different shapes and sizes, with varying degrees of talents, skills, and abilities, everyone deserves respect as a human being. To be respected, though, means to be respected for the person that one is, with all the intrinsic attributes and features that make up each individual’s differences. At the same time, however, when differences make a difference in how one gets on with one’s life and participates in social activities, equality as a political value demands that, at a minimum, no one be excluded from opportunities or prevented from participation for reasons that are not relevant to their capacity to participate.

Respecting difference entails that sometimes one’s capacity to participate requires assistance or accommodation of some sort, the absence of which is a barrier to opportunities. Because equality demands that social roles and positions be open to everyone, where full participation is limited by artificial social barriers, including the failure to assist or accommodate difference, these must be addressed to fulfill the mandate of human rights. To thereby put the human rights agenda on a firmer footing, one must give considerable thought to identifying the attitudinal, social, and political obstacles to the goals of disability advocacy, as well as to developing the tools needed to move the debate from the piecemeal reaction to inequality to a sustained devel-

opment of equality in all areas of human participation. Sound social scientific understanding of the historical and economic forces that have created our understanding of human rights and our current legal and policy techniques for securing these rights is urgently required. In addition, good empirical work is needed to identify objectives and ways of measuring success and failure in reaching those objectives. On all of this work, the future of disability advocacy and the dream of human rights depend.

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