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Changes in the political and policy response towards disabled students in the British higher education system: a journey towards inclusion

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This article maps a journey of political and policy change in the response towards disabled students studying in British higher education: changes which were underpinned by dominant perceptions about disability. Findings are drawn from an analysis of archival material linked to UK legislative and policy development, together with key informant data, which included the views of senior policy staff and disabled people. Recent changes in the response towards disabled students incorporate findings from an in-depth study at a case study university, which involved extensive interviewing of staff members and disabled students. It is argued that disability was perceived as a welfare issue within higher education policy and provision and, consequently, disabled students were treated differently to other groups who were viewed as experiencing inequality, for example, women and people from ethnic minorities. The failure to understand disability in terms of equality and rights, and as a form of oppression, meant that the inequality and the lack of inclusion experienced by disabled students remained unchallenged until more recent legislative developments.

Keywords: discrimination; equality; legislation; marginalization; power

Introduction

The political response towards disabled people radically changed in Britain during the last two decades: from a welfare and needs-led focus (based on care and compensation) to a rights-led focus (based on equality and inclusion). Similar changes in political approaches were observed elsewhere in Europe and other parts of the Western World. However, whilst policies in some countries supported a positive approach (aimed at improving the lives of disabled people) as formulated in Sweden, the United States and Australia, the approach in other countries was negative (characterized by inaction or neglect) as in China. Within positive policy formulation, a spectrum existed between minimal and maximal policy: a minimalist position was adopted in Sweden during the 1990s, which targeted provision for disabled people (similar to that of the UK Conservative Government); a maximalist position was adopted in America and Australia with a rights-based focus (similar to that of the UK Labour Party) (Drake 1999). International comparison of disability legislation and policy, partly influenced change, for example, in the UK the disability movement fought for legislation akin to that enacted in America (Americans with Disabilities Act 1990). Moreover, political change was driven by the United Nations

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and the European Union, which gradually moved from dominant welfare responses, towards understanding the exclusion experienced by disabled people:

> Rehabilitation efforts have to be complemented by measures to ensure equal opportunities for disabled people, i.e. activities have to be planned and carried out to encourage and enable the community to include disabled people in its normal social and economic life. (Momm and Konig 1989, 505)

The changing political response in Britain towards achieving equality and inclusion for disabled students in higher education is increasingly evident in other European countries, for example, in Sweden (Holme 2009; Gustavsson and Holme 2010), Norway (Magnus 2006, 2009) and Belgium (Heurckmans 2009). As each country struggles with fundamental issues about disability, human rights, equality and inclusion, it is important to identify and share experience about the priorities within policy which shape and determine the experiences of disabled people.

Whilst the number of disabled students accessing British higher education during the 1990s significantly increased from just over 2% in 1994 to nearly 4% in 1996 (Higher Educational Statistics Agency 1996, 1998), increased numbers did not reflect a student experience of belonging (Beauchamp-Pryor 2004, 2008).[1] The feeling of being unwanted was indicative of the broader marginalization of disabled people within society:

> We receive so many messages from the non-disabled world that we are not wanted, that we are considered less than human. For those with restricted mobility or sensory disabilities, the very physical environment tells us we don't belong. It tells us that we aren't wanted in the places that non-disabled people spend their lives – their homes, their schools and colleges, their workplaces, their leisure venues. (Morris 1996, 26)

The marginalization of disabled people perpetuated because of the dominant perception of disability held throughout society: a perception which viewed disability as personal inadequacy, inability and abnormality, a view which was contested by disabled activists and academics in the UK (Union of the Physically Impaired Against Segregation 1976; Finkelstein 1980; Oliver 1990, 1996). From this perspective disabled people were not restricted by their impairment, but by institutional, environmental and organizational barriers. Ideas of inability persisted, underpinned by dominant values. As exemplified in education, disabled people experienced exclusion:

> The majority of British schools, colleges and universities remain unprepared to accommodate disabled students within a mainstream setting. Thus many young disabled people have little choice but to accept a particular form of segregated 'special' education which is both educationally and socially divisive, and fails to provide them with the necessary skills for adult living. By producing educationally and socially disabled adults in this way, the special educational system perpetuates the misguided assumption that disabled people are somehow inadequate.... (Oliver 1996, 64)

Consequently, assumptions based on inability and inadequacy became generally accepted as fair, just and rational.

Theoretical accounts of power provided by Lukes (1974) and Gaventa (1980), which harmonize with Gramsci's doctrine of 'hemegony' (Femia 1981), explicate how those with power are able to override the interests of those who lack power (Beauchamp-Pryor 2008, 2011a, 2011b). Gramsci's doctrine rested on the 'domination' through moral, political and cultural values in society in which 'hegemony' shaped 'directly or indirectly, the cognitive and affective structures whereby men perceive and evaluate problematic social reality' (Femia 1981, 24). The ideological domination of one group over another distinguished between the 'normal' and the 'deviant' (Hulley and Clarke 1991) and disability was perceived as a social problem because of:

> …the successful efforts of powerful groups to market their own self-interests. Consequently, the so-called 'objective' criteria of disability reflects the biases, self-interests, and moral evaluations of those in a position to influence social policy. (Albrecht and Levy 1981, 14)

This article analyses the political response and policy process towards securing equality for disabled students in British higher education. Questions focus on the priorities and objectives of UK legislation and policy from the 1990s and two periods are considered: the first from 1990 to 2000; the second from 2000 onwards. The analysis seeks to: identify the key decisions reached in legislative and policy development; establish whose views prevailed in the process; determine dominant perceptions about impairment and disability; and assess the outcome for disabled students. Whilst the first decade is largely reflective and relies on archival material surrounding political and policy processes and key informant data, the second decade utilizes findings which evaluated the impact of legislation and policy within a case study university (the methodological approach is detailed below). The analytical process of revealing legislative and policy objectives for disabled people is important in ascertaining dominant approaches towards them and furthering understanding of those barriers which worked to exclude and those initiatives which worked to include them in society.

Methodological approach

An analysis of legislative and policy processes was carried out to determine the competing tensions that existed between policymakers, higher education providers, traditional charities and disabled people. The analysis initially involved detailed scrutiny of archival material linked to UK legislative and policy development, such as reports, and minutes of meetings. Whilst documentary analysis is viewed by qualitative researchers as a 'meaningful and appropriate' research strategy (Mason 1998, 71), understanding the social, political and economic context in which the various policy papers were written was important. Therefore further research strategies were involved to verify and clarify data, which included regular contact throughout the project with senior policy staff at the Department for Further Education and Skills, the Disability Rights Commission, and Skill (The National Bureau for Students with Disabilities). In addition, key informants were interviewed between 2001 and 2005: informants included a leading disability academic, a disability activist who was a member of the Disability Rights Task Force and two disabled student representatives who were participating in policy consultation. Key informants are defined as:

> Those whose social positions in a research setting give them specialist knowledge about other people, processes or happening that is more extensive, detailed or privileged than ordinary people, and who are therefore particularly valuable sources of information to a researcher. (Payne and Payne 2005, 134)

Interviews were unstructured and the flexibility of approach enabled the exploration of in-depth views and experiences about the political involvement of disabled people during this time, effectiveness of representation and consultation, the relationship between organizations representing disabled people and the likely consequences for legislation and policy. The triangulation of analysis is drawn upon throughout the paper in determining the priorities in policy and practice during the 1990s and from 2000 onwards.

A further level of research was undertaken to identify the priorities within Welsh policy, with reports, reviews and policy documents scrutinized. Analysis provided the opportunity to compare the policy response towards disabled students in Wales with that of England and Scotland: an important process given the devolved role of the Welsh Assembly Government in identifying and setting the priorities of public policy in Wales. Differences in policy response were evident and are exemplified in the priorities of the National Funding Councils, which are considered in the analysis of policy and practice during the 1990s (detailed in the first section of the paper). A survey of Welsh higher educational institutions was also carried out, with questionnaires sent to each of the 13 institutions in Wales and eight were completed and returned by disability support staff. The questionnaires were designed to ascertain the progress of policy and practice within institutions. The analysis was qualitative, and assisted in identifying objectives in Wales.

Alongside the analysis of Welsh policy an in-depth study of a university in Wales was undertaken. The university selected was chosen mainly because of the high level of provision offered to disabled students, together with the large number of disabled students studying at the university. The process included extensive interviewing of staff members between 2001 and 2003, which involved managerial, administrative and support staff, working in a wide range of departments, such as planning, estates, admission and marketing, equal opportunities, widening participation, staff development, disability services, examination support, the international office and accommodation. Six disability co-ordinators in academic departments were also interviewed as part of the process. Findings which identified the changing response towards disabled students at the case study are drawn upon in the analysis of policy and practice from 2000 onwards (detailed in the second section of the paper).

Whilst the analysis contained within this paper focuses on the policy response towards disabled students, it is important to note that the PhD study also included the views of disabled students' studying at the case study university. A questionnaire was distributed to 491 disabled students registered with Disability Support Services, and 115 were completed and returned. The questionnaire sought information across a wide range of support, and importantly identified those students willing to participate further in the research. Twenty-three students were chosen to reflect a cross-section of impairment categories and a range of backgrounds and characteristics such as gender, ethnicity, age, experience of different courses and subject areas, and levels of study. Interviews were largely unstructured and this flexible approach provided students with the opportunity to discuss the issues that were important to them and as a result, the data covered many aspects of university life. Analysis of the interview data enabled identification of those factors supporting equality and inclusion and those factors that resulted in inequality and exclusion. All research participants were anonymized.

Policy and practice: the 1990s

In the early 1990s a major review of discriminatory policy and provision in the UK identified that higher educational institutions were inaccessible and often refused admission to disabled students (Barnes 1991). Whilst other groups, based on initially social class, and then later gender, ethnicity and geographical location, had been recognized as experiencing inequality of access, disability had not. The mass expansion of British higher education had been influenced by two major reports in the 1960s (Anderson 1960; Robbins 1963) and although subsequent research focused on inequality of access, disabled students were omitted from analysis. Disability was perceived as a welfare issue and viewed differently from other groups experiencing the undermining of rights. The analysis of the legislative and policy steps taken in Britain, during the 1990s, identify the dominant response towards disability, together with the underpinning influence of those with power (politicians, higher education providers, and traditional charities) and those without (disabled people). Analysis will focus on the policy and objectives of: first, the newly established Higher Education Funding Councils; second, the 1995 Disability Discrimination Act; and third, the National Committee of Inquiry into Higher Education.

National Funding Councils

The Further and Higher Education Act (1992) unified the funding for higher education and created Funding Councils for England (HEFCE), Wales (HEFCW) and Scotland (SHEFCE). Importantly, the Secretary of State for Education directed funding bodies to have some regard for disabled students as part of their duties (Hurst 1996). This meant that Funding Councils needed to assess the implications for disabled students in funding decisions reached and also in other ‘functions’ such as quality assessment (Cooper and Corlett 1996).

Each Funding Council took a different policy approach, which led to inconsistency in provision for disabled students across the UK. Notably, the approach of the Funding Council in Scotland began a process of collaboration across institutions. Whilst, Scotland made significant steps forward in improving provision, support continued to remain variable and dominant perceptions about disability within provision persisted (Hall and Tinklin 1998). In England, the approach of the Funding Council lacked the continuity of policy and provision observed in Scotland. Funding was set aside for ‘special initiatives’ and institutions were invited to bid for funds in relation to physical access, access to teaching and curriculum support, and leisure and advisory services (HEFCE 1993, 1995). However, those institutions which secured funding were already developing and improving access. Consequently, a disparity between institutions became glaringly visible, particularly between the pre- and post-1992 universities. Disabled students were more likely to have enrolled in the newer institutions, a decision influenced by academic culture and perceptions of appropriate subject choice. Analysis of Higher Education Statistics Agency datasets for 2001/02 identified an association between impairment and subject of study: disabled students were less likely to study subjects such as, Economics, Clinical Medicine and Accountancy, and more likely to study others like, Drama and Fine Art (Beauchamp-Pryor 2008). Notably, during the early policy development in England (as with Scotland), dominant perceptions about disability also continued to remain unchallenged.

Wales adopted a different approach to that of Scotland and England and the decisions taken by the Welsh Funding Council proved ineffectual. Funding was allocated to the academic infrastructure, but had not been directly earmarked (HEFCW 1993, 1994a, 1994b). The priorities of the Funding Council were arguably reflected in the policy response in institutions. For example, the case study research identified a reluctance to commit funding to increase disability provision (for example, disability training and access) by senior management at the University: a reluctance associated with the dominant view of disability 'as an individual and largely private concern' and, therefore, cost implications considered as 'a potential burden . . . [which] should not be borne by employers, developers or investors' (Imrie 1997, 295). Significantly, in the following decade, the Welsh Funding Council responded to concerns over the legislative compliance of higher educational institutions and as a result funding within institutions was secured (HEFCW 2004, 2005).

Throughout the early 1990s the lack of policy and provision for disabled students in higher education began to be recognized. However, dominant perceptions about disability remained unchallenged. As a consequence, policy and provision within institutions focused on the welfare of students and meeting their individual needs:

> The discourse used was of care and concern rather than of discrimination and rights. In other words, there was a lack of a general recognition of disability as a form of oppression, with structural and curricular implications for each department's practice in its provision for all students. Rather, disability tend[ed] to be seen only in terms of meeting 'special needs'. (Leicester and Lovell 1994, 47)

The inequality and lack of rights experienced by disabled students persisted and will be discussed further in the following analysis of the priorities and objectives of the Disability Discrimination Act (1995).

Disability Discrimination Act 1995

The Disability Discrimination Act was perceived by many as an inadequate compromise (Beauchamp-Pryor 2011b). Comprehensive civil rights legislation had been argued for by politicians (Silver Jubilee Access Committee 1979; Committee on Restrictions Against Disabled People 1982), academics (Bynoe, Oliver, and Barnes 1990; Barnes 1991) and organizations of disabled people campaigning for rights, such as the British Council of Disabled People and Rights Now. However, the Conservative Government was reluctant to legislate and believed in the path of persuasion (Hansard 1991).

Concerns over cost compliance for business and industry in implementing comprehensive civil right legislation were evident, and because disability was perceived as an individual 'problem', associated costs were viewed in terms of a burden to society. Moreover, the government consulted with the 'big seven' charities, the traditional charities, who supported its position of persuasion (Beauchamp-Pryor 2011b).

The lack of power experienced by disabled people was evident, with the values and interests of those with power carrying the greatest influence. As argued by Lukes (1974) dominant viewpoints are protected, which extend to an overriding of views and interests of those who lack power. Dominant perceptions of disability in terms of impairment persisted and underpinned the proposed definition of disability. Concerns over the definition by disabled academics and campaigners were voiced (Chadwick 1996). However, these views were overridden and disability was defined in the Disability Discrimination Act as 'a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities' (Department for Education and Employment 1995, 1.1.1). The definition focused on the effect of impairment and not on the barriers experienced by disabled people in society. But as Rights Now argued '. . . what a discrimination law should focus on is discrimination; not how disabled a person is but how much they are discriminated against' (1995, 8).

The Disability Discrimination Act proved weak in comparison to other equality legislation such as the Sex Discrimination Act (1975) or the Race Relations Act (1976). For example, the Act defined direct discrimination as less favourable treatment that cannot be justified (Department for Education and Employment 1995, 28s(1)) and unlike other equality legislation, discrimination in certain circumstances may be justified: for instance, on economic grounds. The concept of indirect discrimination was also excluded. The legislation failed to recognize that it was institutional and organizational policies and practices that were disabling people. Moreover, the Act did not extend to the legal protection of disabled students in higher education. Skill (The National Bureau for Students with Disabilities), who represent disabled students in post-16 education, together with a range of professional groupings, appeared to support the government's line of persuasion (Hansard 1995; Beauchamp-Pryor 2011b).

Successful implementation of policy is reliant on the collaboration of powerful sectors, without which, the state would be powerless (Miller 1999). However, the path of persuasion and the inadequacy of the legislation had proved weak, and the Labour Party when in opposition began to address the concerns of disabled people. New Labour pledged in its manifesto commitment to secure civil rights for disabled people and when elected in 1997 it set up the Disability Rights Task Force (DRFT). A number of important recommendations were made (DRTF 1999), which included legal protection for disabled students in higher education (Special Educational Needs and Disability Act 2001) and the inclusion of a public sector duty to promote equality (Disability Discrimination Act 2005). These two important legislative developments will be returned to in the analysis of legislation from 2000 onwards, questioning how the legislation impacted on higher educational institutions and the experiences of disabled students.

The Disability Discrimination Act (1995) legitimized the dominant welfare view of disability and did not challenge existing power relationships. Consequently, policy and provision which supported disabled students in higher education did not confront the inequality and exclusion that they experienced. The dominant response towards disability issues continued to reflect the relationship between those with influence, and those without, and is illustrated further in the discussions and recommendations of the National Committee of Inquiry into Higher Education (NCIHE) about the meaning of disability, the subsequent policy implications, and the Committee's reluctance to endorse legislative steps.

National Committee of Inquiry into Higher Education (NCIHE) 1997

The National Committee of Inquiry, chaired by Sir Ron Dearing, was the first major review of higher education since the Robbins Committee in 1963 and as with previous reviews (Anderson 1960; Robbins 1963) disabled students were omitted from the Committee's terms of reference. The omission reflected the ongoing policy response which did not recognize disability as an equality issue. However, pressure from Skill, and evidence from the English Funding Council's 'special initiatives' eventually secured the inclusion of disability issues.

Interestingly, although disability was largely perceived in welfare terms, the Committee acknowledged the importance of social factors (NCIHE 1997a, 5.12). However, their understanding of disability in terms of inequality remained questionable. A lack of grasp was evident during deliberations of specific areas of policy and was illustrated in their discussion of Disabled Students' Allowances (DSA). The allowance had been introduced to help towards the additional study costs incurred by disabled students and the Education (Student Loans) Act in 1990 had increased and extended the allowance. As a consequence, many disabled people who had previously been unable to afford to study in higher education were now able to do so. The Committee recommended that the allowance be a fixed rate based on specific impairment, reflecting costs 'typically incurred' (NCIHE 1997a, 5.12). However, the Committee failed to understand, or take into account, the wider experience of disability. Their approach was not unique, and in accounts given by disabled students at the case study institution, which were based on their experiences of applying for DSA support, it was evident that because they had certain impairments they were automatically categorized as requiring a set list of support.

Regardless of the Committee's inconsistent approach towards disability, important recommendations were made. The Committee proposed that universities needed to be encouraged to produce disability statements, publish their policies and practices in handbooks/prospectuses, provide information about their limitations and their plans for improvement, inspect their resource and estate management proposals for disability issues, implement staff training at all levels, improve their information systems, ensure commitment from senior management, and introduce regular use of student feedback (NCIHE 1997a, 5.15). These recommendations represented a positive step forward, and were followed by the newly established Quality Assurance Agency (QAA) in its *Code of practice for the assurance of academic quality and standards in higher education* (1999), incorporating a section relating to students with disabilities. But whilst the guidelines and precepts were comprehensive, they were not legally enforceable and were only one of many measures against which the QAA assessed standards within institutions.

Disappointingly, the Committee failed to recommend extending the Disability Discrimination Act to protect disabled students in higher education. Moreover, the Committee failed to compel universities to comply with the legislative requirement to produce disability statements and only recommended them to do so (NCIHE 1997b, 7.42). The vice-chancellors had vehemently opposed publication of disability statements (detailing their policy, provision and future plans) (Committee of Vice-Chancellors and Principles 1995, quoted in Hurst 1995) and the Committee noted that academic concerns over autonomy were of central concern to the vice-chancellors. Consequently, the priorities of the Committee and the decisions taken were representative of those who held the most influence and power.

Summary of the 1990s

Important steps forward were made in policy during the 1990s towards increasing the participation of disabled students in higher education. However, policy reflected a welfare approach with dominant values about disability persisting. The views of those with influence dominated, which detrimentally impacted on the legislation enacted. The following decade witnessed major policy shifts, which began to recognize disability as a form of oppression and hence challenge the inequality experienced by disabled students.

Policy and practice: 2000 onwards

The priorities and objectives of disability legislation and policy towards disabled students within higher education were about to radically change. First, the Disability Discrimination Act (1995) was extended to provide legislative protection for disabled students and second, legislation enacted in 2005 recognized for the first time disability as an equality issue. The importance of these changes in legislative focus will be analysed in terms of challenging inequality and ensuring an inclusion agenda for disabled students.

Special Educational Needs and Disability Act (SENDA) 2001

Prior to 2001 students who experienced discrimination in higher education had no legal recourse. Although students had been able to pursue complaints through internal complaint procedures, research identified that inequality persisted (Preece 1995; Hall and Tinklin 1998; Borland and James 1999; O'Connor and Robinson 1999). The incoming Labour Government passed the Special Educational Needs and Disability Act (Department for Education and Employment 2001), which extended Part IV of the Disability Discrimination Act. It then became unlawful to discriminate against disabled students and applicants without justification and institutions were required to provide 'reasonable adjustments' in circumstances where disabled students might be substantially disadvantaged.

In the drafting of the *Code of practice* (Disability Rights Commission 2002a) for the Special Educational Needs and Disability Act, the government disappointingly continued to consult with the professional organizations and traditional charities, and the views of the most powerful dominated. The working group drafting the *Code of practice,* comprised the newly created Department for Education and Skills' officials, Disability Rights Commission staff, Skill staff and other experts in the field. Whilst recognizing the need for professional expertise within the working group, input from the expertise of disabled people was missing. Two wider reference groups were established, but were again dominated by organizations of education professionals and traditional charities. A leading disability studies academic commented on the composition of the reference groups: 'it should not be surprising that they go to these safe organisations that are not going to cause problems. Disappointing and depressing, but that's the way it is, that's the way it always has been' (Interview: 14/02/04). Drake (2002) reminds us that government ultimately chooses who participates in formal procedures and, therefore, the composition of the working group and the subsequent consultative steps taken in the early part of the decade, continued to reflect a governmental approach which had failed to include disabled people.

The Disability Rights Commission issued almost twenty thousand consultative packs to key stakeholders seeking views on the draft *Code of practice.* However, it was the responses from the professional organizations that dominated (Disability Rights Commission 2002b). The failure to target organizations *of* disabled people meant that the views of disabled people continued to be absent: the views of the most powerful groups persisted. Oliver strongly argued

> the 'lack of fit' between able-bodied and disabled people's definitions is more than just a semantic quibble for it has important implications, both for the provision of services and the ability to control one's life. (quoted in French 1994, 3)

The political priorities and objectives were mirrored at an institutional level and, in a study of disabled student experience in Scottish and English higher education, it was clear that whilst institutions were aware of their legal obligations that:

> Changes in deeply ingrained aspects of institutional culture, such as established practice in relation to pedagogy, curriculum and assessment, were much less susceptible to change. (Riddell, Tinklin, and Wilson 2005, 155)

Similarly, at the case study university, whilst senior management recognized the potential threat of litigation they were slow to implement the new policy enacted by the Special Educational Needs and Disability Act. An academic disability co-ordinator expressed her concern commenting: 'I did expect more, I thought there would be a big bang approach before the Act came into force, and so I've been surprised that doesn't appear to have happened' (Interview: 28/10/03). This lack of response reflected the weakness of the legislation when compared with equality legislation. The University's response towards the Race Relations Amendment Act (2000) had been very different: an Equal Opportunities Officer was appointed; extensive policy was produced and integrated into their strategic plan; and an impact of institutional policies had been completed. Disappointing, the University did not assess other areas of inequality, such as disability, and as a senior member of staff commented 'you have to comply with legislation of course,... but the Race Relations Amendment Act goes one step further and says not only will you have to comply, but you will also actively make progress in particular areas' (Interview: 28/10/03). Therefore, without legislative pressure, public bodies were unlikely to use resources to evaluate and implement equality policy. Significantly by 2005, the response of senior management towards disability had begun to change considerably, as a direct result of the changing focus of legislation, which will be discussed in the following analysis of the Disability Discrimination Act (2005).

Disability Discrimination Act (2005)

The Disability Discrimination Act (Department for Work and Pensions 2005) recognized for the first time the inequality of power experienced by disabled people. The language adopted radically changed with disability discussed in terms of equality and rights. The change was significant as language acts as a powerful influence in the perpetuation of inequality and oppression. Language is not neutral (Spender 1990; Roberts, Davies, and Jupp 1992) and the case study research identified that the language used proved instrumental in transmitting dominant ideology. At a number of meetings held within the University, disability was consistently referred to in welfare terms of ‘special needs’, ‘special treatment’ and ‘compensation’.

In challenging the inequality experienced by disabled people, the government endorsed the social model in *The duty to promote disability equality code of practice*:

> The poverty, disadvantage and social exclusion experienced by many disabled people is not the inevitable result of their impairments or medical conditions, but rather stems from attitudinal and environmental barriers. This is known as ‘the social model of disability’, and provides a basis for the successful implementation of the duty to promote disability equality. (Disability Rights Commission 2005, 1.6)

The changing political response meant that disability was no longer perceived as a personal ‘problem’ resulting from an individual’s impairment. The recognition of social causes placed the onus on institutions to remove barriers which excluded students. Whilst the legislation recognized that institutional policies and practices were disabling students, the concept of indirect discrimination continued to be excluded. However, the Single Equality Bill introduced to the House of Commons in April 2009, which combined all equality strands (age, disability, gender reassignment, race, religion or belief, and sexual orientation), included protection against indirect discrimination for disabled people. The political focus changed, strengthening and streamlining the legislative approach towards inclusion. A strategy driven by the Treaty of Amsterdam (European Union 1997), which introduced a legal basis for the adoption of measures combating discrimination on grounds of sex, racial or ethnic origin, age, disability, religion and sexual orientation (Article 13).

Along with equal treatment principles, the European Union promoted the mainstreaming of equality, which is concerned with the integration of equal opportunities, strategies and practices into the everyday work of government and other public bodies: a process which implies involvement of individuals and groups previously excluded. In tackling the inequality experienced by disabled people, the Disability Discrimination Act (2005) introduced a Disability Equality Duty on public authorities to promote equality. The duty placed proactive responsibility on them to mainstream disability equality into ‘all decisions and activities’ (Disability Rights Commission 2005, 1.13). As part of the duty, public bodies were required to publish a Disability Equality Scheme and to ensure the involvement of disabled people in the process. The *Code of practice* recognized the historic under-representation of disabled people in positions which ‘determine policies and priorities’ and the importance of genuine involvement by disabled people (Disability Rights Commission 2005, 2.53, 3.13): an involvement perceived by government as a more ‘active engagement’ than ‘consultation’.

Recent policy reviews in England and Wales identified that higher educational institutions were actively taking steps to involve disabled people in Disability Equality Schemes and examples of good practice were evident (HEFCE 2009; HEFCW 2009). However, whilst some institutions had started to secure the involvement of disabled students in Disability Equality Schemes, it was evident that others had yet to fully comply with the legislative requirement. At the case study institution, the Disability Equality Statement in 2006–07 stated that disabled students had been actively involved in the process, but student involvement was questionable and appeared to be non-existent (Beauchamp-Pryor 2011b). However, the involvement of disabled people was more visible by 2010, with equality staff organizing regular focus groups and inviting students to attend the University's Disability Equality Committee.

Legislative pressure had begun to instigate change at the case study institution, for example, as a direct result of legislation, a Disability Equality Trainer was appointed and the role of the Equality Opportunity Officer extended to include disability. Significant steps in challenging deeply held views about disability, previously identified at the case study and in other studies (Hall and Tinklin 1998; Borland and James 1999; O'Connor and Robinson 1999; Holloway 2001; Riddell, Tinklin, and Wilson 2005; Fuller et al. 2009), were being challenged. In a recent project about improving disabled students' learning in higher education, Fuller et al. identified that whilst some staff addressed disability inequality because it was 'the right thing to do', the Disability Discrimination Act was proving to be a 'strong driving force' which was 'regarded with some degree of fear' (2009, 29). The process of embedding disability within an equality framework has the potential to put in motion a change which recognizes the oppression experienced by disabled people. Arguably, in the future as inclusive principles are adopted, the diversity of *all* students will be recognized (whether disabled or non-disabled) and an inclusive environment will move beyond fixed categories: the importance of which was identified by Fuller et al. (2009). As Minow (1990) discussed it is essential to confront distinctions built upon difference.

Summary of 2000 onwards

Important legislative steps were taken by government in challenging preconceptions of disability and dominant welfare responses based on care and compensation. By the end of the decade disability had become an equality issue. Government recognized the importance of including disabled people in policy development, which was fundamental to challenging the inherent oppression experienced. The approach towards disability policy and provision within higher education began to shift towards challenging exclusion and working towards inclusion. How radical the change was in practice remains to be ascertained, but early indications suggested that legislative pressure had instigated change.

Conclusion

The importance of securing legislation in tackling the inequality and exclusion experienced by disabled people within higher education became increasingly visible over the past two decades. Persuasion alone failed to secure equality and inclusion for disabled students and the case study data exemplified that it was legislative pressure that eventually brought about a process of change: a change from a needs-based to a rights-based focus. Moreover, in the past disability legislation had failed to be enforced, but a growing commitment by government towards change was evident.

Change proved gradual with legislation and policy decisions driven by those who carried the greatest influence and, consequently, dominant welfare perceptions of disability persisted. Competing tensions existed between the views of disabled people and those of politicians, policymakers, business, industry and the traditional charities. Therefore, why did the Labour Government make a commitment towards securing rights for disabled people? The United Nation's *Convention on the Rights of Persons with Disabilities* (2006) and the European Union's *Treaty of Amsterdam*

(1997) were significant drivers, but other arguments in Britain had started to emerge. In the past, cost compliance had previously justified the exclusion and inequality experienced by disabled people, but more recent arguments identified the financial validity of securing the participation of disabled people within society in terms of employment (Department for Work and Pensions 2007). Whilst the focus of government changed towards securing citizenship and rights, in practice the effectiveness of achieving equality reflects an ongoing long-term commitment.

A growing commitment by government was also evident in ensuring the involvement of disabled people in the development of policy and provision. Whilst the government in the past relied on those who carried the greatest influence in the development of legislation and policy, the historical lack of influence by disabled people was acknowledged. However, in practice how effective and genuine participation is in future legislative and policy development is yet to be determined.

Significantly, the changing focus of legislation streamlined equality policy with disability forming one of many strands, which subsequently impacted on the development of policy within the case study institution. In the past, disability at the institution was viewed as a 'problem' to be dealt with by specialist staff, but the approach had started to change with disability beginning to be incorporated into equality policy. The effectiveness of change remains indeterminate, but early indications suggest that dominant perceptions about disability are being challenged and a growing recognition of disability in terms of inclusion is evident.

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Note

1. The findings from my study will be available in a forthcoming book *Disabled students in Welsh higher education: A framework for equality and inclusion,* to be published by Sense.

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