

BOOK REVIEWS

JUSTICE FOR PEOPLE WITH DISABILITIES

MARGE HAURITZ, CHARLES SAMPFORD AND SOPHIE BLENCOWE (EDS)
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This edited collection is part of the series on law, ethics and public affairs. The papers were first aired at a conference in early 1996, which was followed by an intensive workshop where the authors debated and refined their contributions. As a consequence, the book has a cohesion and relevance not often found in a book of essays.

The main focus of the collection is on the way in which law and services advance the rights and promote the welfare of people with disabilities. The first part of the book deals with legal and ethical concerns ('Legal responses': Chapters 1-6) while part two considers 'institutional responses' (Chs 7-13). The authors tackle their task in a highly scholarly and reflective way. Prominent attention is given to major theoretical debates, as illustrated in the first two papers.

Bellamy's opening essay on the socio-political ingredients of change and reform is a fine example. He argues that real change is dependent on harnessing governmental, cultural and institutional arrangements. The essay charts the way in which this 'braid of progress' (p 3) explains US developments in responses to the needs of people who are developmentally disabled: moving from protection to 'preparation' for engagement in spheres of work or society, until finally embracing an ethos of 'participation'. The chapter is nuanced and qualified in its claims (pointing out that change is highly dependent on context) and demonstrates the importance of knitting together insights drawn from many disciplines.

Citizenship theory is also prominent, especially in the paper by Davis (Ch 2). The concept of social rights of citizenship is both emblematic of a traditional form of the welfare state, now under threat from economic rationalism and the proponents of the 'market', but is also a source of internal tension. This is because citizenship theory is divided: social rights can be viewed as an absolute entitlement or status which is intrinsic to citizenship, or, it can be seen to be serving the higher order goals of 'active participation'. As Davis points out, this is no sterile academic dispute. Active citizenship can be invoked as the underpinning for progressive

social policies which emphasise entitlements of people with disabilities to be full participants in employment and the polity, as well as in community life.

However, citizenship theory risks being misappropriated (through ideas of 'mutual obligation' or 'individual responsibility') by advocates of policies which leave disability to the working of the private market. This theme is taken up by Colker in a comparative analysis of affirmative action programs, especially those of US law and economics critics who argue that rather than relying on equal opportunity laws, people with disabilities must discount their labour price if they desire employment.

The paper by Jones & Bassar Marks (Ch 4) is of particular interest because it challenges the orthodoxy that law is best placed to provide a resolution of complex social and political problems. This presages the point about the definition of 'disability' which is elaborated by Banks & Kayess in their Chapter on disability advocacy (Ch 9). As the consequences of disability are as much a result of the (mis)perceptions by the surrounding community as they are of some quality inherent in the person with the disability, the removal of the barriers obstructing people with disabilities is a societal, not just an 'individual' question. Some laws (such as anti-discrimination legislation) and programs (eg the Commonwealth Disability Strategy discussed by Barson in Ch 7) do set out to tackle the bigger picture. As Jones & Bassar Marks observe, legislation has often preferred to provide options for remedying individual grievances (including by more innovative alternative dispute resolution). Their comprehensive review of this legislation demonstrates that it does contribute to better recognition of the rights of people with disabilities. However their argument is that the greatest prospect for real reform lies in the often overlooked potential of provision made in the *Disability Discrimination Act 1992* for the promulgation of 'standards' (in various spheres of employment, services etc) and in the drawing up of 'action plans' (77-84).

That argument may overstate the power of systemic measures of this type, but they inspire greater confidence than is engendered by the conclusion reached in an otherwise splendidly researched paper contributed by the then president of the Australian Law Reform Commission (Rose, Ch 5). This reports the finding of the ALRC review of the *Disability Services Act 1986*. It provides a wonderful synthesis of international conventions, declarations and customary law pronouncements which impel domestic action by Australia. It rightly criticises the present legislation for its lack of teeth, coordination or priority setting, its diagnosis-based definition of disability, and its concentration on addressing service providers rather than consumer interests (pp 99-100). However, it does not have the appreciation of the limits of the law demonstrated in the papers by Bellamy or by Jones & Bassar Marks. Otherwise worthy ideas about writing 'client focused' legislation, or of providing avenues of redress for people denied their fair share of disability services, fail to engage with the literature on the role of law in securing rights or distributive justice outcomes in the sphere of welfare services. Similar challenges confronted Forlin and Forlin in their Chapter on the education participation rights of the disabled (Ch 6). Again the authors provide a sound review of common law and

statutory provisions, but the reader is left with a stronger sense of an educator's perspective (including duties of care and implications for educational practice) than of how to secure advances for people with disabilities.

The second part of the collection is a little less even than the first. Some papers maintain an interest in critical examination and theory, but others are very descriptive. Hanley's discussion (Ch 8) of the part played by non-government (voluntary) agencies in the construction or destruction the barriers of disability is a good example of the former. The essay takes a New Zealand organisation for polio victims as its example. It explores the contribution of the concepts and values of 'charity' in the construction of disadvantage, as well as charity's role in and relationship to both the traditional liberal welfare state and its 'marketised' replacement. This replacement is based on the neo-liberal economic reforms driving privatisation, contracting out and competitive neutrality principles recently introduced so extensively by countries such as New Zealand. It is indeed a tangled web, as Hanley observes, for:

Public sector contracting has its roots in the same nineteenth-century liberal economic tradition as does the charity model. It represents an attempt to introduce market forces in the provision of human services and promotes private sector models, norms and practices. [However] [i]f the market has failed to meet the needs of disabled people in the past, and contributed to their marginalisation, there is a danger that people with disabilities will suffer the same fate in a contracting environment (p 148).

A similar concern with wider currents and larger debates is evident in the analysis of advocacy by Banks & Kayess (Ch 9), especially their exposure of current Commonwealth thinking. Due to what they see as an uncritical adoption of the theories and practices of community advocacy developed by Wolfensberger, which views advocacy for people with disabilities as being unpaid, non-professional, and 'individual' in orientation. This would appear to deny the case for addressing structural barriers of the need for powerful and independent sources of advocacy for these rights (ibid 160).

Other papers are atheoretical, as with Barson's description of how the Commonwealth public service set about shifting the culture and values of its members towards disability (Ch 7). The description of the strategies is interesting, but it leaves many unanswered questions about how effective the program has been, or what its wider implications may be for promoting change outside the public sector. By contrast, Nicolls' paper (Ch 10), outlining how the Wesley Mission transformed institutional services into community based programs, demonstrates that it is possible to use theory as a *basis* for describing and evaluating program development.

A different synthesis between practice and wider implications is evident in the last three papers. Instead of counterpoising practice with theory, these papers find their creative tension from the sub-title of the book itself: the mesh between 'law' and

other 'institutions'. Stewart's narrative of the findings from the inquiry into serious allegations of abuse against residents of the Basil Stafford Centre in Queensland gains much of its power from the exposure of the workings of staff and operational 'culture' at the institution (Ch 11). Likewise the Chapters about people with disabilities as victims (Hauritz Ch 12) or as possible perpetrators of crime (Webb, Ch 13). Here the data itself speaks eloquently about the nature of the challenges, even if Hauritz spends too much time chronicling general crime prevention strategies without choosing between them or applying them to the specifics of clients of disability services. Webb's New Zealand study of rates of offending by clients who are intellectually disabled certainly has some methodological limitations but it definitely contributes to showing that it is the insensitivity of criminal justice institutions, rather than a significantly higher incidence of crime which accounts for the dramatic over-representation of this group among people sentenced to imprisonment.

The citizenship status of people with disabilities and the recognition of their rights to participation in various spheres of social activity, has been a long neglected issue. This book not only places those questions on the public policy agenda, but it does so in ways which speak to the realities of policy formulation. The objective of blending law, administration and theory was an ambitious one. Understandably the collection does not provide a complete or cohesive synthesis. Some chapters do better than others. Certain sections of the book tackle a wider ambit whilst some are more prosaic and descriptive. Surprisingly, the book succeeded in its objective to a large extent. It should be read by anyone seeking to understand the challenge of realising citizenship rights of people with disabilities.

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