Blind Justice?

An Investigation into the Social and Economic Effectiveness of Discrimination Law in the Delivery of Fair Employment for Visually Impaired People.

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Abstract

This inquiry examines why UK legal and social policy has not prevented the employment exclusion of visually impaired people. Visual Impairment is one of the largest impairment constituencies. As a result, mainstream access solutions are, increasingly, freely available in computers, phones and tablets. This provides the possibility of effective job productivity in virtually every workplace. Discrimination is also ostensibly illegal, yet visually impaired people are facing long term exclusion from the labour market.

The investigation starts by offering some demographic evidence to justify this inquiry by assembling evidence for the relative size of the visual impairment population, and their employment exclusion. I will also outline some objective technological factors which should now support the employment of visually impaired people.

Then, in Part One, I commence with a historic contextualisation of social, economic and political drivers that have shaped our current legal and social policy framework. This will discuss the extent to which our current legal framework is an expression of historic pressures for reform.

In Part Two, I shall evaluate current law and policy against its stated aims. I shall examine how the drivers for, and resistance to, reform have found expression in our current framework. I examine the consequent paradoxes and contradictions played out in the history of discrimination law, including the strange death and resurrection of disability indirect discrimination. I try to outline why there may be only limited cause for optimism with the law in its current form.

In Part Three, I shall propose practical reform to the current legislative and social policy framework. I will develop the case for collective, as opposed to individualised, social policy responses. I will propose a new system of Positive Enforcement of Disability Discrimination Law. This part will conclude by addressing the economic consequences of these reforms, and assemble economic evidence to support the inclusion of visually impaired people in employment.

Finally, in Part 4 of this inquiry, I shall conclude with an examination of principles which could guide the future formulation of legal and social policy. I will consider

the contemporary challenges to The Social Model of Disability. This Part considers what support the Social Model could receive from the Human Rights paradigm, including an analysis of the Capabilities Approach. Finally I consider what support the Social Model could receive from a new Politics of Disablement. The politics of identity management, dependency, and impairment will be investigated to establish what positive support could be politically assembled for the employment inclusion of visually impaired people.

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Preface

Once upon a time I was a Manager in the NHS. When my Director was told that he had a deaf blind Ophthalmology Manager he felt like someone had punched him in the stomach. He confessed this when his apprehension had become trust. Yet, despite eventual acceptance and success, there were undeniably avoidable stresses. I recall the nervousness of hovering outside a Board Room, asking nurses to read aloud an inaccessible £13.5 million budget. An obstinate Finance Department prioritised security over accessibility. Spreadsheets were provided in an inaccessible PDF format which a computer screen reader could not decipher. I had to listen to, memorise and analyse this complex budget on the spot, before defending it against sighted managers. They could review their printed spreadsheets at leisure.

NHS Managers have a pressure to deliver. Making an issue of these accessibility hurdles might invite speculation on capability. This, and a myriad of smaller access barriers, made it difficult for me to perform at my true capacity. I resolved that someday I would study this problem and propose reform.

The second motivation for this study is the knowledge that I developed of just how many of us are not only unemployed, but have no realistic hope of a job. I was fortunate to have had an established professional career before I went blind. Younger people with visual impairment see no prospect of a career. People in middle age, who develop a visual impairment which forces them to leave work, see no way back. This pessimism is entirely justified. Sadly, there is a pool of talent and potential amongst the visually impaired that is untapped.

The third inspiration for this work arose from a demonstration that I attended outside City Hall in 2008. Over a hundred visually impaired people had collected to protest against Mayor Boris Johnson's plans to remove kerbs, under his shared pedestrian / traffic schemes. There I met older protestors, who announced proudly that they were members of the National League of the Blind. In a couple of hours I learnt a fascinating history of the forgotten marches of the Blind in the 1920s and 1930s. They had all met veterans of these historic campaigns. I resolved to uncover this historic struggle. Along the way I discovered yet more of the forgotten and fascinating history of the self-motivated actions of the visually impaired men and women who have campaigned for years for the improvement in the quality of their lives. I wanted to learn the lessons of these campaigns.

After I started on my research, I became convinced that the only coherent approach was to consider the historical development not just of law, but of the campaigns which have presaged these reforms. In this context I found the principle authoritative text, Phillips' "The Blind in British Society" (2004), unsatisfactory. Whilst this is a serious, extensively researched work, he clearly subscribed to what Butterfield described as "Whig" history (Butterfield 1932). This describes history as a march of progress, towards ever increasing enlightenment and improvement. There is inevitability to this triumph of reasoned enlightenment over backwardness.

This view is encapsulated in Phillips' work. The history of the blind involves the state and charities in a joint triumphal march towards ever improving conditions for blind people. Good men and women in the state combine with good men and women in charities to gradually relieve conditions of despair. Yet there is a strange lacuna in Phillips' work. Phillips provides a detailed account of organisations for the blind, but never dwells on organisations of the blind. He writes extensively about the work of sighted liberals working in charities on our behalf, but pays scant attention to the self determined organisations of the blind. The National League of the Blind is, for example, dismissed as a "Socialist Sect" (Phillips 2004 p202-204).

I found this historical approach not just misleading, but disrespectful to the memory of brave men and women who shook Governments to their core. Virtually everywhere I looked, legal and social reform was accompanied not just by the march of rationalism and demographics but also self activated political campaigning.

I, therefore, decided not just to make a historical account but to ground this in the materialism of the events accompanying reform. In part this may relate to demographics, in part to economic factors, but also included the political campaigning of visually impaired people. This work, therefore, attempts to place legal reform in a social, economic and political context. This approach is not just for academic clarity, it also provides insight into the potential conditions which could deliver further needed reform.

During the research for this inquiry I discovered a consistent theme of paradox and contradiction. This theme is too consistent for coincidence. This work is not a treatise on revolution, nor is it allied to the political convictions of any political party. At the end of this inquiry I attempt to summarise the state of politics in the disability movement. However, I should say that I consider the most coherent strategy for this study was to adopt both a historical and materialist approach. In addition I am convinced of the key role of agency that visually impaired men and women have played in exacting change through their striving for reform. Whilst I have never supported Stalinist or Maoist implementations of Marxism, I have found inspiration in the writings of not just Marx but Hobsbawm, Taylor, EP Thompson, and Christopher Hill. The first ever history book to genuinely thrill me was, though, Dangerfield's "Strange Death of Liberal England". I recently had to reread some sections of this work and am forced to conclude that, despite a gap of 35 years, there is a haunting resemblance in style that I may have unconsciously replicated. However, if this work evokes any vague reminder of Dangerfield's, this would only constitute a matter of pride for me.

I must also declare my own background and the relevance for this thesis. This will also shape any prejudices I carry. I have a genetic disease called Usher's syndrome. This means that since childhood I have had progressive eyesight and hearing loss and was registered blind when I was 30. This thesis is, therefore, informed by personal experiences as well as research. My ideas are shaped by experience in several roles, including, 12 years as a Social worker and then 13 years in Senior Management in both Social Services and the NHS. In these roles I had to respond to the legal requirements to provide Reasonable Adjustment for my disabled staff. In addition, I have, as a Disability Consultant, advised organisations on meeting their legal duties, including two years chairing the London Development Agency's Independent Disability and Equality group. I was the Chair of the Waltham Forest Low Vision Forum from 2008 to 2012 and currently sit on the Board of Waltham Forest Disability Action. Since 1996 I have personally received Reasonable Adjustment arrangements. These experiences have inevitably helped me form a particular view of the interaction of visual impairment and employment legislation.

In this thesis I will occasionally report upon conversations I have conducted with other visually impaired people. Unfortunately time constraints made it impossible to develop these into formal qualitative research. Whilst I could exclude this material, some of these conversations have genuine illustrative value. I therefore decided that where I use this material it is not to provide new insight but only to illustrate issues revealed in other substantive research.

A note on the references and source material.

In keeping with the theme of this thesis, wherever possible I have provided references accessible to visually impaired people. This means that I have prioritised online electronic resources and where possible I have referenced accessible rather than inaccessible PDF documents.

With regard to electronic text, such as books downloaded from Internet archive sites, I have used the following page numbering convention. Where a page number exists in the text I have used this. Where a page number does not exist I have used the page number created when the document is formatted into the default template of normal.dot in Microsoft word 2003.

I have referenced some Kindle e books accessed through Text to Speech. Where the Kindle announces the page number I used this, otherwise a location point is used.

I have made use of talking books from the RNIB library, not all of which will have page numbers read. Where page numbers are not recorded I have tried to infer the page numbers from other sources, occasionally I have scanned a book as well as having the RNIB version.

Only as a last resort have I scanned books as a primary source of reading. Nevertheless there are many books that have been scanned for this enquiry. Scanning is an imperfect, challenging process; sections may be inaccurately transposed or incomprehensible. Nevertheless I have extrapolated reference and page numbers as accurately as possible given the unpredictability of scanning.

Acknowledgements

I am indebted to lots of people who have helped me. Wendy Stokes had the special ability to make difficulties melt away. Rob Murthwaite kept me on the legal straight and narrow. Kelvin Knight helped stimulate ideas by introducing me to Nussbaum and Macintyre. Cliff Snaith, in particular, had the rare skill of providing me with constant encouragement, whilst at the same time challenging and stretching me. I never felt anything but supported by Cliff and was consequently motivated to move this to completion.

I have had loyal, flexible and committed support from Monica Sava throughout who has assisted me through various access barriers. She has stuck at it through thick and thin, including a very thin 9 months during which bureaucratic incompetence meant she received no payment.

I have to give especial thanks to my brother Jim Griffith, who worked tirelessly and with skill to assist with the final proof reading and amendments.

The bulk of what is written here was done with me sitting in my living room with a Jaws Screenreader babbling out through very loud headphones into my deaf ears. My wife Sue Monk had to put up with this for several years. She also had a more active part to play. Inspiration for many of the ideas contained here derived from conversations, often over a dinner table with Sue. Quite simply I would not have conceived these ideas without her help.

There are many others, too numerous to list here, who have all assisted either directly and indirectly. My thanks go to them all.

David Griffith June 2013

Introduction

Something isn't Working - the Visually Impaired aren't Working...

There is 'something rotten' in the state of employment for visually impaired people. Visual Impairment is one of the largest impairment constituencies. As a result, mainstream access solutions are, increasingly, freely available in computers, phones and tablets. This provides the possibility of effective job productivity in virtually every workplace. Discrimination is also ostensibly illegal, yet visually impaired people are facing long term exclusion from the labour market.

In this introduction I will start by offering some demographic evidence to justify this enquiry. We will look at the visually impaired population and introduce evidence for their employment exclusion. I will also outline some objective technological factors which should now assist the employment of visually impaired people. Finally, I will outline the strands of investigation which will make up this enquiry.

I will not replicate the many causes of visual impairment, which are described in many texts; a good summary is provided by McCreath (McCreath 2011 Ch. 2). We need to start though with a definition of visual impairment. Here I will use it as a collective category to describe people who are, or could be, registered severely sight impaired, or sight impaired (DoH 2012). These categories are equivalent to the original registration categories of blind or partially sighted people. They describe conditions that are irreversible and significant. I include those who could be registered but are not, as registration is not required for either discrimination protection or employment support. For example, DWP employment support services, such as Access to Work, do not require registration. Visually impaired people are not registered for a variety of reasons. These include those examined by an ophthalmologist but who either do not wish to, or fail to have their sight impairment registered (Barry and Murray 2005). Others may not wish to visit an ophthalmologist for a variety of reasons including psychological difficulty (Robinson et al 1994). Focussing only on the narrower and smaller group of people who undertake formal registration will give misleading representations of scale. However, when we consider numbers beyond formal registration, statistical data becomes more difficult. Employment Statistics on visual impairment are particularly hard to ascertain as government agencies do not provide a breakdown by impairment.

The demographics of working aged visually impaired people are detailed in Chapter 14, but some introductory observations are required here. A range of indicators show that the scale of visual impairment is larger than many realise. In 2011 in England 147,000 people were registered blind. 151,000 were registered partially sighted giving a total visual impairment registration figure of 298,000. During 2008, 23,400 people were registered for the first time. This equates to a person being registered every six minutes in an Ophthalmology Clinic (NHS 2011). An Access Economics survey estimated that the actual combined registered and unregistered sight impaired population was 1.8 million (Access Economics 2009).

This high estimate needs corroboration. Luckily there are other data sets available. Within the NHS, the size of Eye Health, both in numbers and provision, is well known. The NHS collects Outpatient data on 136 specialties. Ophthalmology is a surprising Goliath within this data set. In 2010 nearly 1 in 10 of all the 70 million hospital outpatient attendances was for Ophthalmology clinics. At 6,533,206 attendances, Ophthalmology visits were over twice as high as the next specialty, Dermatology at 3,009,153. Next is the 2,672,925 visits made to the combined speciality attending clinics for Ear Nose and Throat conditions. Most other major specialties hover around the million mark (NHS information Service 2012). In London we have two specialist Eye Hospitals in addition to the many Ophthalmology Departments and Treatment Centres (NHS London 2012). With the exception of Accident and Emergency services and resulting Orthopaedic referral, no other specialty has an equivalent service base.

We can also consider the relative size of charitable sectors. In London, for example, the Metropolitan Society of the Blind and Greater London Fund for the Blind are serious organisations with significant resources. At the national level the RNIB is joined by three further national visual impairment charities: Guide Dogs for the Blind and Action for Blind People. In addition, Sense supports people who have both visual and hearing impairment. These charities dominate funding. In 2010 the largest hearing impairment charity Action on Hearing Impairment (formerly RNID) had a turnover of £15.48 million. This was exceeded by the smallest national visual impairment charity; Action For Blind People at £19.89 million. The largest physical disability charity, Leonard Cheshire, delivers, internationally, contracted housing, residential and home care services in over 20 countries (Leonard Cheshire International 2012). Despite this international setup, Leonard Cheshire at £111m was exceeded by Guide Dogs, at £119m. The RNIB is another heavyweight with £97m. Even Sense is surprisingly weighty, dwarfing most other disability charities, with over £35 million in England and Wales and nearly £9 million in Scotland (Charities Direct 2012). No other impairment group can point to a comparable charitable resource base.

Whilst any one indicator does not prove the importance of the constituency of people with visual impairment, they all tend to point in this same direction. Yet, despite the relative importance, the literature on visual impairment, employment, and discrimination is scant. The Government Equality Office has admitted that weakness of current research is the focus on disability as a homogenous group (GEO 2011). At the time of writing this thesis will be the only systematic review of discrimination law and employment support from the perspective of a visually impaired person.

The legal vehicle for delivering equality and protection from discrimination is now the 2010 Equality Act. This was conceived after over 40 years of evolving Anti-Discrimination Law. Apart from consolidating legislation around different protected characteristics, the Equality Act continued the principle, established in the Disability Discrimination Act (DDA) 1995, that people registered sight impaired or severely sight impaired are provided with automatic protection under the Act. (Equality Act 2 Sch1, Para 7).

The Equality Act also included important principles of Positive Action duties, first introduced for disabled people in 2005. Additionally, in Section 19 of the Act, a protection against Indirect Discrimination for disabled people was also provided for the first time. These new duties and protections were intended to add to those first established in the 1995 DDA. As well as outlawing Direct Discrimination, a duty was placed upon employers to make Reasonable Adjustment to enable disabled people to access employment.

These statutory duties are supported by a number of organisations. Policy is supported by an Equality and Human Rights Commission (EHRC) which provides advice to employers, employees and government. The Home Office also hosts the Government Equality Office (GEO). This has the remit of driving forward equality policy, research and implementation. In addition the Access to Work service (ATW) provides practical support for disabled employees and their employers. The DWP fund various national schemes, including Work Choice to provide support with securing and retaining employment for disabled people (DWP (A) 2012) (DWP (B) 2012).

This legal and social policy framework is intended to expand the possibilities of employing visually impaired people. Both the 2010 Equality, and the 1995 Disability Discrimination Acts are explicit about equality objectives, (The National Archive A 2010), (The National Archive B 1995). By 2013, we have had disability discrimination law for 18 years, and an Access to Work service as well as a rights Commission for 15 years.

There are objective factors, apart from this legal and social policy framework, which should assist visually impaired people to gain and retain jobs. Flexible and accessible technology has been available since the days of Windows 95. The encroachment of computers into nearly all workplaces is well known (Lawrence 1999). Virtually all these computers could provide access technology for a visually impaired person. In 1984 IBM created a breakthrough by developing synthetic voice reading of text on computer screens (Cook 2004). With the release of Jaws (Job Access With Speech), it became feasible for blind workers to provide output comparable to sighted colleagues (Webaim 2009) (Freedom Scientific 2012). Other screenreaders have joined the market (GW Micro 2012) (Dolphin Access 2012(; including high quality free options (NVDA 2012) (System Access 2012). All modern Apple computers and iProducts include good free screen reading and magnification tools (Apple 2012) (Seraphin 2010). Even Linux has free screen reading and magnification tools (Vinux 2012). Microsoft includes a free full featured screenreader in Windows 8 (Access World 2013), (Network World 2012). All modern Mac and Windows computers are able to provide magnification, including the assignment of high contrast colours and increase font sizes. Full featured commercial screen magnifiers have been available since Windows 95 (A squared 2012). (Freedom Scientific B 2012).

Whilst a visually impaired worker may require further specialised equipment, some productivity should be immediately possible in most workplaces. Despite the availability of these access technologies there has been no positive, transformative effect on the capacity of visually impaired people to enter employment.

The evidence for employment exclusion is not straightforward, as state agencies do not record discrete figures for visual impairment. Instead these are subsumed into general figures for the rate of disabled people in employment. We must first then, review this wider disability data before drilling down to data on visual impairment.

Employment data on disabled people is collected from two main sources; census information from the Office of National Statistics, and unemployment statistics from the DWP.

The most authoritative and recent statistical analysis on disabled people is the *Life Opportunities Survey,* produced by the Office for National Statistics (ONS2011). The 2009/2010 survey interviewed 18,050 people between 16 and 65. The Survey is unique amongst large scale enquiries in that, in response to feedback from the Advisory Reference Group, the survey clearly adheres to a Social Model of Disability. To an extent never before undertaken, the survey measures disabling barriers as well as impairments.

The findings of the survey are startling. It found that 26% of respondents had disabilities which would have qualified them for protection under the Disability Discrimination Act. It also found also that a larger group of 29% had impairments. That is almost a third of the general population. Of the people with impairments 17% felt that they had had restrictive barriers to educational and learning opportunities as opposed to 9% of people without impairments. In employment 56% of people with impairments experienced restrictions as opposed to 26% of people without impairments. In households with one member with an impairment 45% experienced economic restriction as opposed to a general rate of 29%. Amongst those people in work, 33% of people with impairments found their work opportunities unfairly restricted, as opposed to 18% of people who did not have impairment. Amongst those out of work, 50% of those with impairments were restricted in the paid work they could undertake, as opposed to 29% of those without impairments (ONS 2012).

These LOS findings are slightly expanded when compared to data assembled by the Equality and Human Rights Commission (EHRC). The EHRC has relied on DWP and Labour Force Survey data. Using this data the study concludes that 18% of the working age population are disabled (Riddell et al A 2010).

They also conclude that the employment rate for disabled people is nearly 30% lower than that for the whole working age population (Dell et al B 2010).

These figures imply an unemployment rate for disabled people of about 50%. This appears to be at serious variance with the official unemployment statistics derived from the DWP. Here the unemployment rate is suggested to be 10.4%, as opposed to 6.6% for the general working age population. Although this is a serious inequality, it nevertheless suggests that 9 in 10 disabled people may be in employment. However the report point out that this is a misleading statistic as many disabled people do not claim Job Seekers Allowance, on which these figures are based, but instead claim Invalidity Benefit or Employment and Support Allowance (Riddell C 2010). Disabled people will claim disability benefits for the marginal income advantage they provide, but this does not preclude a desire to work.

These recent data sets correspond with historic data, which has also pointed to the problem of disabled people facing employment exclusion. Pope & Bambra reported, using *General Household Survey* data, that disability employment rates had failed to improve by 2002 despite the DDA 1995 (2005). By 2007 they concluded that the rates of employment for disabled people had deteriorated since the passing of the DDA (2007). In 2002 the Disability Rights Commission reported that the rate of disabled people with no qualification was twice the rate for nondisabled people. Disabled people are only half as likely to enter university. For those of working age, disabled people are five times more likely to be unemployed and claiming benefits (Boston et al 2002).In 2007, as part of its review of disability employment support, the Government claims an improving disabled employment rate from 38% to 47%. (Cabinet Office 2007). The more recent LOS data undermines the optimism of this conclusion, but even if we accept it as a genuine advance, this is still a massive inequality. The Government concluded that this employment rate was seriously short of the employment rate of the population as a whole at nearly 80%.

Employment exclusion will obviously increase the problem of achieving adequate income. In 2008 Leonard Cheshire published a report which provided evidence that millions of disabled people across the UK were trapped in poverty. Rates of poverty had increased, three million disabled people lived in relative poverty, at a rate twice that of non-disabled people. The affects of this was exacerbated by higher than average living costs, including mobility aids, care and transport (Leonard Cheshire 2008). All these indicators are consistent with earlier research, which confirms serious barriers and inequalities in the employment of disabled people (Rawlstone and Barnes 2005), (DRC 2006).

Unfortunately evidence shows that visually impaired people suffer greater rates of exclusion compared to the general disabled population. Government commissioned RNIB research found an alarming 73% unemployment rate amongst visually impaired people of working age (Simkiss 2005) (Bruce and Baker 2003). If correct, this equates to three out of four visually impaired people outside the labour force. These RNIB findings confirmed similar results from an earlier survey (Bruce et al 1991). International evidence has supported the credibility of these RNIB studies. In 2005, a similar Canadian survey reported an unemployment rate of 75% (CNIB 2005). This survey concluded that the majority of blind or partially sighted Canadians remained permanently outside the job market. The 2007 Vision Australia survey reported an unemployment rate of 69% amongst blind or partially sighted Australians (Spriggs 2007). In the USA a 2004 study reported an unemployment rate of 81% amongst blind or partially sighted Americans. (Zuckerman 2004). In the context of these international surveys the RNIB UK survey results cease to be surprising and, instead, are consistent and to an extent predictable.

These rates of employment exclusion have consequences. Visually impaired people have low expectations of employment and therefore low motivation to work. Extra living costs for visually impaired people are higher. They had to meet more of the extra costs of their disability from their own income. There are low rates of house ownership and living in social housing is twice the national average (Bruce and Baker 2003) (Bruce, McConnell, and Walker 1991).

Whilst visually impaired people share some access barriers experienced by other impairment groups, some aspects will have greater impact. There are special informational and communication barriers. We have to adopt different strategies in the process of securing employment. Our impairments are relatively obvious and visible, and therefore, unlike some impairments, difficult to conceal from employers. The difficulty of mobility, travelling to and within work has special consequences for visually impaired people. Sight is so central for many work tasks, employers will find it hard to conceive of productive use of visually impaired workers (Roberts et al 2004).

So the exclusion from employment of visually impaired people presents a depressing picture. It sits alongside justifiable concern for other impairment groups and other discrimination categories. Visually impaired people will also experience problems associated with other characteristics such as gender and race. This is despite an extensive collection of legal Anti-Discrimination law initiatives. Statutes to combat race discrimination were enacted in1965, 1968, and 1976. Unequal pay and sex discrimination were formally outlawed in 1975. Yet, the last Government acknowledged that a glass ceiling persists across the range of discrimination categories. (Munn 2006). Their Equality Review described continuing discrimination as **'intolerable'** and **'a scar on society'**. It estimated that it would take decades to achieve equality. (Cabinet Office 2008) (11)

This all confirms wide recognition that comprehensive discrimination legislation has not redressed socially constructed exclusion (Kirton and Greene 2005 p 6-10) (CRE 2006) (DfCLG 2007). So the combination of unparalleled employment rights, and available access technology support fails to resolve employment exclusion. This requires an explanation, as visually employed people are, by no means, unemployable. Blind people have demonstrated their capacities in a wide variety of roles, including the legal profession (SOVIL 2012). (The Judicial Office 2012).

This is, therefore, an inquiry into why UK legal and social policy has not prevented the employment exclusion of visually impaired people. It will be organised into four parts. In Part One, we will commence with a historic contextualisation of social, economic and political drivers that have shaped our current legal and social policy framework. This will discuss the extent to which our current legal framework is an expression of historic pressures for reform.

Part Two will evaluate our current law and policy against its own, internal, stated aims. It will examine how the drivers for, and resistance to, reform have found expression in our current framework. It will examine the consequent paradoxes and contradictions played out in the history of discrimination law, including the strange death and resurrection of disability indirect discrimination. It will describe how there may be only limited cause for optimism with the law in its current form.

Part Three will propose practical reform to the current legislative and social policy framework. It will develop the case for collective, as opposed to individualised social policy responses. I will propose a new system of Positive Enforcement of Disability Discrimination Law. This part will conclude by addressing the economic consequences of these reforms, and assemble economic evidence to support the inclusion of visually impaired people into employment.

Finally, in Part 4, we shall conclude with an examination of principles which could guide the future formulation of legal and social policy. This Part will consider the contemporary challenges to The Social Model of Disability; it will consider what support the Social Model could receive from the Human Rights paradigm, including an analysis of the Capabilities Approach. Finally I consider what support the Social model could receive from a new Politics of Disablement. The politics of identity management, Dependency, and impairment will be investigated to establish what positive support could be politically assembled for the employment inclusion of visually impaired people.

It is time then to start our journey with a historic contextualisation of the birth of Discrimination Law for visually impaired people. This is an investigation which will, from time to time, see us asking strange questions, and challenging long held assumptions, as we foray into a complex mix of social, economic and political drivers for legal and social policy.

Part 1

Striving for Rights

Chapter 1

Justice Not Charity

The Marches of the Blind

In 1920 and 1936, the attention of the nation's Media and Government were riveted by the sight of blind demonstrators, following a rope, marching from three corners of Britain to converge on London. Each march was fronted by a banner proclaiming 'Justice Not Charity' (National League of the Blind 2008). Many remember the Jarrow Hunger Marches, but few know that they were inspired by the successful March of Blind Men in 1920 and that the Jarrow protestors marched alongside the National League of the Blind, in 1936, in homage of this (Lysons 1973 p 473). These forgotten campaigns of the blind were not trivial; they pre-occupied Prime Ministers and Cabinet Meetings. They also attracted attention from the police and Special Branch because of fears of Radicalism and Communism (Lysons 1973 p 476). This chapter is about how successive generations of blind men and women, between the Boer and Second World Wars, campaigned to improve their conditions of life. It is also about why, despite a 50 year gap, they share resistance to charitable models of support with the later Disability Rights Movement. To help us investigate this complex, contradictory relationship between charities and blind workers, we need to resolve a strange anomaly; why did the blind activists turn against the charities set up to defend them?

It is too simplistic to dismiss charities as enemies of the blind. Many visually impaired people would not have their improved conditions of life without charitable support. Charities are by their nature, established with good intentions. The paradox is that, despite these, the history of blind charities and their service users reveals tensions as well as support. Whilst charities have provided essential support and advocacy for visually impaired people, they can also disempower, even oppress their beneficiaries.

A key feature of the protest was that concerns were both economic and political, with calls for legislation. A target was the replacement of charities by state organisations. However, successive Governments frustrated these demands, instead supporting charitable welfare (Phillips 2004 p 102 -110). These tensions persist, albeit in subtler form, even today.

The fact that documents were destroyed in the National League's offices during the blitz partly explains why this is forgotten history (Lysons 1973 p 102). Fortunately Lysons' monumental 1973 review of blind legislation includes extensive documentary evidence, including eye witness interviews, with Parliamentary and Cabinet Minutes released under the 30 year rule. This is the most authoritative source of information available. For a detailed history you will need to refer to Lysons' thesis. What I offer here, is a drastically distilled summary, with the aim of revealing broader longitudinal themes, which highlight underlying drivers for reform.

A feature of the tensions is that they are not so much driven by individual actors but, rather, systemic conflict. This chapter will argue that this was largely inevitable, driven by the social forces inadvertently released by charitable intervention. This is the paradox of the period. The National League, despite it fervent opposition, would never have been formed without the support of these charities.

The role of charity in rescuing desperate visually impaired people cannot be underestimated. During the late 19th century many were confined to workhouses run under the principle of 'less eligibility'. (Bloy2002). Although the infirm were theoretically protected from the harshest effects, in practice they shared them (Lysons p 26). Concern grew about the appalling inhumanity blind inmates endured (Barnes 2010 p 25).

Problems in the workhouse were magnified for visually impaired people. They could not compete for scarce resources against sighted inmates, could not assert any control over their lives, and were dependent on assistance, if available, from other workhouse residents. The minority of blind in any particular workhouse would be too small for Workhouse Managers to focus on meeting needs. Environments were often difficult and dangerous. Chaplains complained of **'many accidents to the blind as a result of their running against iron gates and stumbling down stone steps'** (Lysons p 28). Life for blind inmates was hard and boring, without the modern relief of radio or talking books. Bullying from staff, as well as sighted inmates, compounded the problems of stress, danger, hunger, and tiredness. People lived their lives in misery without relief or support. Despite the crowded conditions of the workhouse, blind people experienced social isolation. Some were so traumatised that inspecting commissioners observed that they became mute. (Lysons p 30-31)

A blind inmate was rarely allowed out. A few would receive an occasional visitor to read for them (Lysons p 28). Even as late as 1909, a Poor Law Commissioner received this letter;

> **'I have been 16 years in a workhouse. I came out of a school for the blind at the age of 18 to a father out of employment. After a period of want my parent, very much to his sorrow, deposited me in the workhouse. I have been used to cloth clothes - now I have corduroys. I have been used to a collar and tie - but now I must wear a neck handkerchief. I should like to attend public lectures, etc. But I must not be out after 7 p.m. except when the master will condescend to grant me the extreme favour. But I must not apply for this favour too often. We scarcely ever have any fruit in the workhouse, not even when it is half the price of bread and the monotony of the workhouse are such that I wish I were free as others domiciled in this country'** (Lysons p 30)

Another 1909 report highlighted;

> **'If you will but look at these structures (workhouses) you will find that they have high walls, great doors, great locks and keys, showing that they are places where freedom is not enjoyed. The blind so consigned have no right to vote in the affairs of the country. The blind walk for exercise in these places, but only a few steps each way. The workhouse wall surrounds them. Most of them do not stand upon more than two or three acres of land and when one begins to think of the hundreds of human beings who are confined in these limited spaces one must understand the hard lot of the blind'** (Lysons P 30).

The lives of the hapless thousands known as the **'outdoor blind'** outside the workhouse suffered from limited Poor Law relief. They lived under the shadow of the workhouse and relied on friends or relatives' support. The risk of the workhouse increased with age and declining capacities. Just as important was the mortality of relatives. Many must have watched the approach of their parents' old age with dread, a third of all blind eventually received Poor Law relief in the workhouse. (Blind and Partially Sighted Society 2012). Conditions caused increasing concern amongst philanthropic reformers. Across the country local charities were established for the humanitarian purpose of rescuing blind people from the workhouse and privation (Phillip 2004 p 114 -124).

Charities came to provide an increasingly important alternative infrastructure. By the 1860s they started to provide pensions and establish workshops. By the turn of the century there were 50 local registered charities for the blind. (AIM 25 1998) (Beacon Centre for the Blind 2011) (Archive Wales undated). Workshops increased in size and number. In 1893 Queen Victoria was patron for a full sized blind workers factory in Tottenham Court Road (Clarity 2009).

Whilst the charities did not provide comprehensive replacement of the Poor Law, they did offer relief for a fortunate minority. Importantly this minority was able to organise and campaign for the generalised rights of blind people. In 1891 a group of blind workers formed a Friendly Society in South London to organise for their social and economic betterment (Lysons p 101-103). In 1893 a conference of blind workshop employees from London and Manchester issued a *Blind Person's Charter.* This was a manifesto for reform, accusing Charities of corruption and inefficiency. The Workshops were described as exploitative **'sweating dens'** with inadequate pay (Lysons p103). The solution they proposed was that charity employment should be abolished and replaced by state employment (Lysons 104). This manifesto eventually became the founding document of the National League of the Blind.

So this is the first paradox. Charities, established as institutions of benevolent support for blind workers, were the first to receive organised approbation from these workers. The key here is that, whilst the workshops were benevolently inspired, they were not state subsidised. Any preferential economic protection for blind workers would have to be found from the modest resources of the local charities. It was not until the 1948 reforms that workshops became genuinely sheltered. Discontent, regarding this, led to demands that the workshops should be protected from competitive markets. Blind workers had to compete against sighted workers. The League, and the charity employers themselves, argued that the blind workshops should be preferentially supplied with Government contracts (Lysons P 111-112,).

In order for blind workers to compete successfully against sighted workers they would have had to work longer hours for less pay. In 1910 the League reported blind workers having to work for 12 hours a day for less than 10 shillings a week. (Lysons p109). It is understandable that blind workers did not have any fondness towards their charity employers. Conditions were ripe for political conflict. However this is an inadequate analysis. The working conditions of the workhouse were even harsher, but there was no organised opposition from blind inmates. As we have seen, there is no doubt that the initial instincts of the charities were benevolent compared to the inhumane workhouses. Their intervention helped lift blind people away from desperation. Both in the pensions they provided, and the workshops they set up, they established routes by which blind people could be lifted out of despair. Yet a new generation of blind workers were to find a voice to express concern in the condition of the workshops set up in their name. They were a new social and political factor into the equation.

Crucially the congregation of blind workers in these workshops provided the opportunity, for the first time, for blind workers to express these concerns collectively on a regular basis. In place of the erstwhile isolation and intimidation of the workhouse, workers must have found mutual support and growing confidence. The paradox is that it is only with the implantation of a relatively humane environment that these workers found the collective strength to organise resistance. Unlike the lives of blind men in workhouses dominated by sighted people, these workers found common experience of sight impairment. Social relationships became possible on an equal footing. With an equal basis for social relations, self-esteem would have had the opportunity to increase. There would have been new opportunities for the sharing of successful coping strategies. Even today, organisations like Low Vision Forums provide a powerful resource for problem solving and mutual learning.

So the coalescing of blind workers had the potential to enhance capabilities as well as provide mutual emotional support. With these capabilities and greater confidence came the possibility of political articulation. The paradox of charitable intervention is that, with its economic backdrop, it created the social condition for the first independent political expression of visually impaired people. Ironically this expression was shaped by the terms of intervention which made resistance possible. In this way the charitable workshops unwittingly established the structure of the long running political campaigns by blind workers in the 20th Century.

A new generation of blind workers gathered, not subjugated by the experience of the workhouse, to find new standards by which their lives could be judged. This change in their social condition allowed transformative ideas to arise amongst blind workers. For the first time there was the possibility of an organised response of the blind to confront assumptions in the wider sighted population. What started as local resistance to the charities became national, more generalised and political. By providing the route by which despair could be transformed into militant political articulation, they unconsciously set in train a social force that would eventually shake Governments and force fundamental political change.

After the initial landmark of the Blind Charter and formation of the National League, progress was slow. Blind Workers experienced logistical hurdles associated with their impairment. Mobility, communication, reading and writing were obvious hurdles. Braille had been introduced in England in 1870 but its penetration was limited. (Enabling Technologies 2012). Whilst Braille was in its infancy there would have been comparatively little incentive to utilise it. A later generation of blind men would have to enjoy specialist education before Braille would emerge as a viable conduit for the sharing of information.

Despite these logistical barriers the League formed its first National Executive in 1897 after blind workers gathered for a London conference. In 1899 the League took the historic step of becoming formally registered as a Trade Union. In 1902 they joined the Trade Union Congress. The support of Trade Unionists for their blind brothers was to play an increasingly important role.

Despite its formation as an organised response to workshop conditions, the League was neither narrow nor insular. It argued for the extension of support to the wider blind population, citing that, from the registration figures available, workshops were benefitting only a minority. In Manchester, workshop places were available for only 1 in 13 of the blind population. In Hull and Liverpool the ratio was 1 in 6 and 1 in 5 respectively (Lysons p 108) In addition, to help further the cause of blind people in other countries, the League, in 1905, organised an International Conference of the Blind in Edinburgh (Lysons p76).

The greatest focus was on the situation of the workshops and management of the charities. The League believed that charities, through their inefficiency, maladministered funds due to their disparate and uncoordinated relationships. 50 separate Charities distributed pensions to just 5,751 blind persons (Lysons 1973 109).

From the start, the League focussed on proposals for legal reform, with parliamentary petitions submitted by Keir Hardie in 1889 and 1901 (Lysons p 114) Increasing industrial disputes supported the case for joining the Trade Union Congress. In 1902 the Sunderland and Durham Royal Institute for the Blind locked out its workforce after they failed to agree a 27% cut in pay (Lysons p 109).

Charity Managers, under national pressure from the League, now realised that they required a national coordinated response. The result was the National Employment Committee for the Employment of the Blind (Lysons p 110).

In 1906 the first Blind Aid Bill was tabled by MP William Steadman, who was also Secretary of the TUC. Between 1906 and 1913 the National League repeatedly submitted Bills which included proposals for the removal of charities from workshop management. The charities, concerned by increasing support for the League, began to mobilise for a reform solution which preserved their role. The National Employment Committee introduced its own Welfare Reform Bills. The League was eventually persuaded, by parliamentary supporters that the best prospect for reform was to agree a joint Bill with their employers. In 1912 they agreed, for the first time, to submit a compromise joint Bill. This was a stripped down version of the League's 'Blind Aid Bill', which called for a guarantee of work, or an allowance for those unable to work. Although this Bill was also blocked, this unified submission won a concession from a Government which could no longer cite charity opposition. They agreed to form a Parliamentary Committee to investigate the conditions of blind employment, education and maintenance (Lysons 111).

Despite Parliamentary co-operation, local disputes persisted. In 1912 the first all-out strike in Bristol lasted for six months. This was the first of many protests against the conditions in the workshops and blind strikers complained of frequent victimisation by their workshop managers (National League of the Blind 2008). Defiant Blind workers continued their fight for better pay, conditions and pensions (National League of the Blind 2008).

The National league was greatly assisted by Trade Union support for demonstrations for a Blind Persons' Aid Bill in 1909, 1910, and 1913. In a period without public address systems the large crowds were addressed simultaneously by speakers from two platforms on either side of Trafalgar Square.

> **'There were 70 banners of the League, various Trade Unions, Temperance Societies and other organisations. Three processions converged on the Square from the East, North and South of London.'** (Lysons p139).

Despite the hiatus of the 1914-1918 War, the Parliamentary Committee ground on. During 36 meetings, it slowly drafted recommendations. It finally reported in 1917 and 200 National League members met at the National Library for the Blind to agree the recommendations (Lysons p 159). The Government responded by setting up the new 'Advisory Committee for the Welfare of the Blind' to look at proposals for funding. This body reported in 1918 with recommendations for the funding of a Blind Person's Act (Lysons p 184).

Despite this pressure the Government prevaricated and now argued that provision for the blind should be included in the MacLean Committee looking into the abolition of the Poor Law (Lysons 174). This delaying strategy came under pressure from the surge in numbers of servicemen blinded by gas and injury (Lysons p 157). The National League suspected a lack of genuine Government interest in reform (National League of the Blind 2008). Stephen Walsh introduce, in 1919, a 'Blind Education, Employment and Maintenance Bill'. The Government blocked this after a Second Reading. The League responded by announcing in January 1920 that they would be organising a number of national demonstrations in April.

In parliament further pressure was added when Ben Tillet won the Private Member ballot to submit yet another Blind Persons Bill in February 1920. In a foreshadowing of the response, 83 years later, to Dr Berry's 'Civil Rights Disabled People's Bill', the Government announced it would instead introduce its own legislation. The League remained suspicious of a prevarication and continued to organise their marches (National League of the Blind 2008). Whilst protest marches were not unusual, the League's use of choreographed national marches, converging on London was innovative. This was the model that would inspire the later Jarrow Marches. The three marches organised rallies in different towns raising support along the way. The progress was widely reported in both national and local newspapers. Every morning telegrams were sent to Downing Street detailing of the location, receptions received and similar information. (Lysons p 196). In April 1920 blind demonstrators from Scotland and the North East set off from Leeds. They were joined by a demonstration departing Manchester, including blind workers from Ireland and the North West. A final demonstration representing the South West set off from Newport. In a foreshadowing of the struggle, half a century later, against disability discrimination, their banner declared 'Justice not Charity' (National League of the Blind 2008).

After 20 days the marchers converged on London, where they were also joined by Trade Unionists in a demonstration in Trafalgar Square. The blind workers had to wait a further five days before they successfully forced a meeting with a reluctant Prime Minister, Lloyd George, thus vindicating their propaganda success. When Ben Purse rose in Parliament to raise the question of the likely victimisation of blind demonstrators by their workshop managers, Lloyd George felt compelled to state that this was an **'unthinkable'** action which could not be supported (Lysons 199).

Some of the key aims of the marchers were realised in the successful passage of the Blind Persons Act in September 1920. Pensions were made available at 50 for Blind People. Charities, whilst not relinquishing their workshop management, lost some independence by becoming agents of the Local Authority. In addition the Local Authorities began to compile a register of blind people (Vista 2010).

There were still considerable problems. Delays in implementation caused a postcode lottery with blind people suffering in some areas whilst others were getting support. (National League of the Blind 2008). Unclear and discretionary access to support was also problematic. In one bizarre case a blind woman, who had lost both her eyes, had her request for support denied because she had not attended a school for the blind. A Ministry of Health circular in 1926 attempted to rectify these anomalies by offering guidance to regulate the interpretation of blindness (Lysons p 215). It was not until 1935 that proper registration by ophthalmologists was arranged (Lysons p 219).

Although the 1920 Act introduced historic pension arrangements at 50, the League wanted the pension age reduced to 30. They also demanded parity with pensions awarded to the war blinded (Lysons pp 430-9).

In the first demand for positive discrimination that I have traced, the League argued that blind applicants be prioritised over sighted applicants for certain jobs, including teaching of the blind (Lysons p 439). The League remained keen to expunge the role of charities in delivering services on their behalf and wanted either national or local government to assume management of the workshops (Lysons p 102, pp 430-9).

The League was initially buoyed by the arrival of McDonald's Minority Labour Government in 1924 (Lysons p 429). They sponsored a fresh Blind Person's Amendment Act but the Advisory Committee on the Welfare of the blind refused support, citing excessive cost (Lysons 431). By October 1924 the Minority Labour Government was removed from power. The combination of prolonged economic depression allied to Labour's absence from office created a tough political environment for advocates of blind rights. Bills were proposed and blocked in 1925, 1926, and 1928. The only legislative progress the League achieved was the winning of a discretionary power, though not a duty, for local authorities to remove blind people from the provisions of the poor law (Lysons p 234). Hopes were raised with the return of a Labour Government in 1929 and the League sponsored a simplified bill lowering the blind pension age from 50 to 40. However this was rejected, even by a Labour Administration, in 1931. McDonald's National Government indicated that economic problems precluded reform. After 1931 no more bills were proposed. (Lysons pp 458-60).

The National league responded by again exerting extra-parliamentary pressure. It was 15 years since the first Blind Persons Act and a new generation of blind workers joined their veteran colleagues for a new campaign. In 1935 a revised Blind Charter was established to express their demands. A demonstration was planned for 1936.

Referring to Cabinet Minutes released under the 30 year rule; Lysons showed that the Government feared that the new march would attract support similar to that in 1920. They considered banning it before ruling this out after legal advice. Other members of the Government were worried enough to propose concessions in an effort to stop the March. (Lysons 471).

Unable to prevent the March, the Government decided to mobilise resources to nullify its impact. They proposed using police powers to re-direct it away from population centres, and banning the marchers from collecting money. On 6th September, Kingsley Wood sent a memorandum prohibiting sympathetic local authorities from providing financial support (Lysons p 471). The Special Branch began to monitor the activities of National League members (Lysons P 475). The Cabinet papers also reveal that at this stage the pressure of the plans for a march had forced Ministers to concede that there would need to be a Bill to reduce the pension age for blind workers from 50 to 40. In October the Government sent a letter to the National League making a final plea for the March to be cancelled with a promise of concessions if this was agreed. (Lysons p 475).

However the constant prevarication and blocking of reform over the previous years had removed any trust the league may have had in Government. After medical screening of all marchers, contingents of blind men set out from Leeds, Manchester and Swansea on 12 October 1936 (Lysons p476). The March did not have the same impact as in 1920. Nevertheless the marchers did not regard it as a failure. 18 year old Ted William who had marched from Sheffield recalled'

> **'every morning we pushed on a few more miles until we eventually got to London. We stood in Trafalgar Square and shouted for what improvements we wanted. We sent a deputation of shop stewards into Parliament and they might have got nowhere at all but it at least**

> **awakened people to our conditions'** (Humphries and Gordon 1992 p 120).

The March won wider Trade Union support, including the Jarrow marchers who joined the March at Watford in solidarity (Lysons P 475). They arrived in London on 1st November to be greeted by a demonstration of Trade Unionists and Labour support.

An eyewitness described how they were greeted in Trafalgar Square;

> **'Before the meeting in the square began a procession of blind persons and supporters headed by a brass band with supporters carrying seven banners arrived in the Square. Five minutes later the main contingent of about 250 persons, including the marchers who were headed by the G.W.R. band, arrived accompanied by the banners of the Paddington Trades Council and Labour Party and the Paddington Branch of the National Union of Railwaymen. About 500 persons were present when the meeting was opened at 2.15 p.m. The meeting was addressed by twelve speakers including three Labour Members of Parliament and Hannan Swaffer.'** (Lysons p478)

Another eyewitness quoted Swaffer's remark

> **'Look at Nelson up there. He was blind in one eye and they gave him a statue. If he had been blind in both eyes, they would have sent him to the workhouse'** (Lysons p 479).

Lysons described the 1936 March as a failure compared to that of 1920, largely because of the distraction of the Jarrow protest and better Government mobilisation (Lysons p 475- 479). Also the demonstrators had to endure inclement weather and ill health caused some departures (Lysons p 476). Yet it is difficult to see why Lysons has such a negative view. Despite the perceived lesser impact compared to the 1920 march the Government was anxious to prevent a repetition and immediately announced, in November 1936, plans to introduce a new Blind Persons Bill (Hansard 1936). It received Royal Assent in 1938.

The Act delivered important concessions. Blind Workers were taken completely out of the means test and the Poor Law system. The age for a Blind Person's Pension was reduced from 50 to 40 and the Local Authorities had duties instead of powers to register and monitor charities (Lysons p 483). It is difficult to see how any of this would have been achieved without the protest movement of

1936. Governments of all political shades had blocked reform for 16 years. They only showed any sign of addressing these issues after facing the possibility of blind protestors appearing on the streets again.

1936 marked the last high profile national intervention by the League. With the coming of the Welfare State most of the aspirations of the League were achieved. They had won a national structure which regulated their conditions of work, and benefits were greatly improved. Over time, more visually impaired people work in mainstream employment and, as we shall review later, this is the direction of modern employment support policy. Workshops became smaller or closed altogether. The engine room of collectivism with blind workers in the shared tasks of workshop production was replaced by increasingly individualised support. With the closure of specialist workshops the League rebranded itself as the National League of Blind and Disabled Workers. It never again achieved a similar national profile. Today they are a relatively low profile section of the Public and Commercial Services Union.

We can now finally draw some conclusions from this narrative. I will briefly consider the legacy of the persevering dynamics revealed in this account.

I have described the creation of workshops as a social experiment, charitably inspired, which attempted to improve the lives of blind people. However, the economic pressure of these workshops attempting to compete in a wider market drove these charities into conflict with their blind service users. The dynamic here is the drive for economic survival through economic competiveness.

The second dynamic is that of political solidarity generated by collectivisation of the blind workers. This collectivisation provided the possibility, for the first time, of organised resistance. These new concepts of solidarity and collective bargaining meant that blind workers could bite the charitable hands that were attempting to feed them.

The working through of these systemic dynamics reveals three main themes, which all have comparatively modern resonance. These themes will be expanded in later chapters but I will describe them briefly here.

The first theme is related to the question of whether it is possible to integrate labour from a visually impaired person, despite their impaired capacities, into a capitalist labour market. The challenge facing these early charity reformers was to discover to what extent there was a business case for the assimilation of visually impaired people into the mainstream labour market. In this era, the model was specialised workshops where people with similar impairments worked. This form of adjustment is relatively unfamiliar to us today. We are now used to adjustments that are delivered on an individual basis, largely through the provision of access technology. Although these individual technological adjustments appear different from the collectivised adjustment of the workshop, they are both underpinned by a tension. This is contained in the question of whether a visually impaired person can deliver profit. More specifically, can the economics of a free labour market be socially manipulated so that visually impaired people can deliver a profit? This is a highly contemporary theme and we will return to it throughout this inquiry. It underpins, for example, the debates over the economic impact and implementation of, the Disability Discrimination Act, and later the Equality act. The tensions revealed in the campaigns of blind workshop workers indicate, at the very least, that this profit is not easily delivered.

The second theme relates to the creation of a social infrastructure of specialised workshops. The initial social experiment of the supported workshop established by the charities eventually gave way to a subsidised system of state supported workshops. In both the 1944 Disabled Persons Employment Act, and Section 29 of the 1948 National Assistance Act, legal arrangements were established for this assistance (Care and Health Law 2004). These Acts also marked the end of discrete legislation targeted at blind and partially sighted people. In this and all subsequent legislation, disabled people are treated as one group. We shall have much more to say about this in later chapters. These Acts established a framework for what Colin Barnes calls **'the humanitarian era of workshop provision'** (Barnes 1991 Ch. 4). In the long post war economic boom the workshops did not face the pressure to compete economically as had their earliest predecessors. Yet this benevolence has not persisted and Government attitude to the workshops proved to be cyclical. By 1976 the humanitarian era of workshops was ended as the Labour Government grappled with cost cutting and an economic crisis. Workshops were again expected to pay their way. Few were able to meet this challenge and the result was large scale closures. (Barnes 1991 Ch. 4). Today the national network of workshops has been largely dismantled (National League of the Blind 2008).

Are we to conclude then that history indicates the inevitable demise of the workshop? Well not entirely, given the cyclical nature of Government interest in workshops over the last century, it is not inconceivable that there may be some modified recourse to this solution in the future. Visionaries for Anti-Discrimination

Law, such as Barnes, identified mainstream employment as key for the improvement in the lives of disabled people. In contrast specialist workshops generally offered undervalued work for underpaid disabled staff. The instrument to force employers to allow disabled people to enter mainstream employment was Anti-Discrimination Legislation (Barnes 1991 ch4). Yet the optimism of this view is tempered by experience. We now know that 18 years of Disability Anti-Discrimination Law has not delivered mainstream employment integration. Rather, we have structural exclusion for the overwhelming majority of visually impaired people. Anti-Discrimination Law may be necessary but not in the end sufficient. A modern Social Model of Disability approach to this exclusion would attribute this to negative employer attitudes and discriminatory infrastructural barriers. Whilst these are huge and continuing problems, it is too simplistic an analysis. After all, as we have seen, speech access technology is freely and widely available in mainstream computers, yet visually impaired people are not necessarily using it. The reality is that the availability of access technology is not the only issue. Productive and efficient use of this technology is neither intuitive nor straightforward. It is actually a huge learning curve. A further barrier to the employment of visually impaired people is their own training and skills deficit.

The mainstreaming of access technology now offers opportunity to develop genuine competitive employment characteristics. Put simply, proficiency in the use of a spread sheet, database or iPhone is more transferable into the mainstream than the basket weaving of the old workshops. The numbers of people with visual impairment does offer an opportunity for specialist employment support centres. These would have to learn the lessons from the mistakes of the old workshops. Whatever the nostalgia for the National League of the Blind, we do not want to create the conditions which necessitate blind protestors marching across Britain.

The case for regional specialist employment support centres which could start to address this skills deficit needs development. There is, understandably, considerable antipathy to any notion of segregation. However at the moment, visually impaired people are already segregated from mainstream employment and there seems no prospect of this changing for at least a generation. This measure would address this individualised segregation by offering group training as a conduit into the mainstream. There are undoubted risks including the creation of an employment ghetto for visually impaired people. Yet this risk has to be set against the current virtual abandonment of the vast majority of visually impaired people on to an unemployment scrapheap.

There are two final lessons from this history. A specialist visual impairment employment centre is likely to provide benefits beyond the spreading of employability skills. A positive effect of the workshop system was the social solidarity and community sense it established for visually impaired people. This collective experience has disappeared with the closure of both specialist workshops and schools. We know from a variety of survey evidence that there is a problem with isolation for visually impaired people (WFLVF 2012), (Hatlen 2004), (RNIB 2008). Organisations such as Low Vision Forums attempt to recreate these communities, but are battling against the odds. Without some source of regular shared service base, visually impaired people are prevented from finding other visually impaired people. We may pass each other in the street but be oblivious to the other's presence. Occasional visual Impairment forums cannot replace the depth of relationships and sharing built up by daily association. This theme will return in later chapters.

Finally there is one part of the National League's Manifesto that was relatively unsuccessful. Although the workshops passed into state supervision, the position of charities has remained essentially untouched. In fact, since the demise of the National League, visual impairment charities are the main vehicle for campaigning. This creates modern tension. The struggles of the National League exposed a systematic conflict with charities because they were tied to competitive market pressures. Whilst not so starkly revealed as in the historical events of this chapter, these tensions can still be seen today, albeit in different form. They are extended to the role of charities not just as employers but as service providers for visually impaired people. Charities such as the RNIB resemble major business concerns employing 450 staff, with an annual budget of £100 million, and a customer base of 300,000 visually impaired people. Increasingly the RNIB appear to regard this customer list as the basis for their business model, long ago abandoning the subsidisation of access technology products (McCreath 2011 p 70). The RNIB, also, does not have a distinguished record as a campaigner for the employment rights of visually impaired people, with a poor litigation record. This is not that surprising. The RNIB acts as a big corporation competing for private and state business contracts. They appear content to negotiate and shape current political, social and economic structures, rather than confront them. Oliver and Barnes refer to this as the problem of **'disabling corporatism'** and **'contract culture'** where big charities are incorporated into political compliance by their reliance on Government funding (Barnes and Oliver 2012 P 156).

This was not a concern for the National League. They launched into militant campaigning, comparatively unfettered by desires for economic integration with big business and the state. This enabled them to engage in high stakes confrontation against a hostile Government. Their militancy forced reluctant enactment of reforms which have benefitted millions of visually impaired people over the last century. History can judge these men as brave trailblazers. They not only overcame their impairments but also endured the stress and privation of this prolonged battle. They paved the way for the modern welfare state with their demands for the right to state security and protection from the market. Arrangements innovated under the Blind Person's Act are carried forward into the post war implementation of welfare legislation. This is a testimony to their determination and courage. As visually impaired people we should be proud of this history.

Unfortunately the current charity campaigners show no signs of demonstrating similar courage to confront the pressing issue of our modern times, the employment exclusion of visually impaired people.

We must now turn to a consideration of the primary legal mechanism for the guarantee of the inclusion of visually impaired people into work. We must consider the creation of Anti-Discrimination rights for visually impaired people.

Chapter 2

The Catch 22 of Disability Discrimination Law

Law is not created in a vacuum but is of course socially discussed and created. Equally the enforcement and effectiveness of law is not automatic. Consequently there are limits to law which are socially constructed. If we are to consider the pertinence of Discrimination Law for visually impaired people then we must examine the social context of its conception, and its likely limits of enforcement.

As there is no discrete visual impairment discrimination law, this will require an analysis of wider disability protection, in particular, the Equality Act 2010. A traditional historical review would involve the listing of Statutes, including the 3% quota introduced in the Disabled Person (Employment) Act 1944 and its subsequent abandonment in 1995. Here though, I will examine not just the chronology but also the effectiveness of law. For this we must widen our analysis and start by examining the Disability Discrimination Act through the prism of the 1970s reforms on Sex and Race Discrimination.

I underpin this review by investigating two peculiarities. The first is the oddly unasked question: 'Whatever Happened to the Race Discrimination Act?' The second is 'What is the Catch 22 of Discrimination Law?' By focussing on these anomalies we can discern some of the key political and social tensions embedded in any attempt to legislate against discrimination.

In my introduction I described how Disability Discrimination Law had failed to deliver on its stated equality aims. Similar problems have beset Sex and Race Law. The Architect of the Race Relations Act (RRA), Lord Lester expressed disappointment that successive Governments have failed to address inequality (Lester 2006). The 2008 Equality Review provided a similar downbeat assessment (Cabinet Office 2008). The use of discrimination legislation to enforce social change is in any case controversial, assuming disputed state competence in reforming social attitudes (Hepple 1992) (Gardner 1992).

Despite these legislative failures, successive UK Governments have maintained interest in pursuing Anti-Discrimination Law both as a regulator of conduct and, more ambitiously, a motor of social change. The waxing and waning of this interest provides insight into contradictory pressures besetting discrimination legislation, exposing both the opportunities and limitations of law. By analysing these tensions in prevailing ideologies at the birth of these statutes, I hope to contextualise the consequent impact on the efficacy of Disability Discrimination Legislation.

Despite the reforms of Race Law in 1965 and 1968, it was not until the 1970s that there was a serious attempt to legislate against discrimination in the workplace. When this arrived it provided radical policies for radical times. In a presage of events to come, the historic 1968 Equal Pay dispute at Ford's Dagenham had won a meeting with Employment Secretary, Barbara Castle, and pressured the introduction of the 1970 Equal Pay Act (Wainwright Trust 2006) (Jones 2010) (IMD 2010). The defining memory of the early 1970s though was Heath's response to the miners' strikes, and his consequent election defeat (Cawood 2003 p274). Heath called his first 'state of emergency' in February 1972 after Flying Pickets closed first power stations, then steelworks, ports, and coal depots (Beckett p 55, 60). As stocks dwindled the Cabinet planned emergency regional government centres, originally conceived for the outbreak of nuclear war (Beckett p 57)., A landmark televised confrontation at the Saltley Coke Depot, supported by striking Birmingham engineers, resulted in dismay for the Government and victory for the miners (Beckett p 58).

By November, the miners' overtime ban, allied to rising oil prices, provoked a second State of Emergency, with power cuts and the three-day week. After the calling of a second strike in 1974, Heath's search for an electoral mandate to crush the miners was rejected. He lost both 1974 elections, the second delivering a majority Labour Government (National Archive 2012).

So this Labour Government arrived in the midst of radical industrial action. In addition there were other, pre-existing pressures from the 1960s of Northern Ireland Civil Rights (CAIN 2013), and Anti-Vietnam war protests in London (BBC 2013). These pressures did not disappear with the election of Heath's Conservatives. Inspired by their American sisters, women in the UK organized the first conference of the Women's Liberation movement at Ruskin College in February 1970 (Murray 2003). In November 1970 they emulated the 1968 American protests by organising high profile direct action against the 'Miss World' contest (Beckett p221). In the same year, Germaine Greer published her ground breaking *The Female Eunuch* (Greer 1970). In March 1971 the first Women's Liberation March was held in Liverpool (Beckett p221). *Spare Rib* hit the news-stands in 1972 (Spare Rib 1972).

Similarly, after British Gays visited San Francisco in 1970, the inspiration for an equivalent movement in the UK was formed. In 1971 the first Gay Rights demonstration against police brutality was held. *Gay News* followed and Confidence developed into the first national Gay Pride March in 1972 (Beckett p 201- 210).

Events in the USA were not just background. Legal developments there directly influenced proposals for reform here. In 1974 Roy Jenkins learnt about a landmark case of race discrimination, Griggs -v- Duke Power Company (1971) 401 US 424, whilst visiting Los Angeles. The principles of this judgment directly influenced the creation of the radical concept of Indirect Discrimination in the Sex Discrimination Act 1975 (Connolly 1998). We will return to Griggs in our discussion of Indirect Discrimination in Chapter 6. For now we should note that Jenkins had already spent nearly three years as Home Secretary between 1965 and 1967. He was a reformer with a record of supporting anti-racism, and the liberalising of laws on homosexuality and abortion. In his second term at the Home Office he now recruited a promising QC, Anthony Lester to help draft legislation for Sex and Race Discrimination Acts. Crucially Jenkins did not consider these Statutes as a concession to Trade Union power, but rather, as he makes clear in his autobiography, to curtail it by providing an alternative tradition of individualised radicalism. Jenkins was as concerned as anybody in the political elite about the strength of Union power which had eventually dispatched Heath's Government (Jenkins 1994p 376). At its design stage Discrimination Legislation was conceived as a strategy to undermine collectivism by encouraging individualism. 1974 Labour created proposals for reforms within a context of political and social radicalism, fermented not just by the direct action of the miners but wider political pressures, both here and in the USA.

From the standpoint of the coming era of neo-liberal Thatcherism, the 1974-1979 Wilson and Callaghan Governments are commonly regarded as the catastrophic precursors to Labour's electoral wilderness (BBC 1995). A Labour Government embarked on a period of industrial strife culminating with the 'Winter of Discontent' (Cawood 2003 p310). Yet this judgement tends to overshadow the remarkable legacy of the most radical reforming Government since Attlee's.

The new administration concentrated on driving through a wave of social legislation as part of the fulfilment of a commitment to extend welfare reform and Civil Rights. In 1975 we finally see the delayed implementation of the 1970 Equal Pay Act, along with the passing of the first ever legislation to outlaw Sex Discrimination. Also in 1975 we see the passing of the Social Security Pensions

Act which protected women's with caring responsibilities. Again in 1975, the Employment Protection Act extended important rights to employees, including the creation of maternity leave as a statutory right. This was followed immediately by the 1976 Race Relations Act. In addition, the following year the Sexual Offences Amendment Act and the first ever Domestic Violence Acts were passed. These Acts in turn all followed hard on the 1974 Health and Safety at Work Act, which was strengthened with the 1977 regulations on Safety Representatives and rights of workplace inspection.

Yet this wave of reform was overshadowed by the looming political crisis with the International Monetary fund (IMF). The IMF burst into political prominence when Healey sought a loan during the Callaghan administration. This application was described as an unusual and humiliating step (Reece2009). In fact, application to the IMF was a routine and essential procedure for every Government during the post war years. The Conservative Government secured loans from the IMF in 1956, 1957, 1958, 1961, 1963 and 1964. During 1947 and 1971 Britain was the largest borrower from the IMF (Beckett p310). However what was new in this application were the conditions linked to agreement. The traditional bankroller of the IMF, the USA, had by the mid-1970s, endured financial pressures from war in Vietnam. The IMF in Washington came, under increasing Right Wing political pressure, from Friedman in particular, to attach conditions to the allocation of USA funds, (Beckett p 311). It was this hitherto unknown political condition that caused a crisis for Healey. The initial welfarist and reforming instincts of the administration found itself pulled to the right by a newly politicised IMF. The result was a Government in crisis, at war with its own Left Wing and Trade Union supporters. The impression was formed of a Government that was intellectually as well as financially bankrupt.

It now appears that the approach to the IMF was unnecessary as the Treasury might have miscalculated the scale of UK debt (Beckett 311-319). Speculation on what Britain would have been like if Labour had avoided the IMF crisis and survived to reap the benefits of North Sea Oil is interesting, but not pertinent for an analysis concerned with what people believed at the time.

The IMF crisis increased the Government's distraction from implementing its radical agendas. For eight years after it was formed, the Equal Opportunities Commission only initiated nine Anti-Discrimination investigations (Beckett p 223). Yet, despite difficulties in implementation, this radical wave of reform marked a watershed in UK political history. It contained persevering radicalism. It represented an interest in regulating not just the conduct, but crucially also the social attitudes of employers and employees. It departed from its Nationalisation and Factory Act antecedents in seeking to regulate attitudes to whole social groups. This went beyond reforms such as extending rights, such as suffrage for women or the prohibition of child labour. Rather the SDA and RRA attempted to regulate in areas rarely before considered. For the first time UK legislation included, with the concept of Indirect Discrimination, a far deeper intrusion into the arena of social attitudes and prejudices. Now, in theory, employers had not just to avoid prejudicial recruitment decisions, but also to consider the whole arrangement of their business to ensure that they did not indirectly discriminate.

Beveridge described five pillars of welfare, the NHS, State Funded Education, Social Security, State Supported Housing, and a commitment to Full Employment (Beveridge 1943). Similarly we can distinguish five pillars of Anti-Discrimination in the 1975 Sex Discrimination Act. These are protection from Direct and Indirect Discrimination, protection against Harassment, and, separately, protection against Victimisation for seeking to enforce legal rights. A fifth pillar of an enabling Equal Opportunities Commission to issues codes of guidance and support enforcement followed. These pillars have been erected and resurrected in successive legislative initiatives for over 35 years.

Yet the last Government's own Equality Review conceded discrimination continued to **'scar'** society and that progress was indefensibly slow. (Cabinet Office 2008) these five pillars have not had the anticipated transformative effect. Lester questions the commitment, after initial radicalism, of the increasingly embattled Labour Government to drive through necessary equality strategies (Lester 2006).

Callaghan' certainly retreated before the right-wing strictures of the IMF in a failed attempt to steer his way out of the economic crisis. This simply caused dissension amongst his supporters and criticism from his opponents. Britain entered an unusual era of class struggle. Both the left and right became entrenched along class lines (Benn 2005). It appears that even the relatively moderate Wilson Government was subject to alleged plans for a 'coup' by elements of the Right Wing newspaper industry in conjunction with ex- MI5 agents (Wright 1988 p 368 372). The prospect of a Benn led government provoked even more extreme responses, with again political destabilisation, possibly led by US interference. (Mullin 2006).

The 1975 and 1976 Anti-Discrimination Law reforms were not pushing against an open door. Although an expression of a radical constituency, this provoked conservative reaction. For example, the growing organisation of Gay Liberation met an opposing reaction from the Festival of Light (Breen 1998 p 378-382). Anti-Discrimination Law was not then, a conveyor belt to social transformation. Whilst reflecting the interest of radical and liberal constituencies, these laws were about to meet a resurgent opposing force. Britain entered a period when social and political attitudes shifted fundamentally to the right. It would be nearly twenty years before the next major piece of Anti-Discrimination legislation arrived. The new politics of Thatcherism included a reaction against "social engineering" and "political correctness". Patrick Jenkins famously commented;

> **If the Good Lord had intended us all to have equal rights to go out to work, to behave equally, you know he really wouldn't have created man and women.' Patrick Jenkins, Secretary of State for Social Services, 1979-1981** (Fawcett Society 2005).

Such a view of divinely interpreted employment policy would, presumably, also have similar problems with allowing access to genetically divined visually impaired workers.

Even as late as 2007, Thatcher Cabinet Minister, Norman Tebbitt railed against

> **'a picture of a Britain in crisis, a Britain that has become hilariously ridiculous in the name of fairness, equality and general safety standards'** (Joseph 2007).

The Conservative reaction, whilst dominant, was not homogenous. The Conservative Lords voted in favour of the Sex Discrimination Act (Meeham 1991 p77) and, although opposed to the 1968 Race Relation Act, they supported the 1976 version (BBC 2008). As we shall see in Chapter 5, it was John Major's Government that was eventually compelled to introduce the Disability Discrimination Act.

What is interesting though is that the 1974-77 reforms persisted, in the face of Thatcherite suspicion, despite three neo-liberal election victories. The radicalism of the 1970s reforms also survives into the current Equality Act. Much that was controversial then is criticised only from the margin now. Only the extreme right would sweep away all Equality Legislation. Labour of the 1970s can arguably be recast from the incompetent guardians of a failing economy to significant and visionary reformers.

The 1970s reforms and the 1980s reaction to Discrimination Law established the foundations for modern paradigms of intervention. One model, favoured by neo-liberals, sees the enforcement of Discrimination Law as interference in employment markets. The political acceptability of such law is predicated on perceived affordability. Ambitions for fairness and employment inclusion are seen as a cost for the market to bear. I characterise this as the 'dead weight' model of Anti-Discrimination. Delivering employment for groups who would normally face exclusion is presented as a special form of charity, a virtual tax which can only be justified when affordable. This theme, as we shall see, was particularly strong in the political resistance to the passing of Disability Discrimination Law in the 1990s. These ideas are contemporarily represented by George Osborne and Theresa May (HM Treasury 2011). An alternative approach resisted this tendency to encapsulate the employment of people from disadvantaged groups as a special form of charity. This instead stressed the positive potential benefits of inclusion and employment arising from effective Anti-Discrimination and was eventually solidified into a formal 'business case for diversity' which was particularly influential in the mid-years of the last New Labour Administration (DTI 2005). How these strands are still being worked through are issues for later consideration in Part Three of this enquiry. For the time being what is necessary here, is to acknowledge that, even in the early years of Discrimination Law, these countervailing perspectives on the social impact of Anti-Discrimination Law were present.

Given the neo-liberal instinct of the seventeen year Conservative Administration, and concern about 'dead weight' consequences of Discrimination Law, we need to ask why they did not simply sweep aside this legislation. One key to understanding the Conservative Government's eventual sanguinity was a growing consensus of the need for social cohesion. The underlying social rationale underpinning the pressure for reform did not disappear with the advent of a neo–liberal Government. The riots of 1981 indicated that there were economic consequences for exclusion beyond the payment of unemployment benefit. We now know that Chancellor Howe recommendation of a 'managed decline' of Liverpool after the Toxteth riots was rejected (BBC (A) 2012). Even the Right Wing Thatcher Government drew back from deliberate ghetto creation in the name of free markets. Thatcher was instead persuaded by Heseltine's policy of inclusive investment and regeneration initiatives, visiting Liverpool to reinforce this message (Grantham Journal 2012) This marked the beginning of public interest in inner cities, which Thatcher reminded us of in her 1987 election victory speech (Jacob 1998).

There were also deeper and wider social demographic forces at work. The wave of legislation in the mid 1970s was not solely the consequence of Rights campaigns but also derived from evolving social and demographic conditions. Profound changes in the UK economy and labour market occurred in the previous 20 years. Two World Wars had revolutionised social perceptions of the role of women in the workplace (Hardy 2012). These changes continued after the War. In 1951 36% of women aged 16-64 worked. By 1961 it was 42%. By 1971 this had grown to 52% and for the first time the majority of women were in work. (Beckett p 221). Women moved into the centre of employment with the redistribution from male dominated manufacturing to female dominated service sectors. Families became smaller with the arrival of contraception and legalised abortion. Women's oppression from housework was marginally reduced by the increasing availability of domestic technology (Beckett p 222).

These changes were not confined to women. Labour shortages in the 1960s had encouraged immigration from the West Indies and there was an economic case for immigration (Coil 2005 p.53–55). Policies supporting social cohesion to accommodate these changes had an objective socio-economic function. Even for some Neo-Liberals then, it was difficult to simply dismiss Discrimination Law as a special form of charity. It had the functional advantages of enhanced social cohesion.

A second reason for Conservative sanguinity is starker and brings us back to our starting point. The five pillars did not have the impact of a drive towards equality that some hoped and some feared. Privileged constituencies were largely unaffected and the inbuilt timidity of enforcement became ever more apparent. To get to grips with the origins of this timidity I want to look in more detail at the Race Relations Act. I have chosen this legislation as it perhaps illustrates in starkest form the contradictions I want to expose. Using the extreme prism of the Race Relations Act we are led to reveal issues not so obvious with a superficial view. In particular I want to examine what I have characterised as the Catch 22 undermining the enforcement of Discrimination Law. To reach an understanding of this Catch 22 we have to ask another question:' What ever happened to the Race Discrimination Act?'

Between 1954 and 1963 the veteran anti-racist campaigner Fenner Brockway made attempts over nine successive years, spanning the Churchill, Eden and Macmillan Tory administrations, to introduce a Race Discrimination Bill (Janus 2012) (Carter et al 1987) (Bleich 2003 p 41). However, Brockway's reward for this principled campaigning was the loss of his Labour seat in the 1964 General

Election. The loss of a long serving, distinguished, Labour stalwart, in an otherwise victorious Labour election campaign must have registered with the incoming Labour Government. The widespread existence of racist attitudes throughout British society in the 1950s is now quite shocking. (Carter et al 1987). Brockway was made a life peer and moved into the Lords where in 1965 he finally saw his long hoped for Anti-Discrimination legislation passed. (Brockway 1986 p15-16) However what was passed was not the Race Discrimination Act but the Race Relations Act. This adjusted branding was to set a pattern and was repeated in the Race Relations Acts of 1968 and 1976.

It is interesting that this adjusted branding persisted even after the 1975 Sex Discrimination Act. The branding of the Race Relations Act as opposed to the Sex Discrimination Act is distinctive. The act to address gender inequality was headlined in 1975 as an act to outlaw discrimination. The statute is titled unambiguously. The presentation of the 1976 Race Act was different. The message was more muted, neutral and restrained. What was placed before Parliament is not the Race Discrimination Bill but the Race Relations Bill. Whilst the 1976 Act had precedents in 1965 and 1968 it had a much more recent association. The Race legislation is the legal twin of its Sex Discrimination sibling with almost identical provisions on discrimination. What was it that made the drafters of this Bill stray from the logical association with Sex Discrimination? What was politically unacceptable about a Race Discrimination Act in 1965, 1968 and 1976?

The drafters of the Bill may well have been mindful of Brockway's shock election defeat twelve years earlier. There was certainly no evidence to show that the racist constituency had disappeared since then. After all why would there be a need to pass legislation if that was the objective reality? It is difficult not to conclude that this continued re-branding was again a response to the race politics of the day. To an extent the problem was that the legislation had the task of achieving legitimacy despite countervailing opinions from large sectors of society and this was indeed a question of numbers. After all a few years earlier the racist views of Enoch Powell had struck a resonance across Britain. (BBC (BB) 2008) Thatcher's emotive 1978 'swamping' speech appealed to the 49% supporting repatriation (Time Magazine 1978). Improved 'race relations' was less contentious than the more controversial message that it was designed to address the discrimination of the white majority. Projecting discrimination as an issue of 'relations' allows an interpretation that this is an arena where there is 'fault on both sides', an area for negotiation and accommodation. In contrast discrimination is an area where there is a victim and a discriminator. It was not possible to form a consensus that black and ethnic minority people were unambiguously victims of discrimination in 1970s Britain. As a result, rather than blame attached to white people, a neutral message is developed.

The reluctance to project discrimination in the statute headline, despite its existence in the text, illuminates the political tensions inhibiting the implementation of the Act. In this tension we identify the key weakness of Anti-Discrimination Legislation. Put bluntly where there is a social constituency for discriminatory ideas and this has political force, there is less confidence in the branding of a Race Discrimination Act. Racism is a tougher nut to crack. In particular the reluctance to extend meaningful economic equality, as well as formal legal entitlements, turned out not just to be an obsession of the Thatcher-led Conservatives. It is this background of the racist constituency that underlies the inertia of the Callaghan Government that Lester found so disappointing (Lester 2006).

So at the birth of this legislation in 1965 and again in 1976 we see ambivalence. Rights are extended but these are not signposted by any notion of economic redistribution or resourcing. In fact remedies arising out of discrimination cases had a negligible impact (Fitzpatrick 1992)

In the tension between equality and economic rights, is born the continuing problem of enforcement characteristic of UK Anti-Discrimination Legislation. It is perhaps best described as the Catch 22 which besets such legislation.

This Catch 22 can be defined as follows: Anti-Discrimination Legislation is only needed where there is a constituency behaving and exercising power in a way that creates problems of exclusion and economic disadvantage. It is the magnitude of the consequent discrimination arising from this behaviour which creates pressure for legislation. Legislation is proposed only where there is a significant constituency enacting destructive exclusionary prejudices.

Yet it is the constituency for these exclusionary prejudices which drives the contradictory axes of the Anti-Discrimination Catch 22. The simple passing of legislation will not cause this constituency to disappear. Using legislation to transform the UK socially into greater economic equality is the heart of the radicalism that causes nervousness in enforcement. Anti-Discrimination Legislation is then vulnerable to criticism precisely for failing to produce the change for which it legislates. The definitive presentation of this Catch 22 is that the more destructive and deep-rooted is the social discrimination, the more it is claimed that Anti-Discrimination Law is needed to redress this. However, the more deep-seated and destructive the discrimination is, the more likely that the Anti- Discrimination Legislation will be relatively ineffective in adjusting the attitudes of that constituency.

The reforming Labour Government wanted to perform a political balancing act. The pressure for equal rights was irresistible. Yet there was limited confidence in translating these political rights into social and economic rights. At its heart these were not reforms created in the anticipation of business efficacy and growth. There was no consensus on the economic benefits of Sex and Race Equality. Rather these reforms were part of the battleground between the left and the right with the Thatcher Government suspicious of a negative impact on, its constituency in particular and, the UK economy in general. This battleground was seen by both right and left as a class struggle. Timidity for these reforms beset the Labour Government, whilst the Thatcher Government simply starved the Legislation's Enforcing Commissions of resources (David 1982) (Parekh 1990)

Today, Disability Discrimination has joined Race, Sex, and many other protected groups within legislation unrivalled in its comprehensiveness. Yet the inheritance of individual legal enforcement rights, perceived as the radical heart of reform in the 1970s Race and Sex Acts, has disempowered effective enforcement for disabled people. We shall investigate this further in Chapters 9 and 10.

Disability Discrimination legislation also inherited the Catch 22 weakness of the 1970s reforms. The history of the striving of disabled people for reform will be a struggle for achieving a legitimate constituency. The resulting legislation can be understood as a reflection of these competing constituencies and interests. The insight we have developed in this chapter will help us describe how the resulting law attempted to straddle the interests of those in discriminated constituencies with the interests of key resource holders, in particular, employers.

So at the end of the 1970s, it was into this contradictory and challenging social arena that the campaign for Disability Rights was launched. This was a difficult, increasingly heated campaign which lasted for twenty years. The reasons for this delay, and the dynamics played out over this time are the focus of Chapters 4 and 5. Before addressing this we need to review the birth of awareness of discrimination amongst key blindness organisations. The next chapter will, therefore, take up the story of organisation of, and for, blind people.

Chapter 3

"Stuff Pity" - Marching for Reform

The NFB and the RNIB

When disabled people chained themselves with handcuffs, in the 'Hardest Hit' demonstrations of 2012, memories were awakened of the direct action techniques deployed 20 years earlier. Then, visually impaired and disabled people took to the streets not to protest about welfare reform but to argue for belated inclusion into the discrimination law framework (Disability Now 2012).

UK protests were inspired by events such as the successful disruption of the USA 1991 Telethon (Hershey 1993). This follows the pattern identified in Chapter 2 of close political sequencing between the UK and USA. Where the USA leads the UK seems to follow. Yet, the contemporaneous nature of the UK and USA Telethon protests is misleading. Whilst there is a similarity, the differences are arguably more important. By focussing on these we can illuminate some of the reasons for the historic UK resistance towards perceptions of disability as socially constructed discrimination. This has implications not just for the structure of our UK legal framework, but also, importantly, its enforcement.

There is a different historical timeline which divides the context of the USA and UK protests. In the UK these protests propelled disability activists into national headlines for the first time. In contrast, in the USA, the Telethon protest was the latest in a long tradition of protest against demeaning depictions of disability. Unlike the USA, the UK Government did not include a Disability Discrimination Act in its wave of 1970s reform. What was it in the USA, 22 years earlier, which enabled the passing of Disability Discrimination protection?

Over the next two Chapters, I will analyse this question by contrasting three drivers that shape the context in the USA compared to the UK. All these drivers are inter-related and require, ultimately, consolidated consideration. However, for ease of analysis I will examine them discretely. Two of these drivers will be examined in the next chapter when we consider the theoretical requirement of a Social Model of Disability to break from the paradigm of welfarism, and additionally evaluate the comparative impacts of Vietnam and Northern Ireland.

In this Chapter, I will focus on a further reason for the difference between the UK and the USA. This is the relative strength, tactics, and maturity of organisations representing disabled people. We shall see how the history and traditions of these organisations shape their attitude to the enforcement of our modern legal framework.

The USA Telethon protest emanated from Evan Kent's landmark 1981 editorial in the New York Times which condemned the Telethon for ‘doing more harm than good’. Whilst the 22 hour long annual Telethon raised up to $80 million a year, it provided demeaning depictions of disability. Kent's complaint, from a potential beneficiary, surprised many, but struck a chord with disabled people who increasingly supported his criticisms (Shapiro 1993 p 27). Demeaning depictions of disability are relevant to employment exclusion. One protestor at the New York Telethon summarised the problem;

> **‘How are you going to employ somebody if you have just cried about them?’** (Richardson 1993).

These critiques matured into an increasingly confident rejection of traditional portrayals of disability by disabled people's organisations. For example, in 1985 the National Federation of the Blind successfully forced the cancellation of a slapstick TV comedy which ridiculed a blind character (Shapiro 1993 p34). The result was that by the time of the UK Telethon protest in 1992, Kent was not a radical protestor but implementing Anti-Discrimination Law from the heart of the political establishment. A confidant of President George Bush, he was, in 1987 appointed Chair of the Equal Opportunities Commission (Shapiro p 34) (NSCIA 1998).

By the time of the 1992 London Telethon protest, the USA Disability Rights Movement was a long standing, successful force which had already won legislative protection. Legislation to protect disabled people from employment discrimination was introduced in the 1973 Rehabilitation Act (Beacon 2005). In 1977, Section 504 of this Act was implemented to prohibit educational or employment discrimination in federally funded programs. This was later extended to the private sector in the 1990 Americans with Disabilities Act (ADA) (Gooding 1992 p 57). The 1973 Act introduced the concept of Reasonable Accommodation and stipulated the removal of structural obstacles to the employment of disabled people. A caveat of reasonableness, with regard to cost in particular, limited the scope of this accommodation (Gooding p 57). This was essentially the model imported into the UK 1995 DDA.

So whilst the 1990 ADA marked an important advance, Anti-Discrimination principles were established since 1973. Gooding argues that, despite its confinement to Federal projects, the 1973 legislation had surpassed expectations. Government procurement was important even for the private sector. Employers with Federal Contracts exceeding $2,500 had to demonstrate compliance. (Gooding 1992 p58). Public sector employers had additional duties including improving accessibility over time and the promotion of Affirmative Action. The effectiveness of the 1973 reforms ensured that much was carried forward into the ADA with provisions across all sectors, with only small employers exempted (US Disability Resource Centre 2005).

The UK movement, therefore, had a lot of ground to make up. Some used shock tactics to weaken demeaning stereotyping of disabled people. This included the iconic **'Piss on pity'** on badges and tee shirts on activists who halted the London Telethon. There was even a wheelchair dance named in its honour (Crescendo 2009). Others used more restrained slogans such as 'stuff pity' (New Internationalist 2005) and the longer standing USA 'No Pity' slogan (Shapiro 1993). Despite the nuances of these messages, they conveyed an identical idea. Disabled people wanted to refocus attention away from charity to protection from discrimination.

There is a common perception that the USA Disability Rights Movement was created in the 1970s (Gooding 1992 p 98-102). For example, the *Disabled in Action* website claims that their formation in 1970 sparked an **'unheard of'** era of direct action by disabled people (*Disabled in Action* 2012). This claim helps disguise a forgotten history of campaigning by disabled people in the USA. This is nowhere more important than in the history of campaigns by visually impaired Americans for their employment rights.

In 1935 'The League of the Physically Handicapped' was formed to protest against the exclusion of disabled people from Roosevelt's **'New Deal'**. From its earliest inception the League was based around direct action. By May 1935 it was involved in an occupation of New York City offices after arriving for a meeting, only to be told the official was out of town. The occupation lasted for nine days and was supported by pickets outside the offices. By November the League was organising a three week picket of the Works Progress Administration (WPA), to protest against their exclusion from jobs creation projects. To end the protest the WPA hired forty League members. The following year the League occupied offices in Washington to force a meeting with WPA leader, Harry Hopkins. Later that year In September 1936, the League made an alliance with the 'League for the Advancement of the Deaf' and secured 1,500 jobs with a commitment that 7% of WPA jobs would be allocated to disabled workers (Brown 2001).

After these early stirrings, the National Federation of the Blind (NFB) was formed in 1940 with a small conference of 16 blind men (NFB 1990 Ch 1). There is a peculiar inverse timeline compared to the story of blind campaigning in the UK. The heyday of the National League of the Blind was before 1940 when the National Federation did not exist. After 1940, the National League underwent a slow decline into obscurity, whilst the National Federation underwent a rapid growth. Today the National Federation of the Blind is the largest visual impairment organisation in the world with 50,000 members in 700 local Chapters (NFB 2011).

The story of the National Federation of the Blind between 1940 and 1970 has striking similarities to the pre-war campaigns of the National League. To understand the political drivers for change in both the USA and the UK today, we need to understand this comparative history of these organisations.

Although the NFB emerged 50 years after the formation of its UK counterpart, its growth was driven by similar social factors. As in the UK, blind workers were collected into specialist workshops (NFB 1990 Ch. 10). Yet post-war USA Workshops did not enjoy the Welfare State subsidies won by the National League in the UK. In the USA, the struggles by the National Federation for improved workshop conditions were only just beginning. The differing conditions of the workshops in the UK and the USA drove increasingly divergent paths for the two organisations.

From its foundation, the NFB was established as a radical alternative to paternalistic institutions such as the American Foundation for the Blind, an organisation similar to the British RNIB. They insisted that they were an organisation **'of'** rather than **'for'** blind people and stipulated majority visual impairment membership of its Chapters.

The NFB is much more like a Trade Union when compared to the RNIB. Its founding President, Jacobus tenBroek, described this in 1943;

> **'The blind have organized their local organizations and their state organizations into a National Federation which is modelled in many ways after the national organizations of organized labour. Through forces over which we have no control, we are forced to extend to each other a good deal of mutual aid and to ask society for**

> **protection and to some extent for assistance. That is exactly what organized labour must do. In modern industrial conditions, the individual worker is helpless without the cooperation of his fellow workers.'** (NFB 1990 Ch1).

The continuing campaigning remit of the organisation is reflected in the title of its official history *Walking Alone, Marching Together* (NFB 1990). Some brief extracts from this history further distinguishes the different in outlook from its UK counterpart.

In 1940, tenBroek broadcasted an appeal to blind Americans;

> **'The time has come to organize on a national basis! In dealing with the public, especially in its many governmental forms, we, as handicapped persons, have long known the advantage and even the necessity of collective action. Individually, we are scattered, ineffective and inarticulate, subject alike to the oppression of the social worker and the arrogance of the governmental administrator. Collectively, we are the masters of our own future and the successful guardian of our own common interests.'**
> (tenBroek - NFB Founding Convention 1940 in NFB 1990 Ch 1).

Also in the year of its foundation the NFB called for a 'Bill of Rights for the Blind'. This included an explicit Anti-Discrimination policy that seems very modern. Jacobus tenBroek again;

> **'For equality of opportunity to be a reality to the blind, competent blind persons must be admitted without discrimination to the common callings and professions as well as to positions in the Civil Service. We do not ask that blind men should be given jobs because they are blind; we do not ask that they be given preferential treatment or handicap allowances. We ask only that when a blind man has the training, the qualifications, the dependability, and the aptitude, he be given an equal chance with the sighted that the bars to public and private employment interposed by legislative enactment, administrative whim, and managerial prejudice and misunderstanding be removed'.** (NFB 2009).

It is worth noting that, from the beginning, the NFB focussed on rights rather than welfare 'allowances'. As with the National League in the UK, the NFB came into increasing systemic conflict with the Charities managing workshops. The NFB won a partial victory with the 1954 Rehabilitation Act (NFB 1990 Ch 9). In this, State oversight of workshops, similar to that won by the National League in the 1920 Blind Person's Act, was achieved. In the USA however, the humanitarian

'Welfare State' support of workshops was absent. Conditions of work for blind workers continued to be harsh. In particular the workshops could claim exemption from paying the minimum wage under the Fair Labour Standards Act 1938. The vast majority of workshop charities exercised their right to exempt themselves from paying the minimum wage (NFB Ch. 10).

By 1956 the NFB complained that attacks by the Blind Charities had intensified with victimisation of their branch members. Jacobus tenBroek again;

> **'We have seen action and the forces of action. We have also seen the reaction and the forces of reaction'** (NFB 1990 Ch. 2)

Jacobus tenBroek satirised the role of Charities in an attempt to reveal oppression underlying apparent benevolence;

> **'You have said that we are different because we are bald, and that this difference marks us as inferior. But we do not agree with certain Biblical parables that possession of hair is an index of strength, certainly not that it is a measure either of virtue or of ability. Owing to your prejudice and perhaps your guilt because you do not like to look upon us you have barred us from the normal affairs of the community and shunted us aside as if we were pariahs. But we carry no contagion and present no danger, except as you define our condition as unclean and make of our physical defect a stigma. In your misguided benevolence you have taken us off the streets and provided shelters where we might avoid the pitiless gaze of the non-bald and the embarrassment of their contact. But what we wish chiefly is to be back on the streets, with access to all the avenues of ordinary commerce and activity. We do not want your pity, since there need be no occasion for it; and it is not we who suffer embarrassment in company with those whom we deem our fellows and our equals. You have been kind to us and if we were animals we should perhaps be content with that; but our road to hell has been paved with your good intentions'** (NFB 1990 ch 2).

So the campaign against pity turns out not to be an invention of the 1990s or even the 1970s, but has a far longer history stretching back as least as far as the 1940s.

The NFB complaint of victimisation by charities prompted future US President, John F Kennedy, to propose a 1957 bill which guaranteed the right of blind workers to form association in the workshops. Moving the Bill he stated:

> **‘Organizations of this kind (NFB) have been formed by the blind to advance their own welfare and common interests. These organizations provide to our blind citizens the opportunity for collective self-expression. Through these organizations, these citizens are able to formulate democratically and voice effectively their views on the programs that our national government and our state governments are financing for their aid and rehabilitation. It is important that these views be expressed freely and without interference. It is important that these views be heard and considered by persons charged with responsibility for determining and carrying out our programs for the blind.**
>
> **In some communities this freedom that each of our blind citizens should have to join, or not to join, organizations of the blind has been prejudiced by a few professional workers in programs for the blind who have allowed their personal views to be expressed in official action for or against particular organizations of the blind. Administrators and workers in welfare programs for the blind possess unusual power to control the lives and influence the conduct of their clients. It is important that our blind citizens be protected against any exercise of this kind of influence or authority to interfere with their freedom of self-expression through organizations of the blind.’** Speech by John F Kennedy to Congress 1957 Quoted in (NFB 1990 Ch. 2)

Traditional blind charities, such as the American Foundation for the Blind, united to block the Kennedy bill. This was a pyrrhic victory for the charities, as the Bill exposed them to negative publicity. In contrast tenBroek and other members of the NFB gained national exposure for their arguments. Pressure increased on charities to ameliorate their behaviour (NFB 1990 Ch 3).

The defeat of the Kennedy bill caused a split in the NFB. In 1961 some members, concluding that militant campaigning did not work, left to form the American Council for the Blind (ACB). Until recently these organisations had an acrimonious relationship but, as we shall see, there is some evidence today of closing ranks.

After this split the NFB continued its militant approach. In 1965 there was a spontaneous demonstration on the streets of Washington by ‘hundreds’ of blind workers attending the annual NFB Convention. At the same conference Robert Kennedy’s key note speech promised a continuation of the tradition of support his deceased brother had provided (NFB 1990 ch4).

The NFB describe their organisation as an ‘army on the march for revolution’. This is how President Kenneth Jernigan addressed the 1969 Conference, on the cusp of the campaign for the1973 Anti-Discrimination legislation'

> **‘The challenge is ours, he said, and the time is now. Our revolution will not wait, and it will succeed but only if we take the lead and take the risks. It is for us to persuade, to participate, to persevere, and to prevail and prevail we will. The time is now, and the challenge is real. I ask you, with all that the question implies: Will you join me on the barricades?**’ (NFB 1990 Ch 4)

In 1970 then, rather than action being "unheard of" we already have a strong tradition of disability protest in the USA. The NFB had grown into a mass membership organisation with 30 years of experience of militant campaigning. This picture is not confined to the NFB. Injuries arising from the Second World War prompted the formation of other campaigning groups. These included ‘The American Federation of the Physically Handicapped’ founded in 1940. This was joined in 1946 by the National Mental Health Foundation, campaigning against abuse of soldiers traumatised in war. In 1947 the Paralyzed Veterans of America was formed, followed in 1948 by the National Paraplegia Foundation. The pressure exerted by these organisations provoked a succession of governmental measures to support social security and Anti-Discrimination measures for disabled people.

These legislative interventions are too numerous to list here, but some examples are merited. In 1943 a Follette-Barden Vocational Rehabilitation Act allocated funds for therapeutic support. In 1954 the Vocational Rehabilitation Amendments Act allocated further federal grants to increase the range of programs available to people with physical disabilities. In 1965 The American Vocational Rehabilitation Amendment Act created the National Commission on Architectural Barriers to Rehabilitation of the Handicapped. This was followed by the 1968 Architectural Barriers Act (Winter 2003) (Stein 1994) (Disability Rights Centre 2010).

The winning of these piecemeal incremental measures never delivered a Welfare State but did encourage militancy by reinforcing the rationale for campaigning. Small victories were hard won, but insufficient to address the scope of change needed.

In 1972 Nixon's veto of the 1972 Rehabilitation Bill on grounds of cost (APP 2012) sparked militant protests across the country. In Madison Avenue, New York, Judy Heumann organised a sit-in which brought traffic to a standstill. After

Congressmen received a flood of angry letters they overturned Nixon's veto in September 1973 (MSCIL 2012). The Rehabilitation Act of 1973 finally passed into law (Disability Rights Centre 2010).

Even the passing of the 1973 Act did not remove the rationale for campaigning. Struggles were necessary to ensure implementation on a range of issues. In 1970 The Urban Mass Transportation Act made the provision of accessible wheelchair access on new public transport systems mandatory, yet it was not until 1990 that it was implemented (Disability Rights Centre 2010).

Shapiro described how after 1973 a 'hidden army' of Americans grew to support Disability Discrimination reform. These were made up of the parents, grandparents, siblings, spouses, children and other relatives who had disabled relatives. He describes how Congressmen broke down in emotional speeches supporting legislation because of the impact negative discrimination had had on members of their families. This phenomenon ensured that the campaigners gathered support from surprising places. George Bush for example, because of wide experience of disability in his family, was an ardent supporter of Disability Discrimination reform (Shapiro 1993).

So our review of USA history demonstrates not just a variation in timeline compared to the UK, but also a persevering philosophical distinction between visual impairment organisations. The NFB has a different modus operandi to the RNIB. Why should this matter?

The first reason is that, unlike the NFB, UK charities were slow to embrace the concept of Discrimination (RADAR 2008 p 10). Why this should be so is the subject of the next chapter but here I want to focus on the consequences of these differential organisational stances. It should not be that surprising that USA organisations founded for the explicit purpose of fighting discrimination tend to support principles of legal enforcement more effectively than traditional UK charities.

Traditional, paternalistic, charities in the UK were slow to recognise the problem of discrimination. Now they have Discrimination Law they are also slow in the enforcement of these hard won laws. This is especially true of the RNIB.

In January 2012 the RNIB announced its first, and to date only, legal action against an inaccessible web provider. BMI Baby had ignored RNIB advice that they should amend a web booking service that only sighted people could accessed. This action was celebrated by many visually impaired people who daily have to struggle against discriminatorily coded web sites. The problems with inaccessible websites are well known to visually impaired people (Russell 2012). Why then has it taken 16 years for the RNIB to exercise rights first given in the Disability Discrimination Act? It is certainly not because they are ignorant of the legal issues involved. The RNIB have had web pages urging the legal requirement for web accessibility since at least 2007. Yet since 2007, the RNIB statement on web accessibility has not advanced, and, if anything, has become more legally vague. For four years it gave examples of inaccessible web design and warned as to their illegality under Disability Discrimination Law. However no action was ever taken by the RNIB. The only case they cited was an action taken against the 2000 Sydney Olympic. The page, until 2010, stated;

> **'RNIB is not aware of any cases that have been brought against service providers in the UK regarding inaccessible websites. However, a useful reference is the case brought against the Sydney Olympics Committee in Australia in 2000. This action resulted in a landmark decision against the website owners. They were required to pay substantial compensation to the claimant'**. (RNIB 2008).

Since the passing of the Equality Act even this dated reference to the use of successful case law in Australia has been excised with only the bland statement that they are unaware of any successful legal action remains.

The RNIB statements on web design and their recent action against BMI Baby are entirely laudable but why have they spent the last five years reporting that there are no successful cases? Why do they fail, in 2013, to even to refer to an Australian case? Why have there been no other cases in the UK? The web page used to provide links to inaccessible web sites as examples of poor practice but even these have been removed.

The prolonged and dated reference to the Sidney Olympic case is even more puzzling when there are more relevant and recent legal examples. Predictably you have to look no further than the NFB for these examples. In 2009 the NFB forced the US Law Schools Council to make their web site accessible after two years of legal battle (jedsblog 2011). Similarly the NFB used similar action in 2008 to force the US shopping giant Target to make their web site accessible. As part of this settlement Target had to set up a $6 million fund for the launching of similar cases against inaccessible web site owners (NFB 2008). This litigious approach to the enforcement of rights is carried beyond web accessibility. The NFB buried old differences with the ACB to challenge jointly the internet shopping giant, Amazon. They reacted after Amazon announced plans to make lucrative deals with Universities to deliver electronic material for students through their then inaccessible Kindle eBook reader. They used the ADA legislation to threaten legal action against educational authorities making such arrangements. This action force Amazon to upgrade to their software. This upgrade provided accessible, spoken menus, as well as text to speech book reading. Amazon showed no interest in these features until this action was threatened. The action forced Amazon to reassess their business priorities. Unless they made their product accessible they risked losing educational contracts (ACB and NFB 2012).

Further threats of legal action eventually forced Amazon to release also an accessible PC version of their Kindle software for computers (Web Standards Project 2007).

Whilst we, in the UK, benefit indirectly from the NFB and ACB litigation there is no indication that the RNIB had any intention of mounting similar action. USA litigation forced Amazon to consider a business case for adjustment. UK firms do not face equivalent pressure.

Litigation militancy in the USA is not confined to modern media. In 2002 the American Council for the Blind took ultimately successful action against the Federal government forcing them to stop producing different value dollar banknotes in the same size, They argued that this prevented identification of the value of notes by visually impaired people (OMT 2008).

Theoretically, any individual visually impaired person can litigate. The problem is that it is expensive in terms of time, energy, potential legal costs, and emotional investment. It is stressful and may create anxieties about jeopardising relationships with parties who may control important resources for the litigant. These factors probably also disincentivise the RNIB. Yet it is worth reflecting that, under UK Discrimination Law, this is precisely the enforcement mechanism which is available for individual employees. If a multi-million pound organisation like the RNIB cannot gather the wherewithal to launch claims against employers and service providers, what are the chances for individuals?

There are two features of the UK legal framework which give charities less incentive to litigate. The first is the problem of costs. Unlike the USA, there is a potential risk of a penalty in the submission of claims. In the USA the normal arrangement is for each side to pay their own costs. In the UK the losing side may well pay the costs of the winning side. In theory the Small Claims track of the County Court is supposed to resolve these issues but the use of the County Court is flawed. RNIB themselves highlighted this in their report *The Price of Justice* demonstrating that financial risks were seriously inhibiting 'goods and services claims'. County courts had heard only 25 claims in four years after the DDA. In contrast there had been 5,000 cases submitted to Employment Tribunals (RNIB 2000). During Work and Pensions Committee scrutiny of the Equality Bill, further evidence was offered of serious cost disincentives. Capping of costs is only available under the Small Claims track in County Courts. If a claim is considered too complex the Judge will refer it to a fast-track or multi-track hearings at a High Court, where costs are unrestricted (UK Parliament 2009). Unfortunately Goods and Services enforcement arrangements were transferred unaltered from the DDA into the Equality Act. This exposes Trustees of Charities to risks of substantial costs. Companies can still discourage claims by employing extensive legal teams to increase the complexity of the claim in an effort to move proceeding from the County Court to the High Court (FIPR 2009). This expensive disincentive also applies to Judicial Reviews. Charities are unhappy that this problem persists (*Vision* 2011). The Jackson Review and subsequent Government consultation does not appear to have resolved any of these issues. Whilst Jackson recognised these issues in Chapter 11 of his report, the review instead focussed Government concerns about costs to defendants, in particular, to develop protection for the NHS from claims for damages (Jackson 2010).

The second area of constraint is strict Charity Law prohibiting activity which is considered political. (Charity Commission 1989). This is a tightrope to walk for any UK Charity with a campaigning remit.

This relatively hostile UK legal framework does not, though, excuse the RNIB. First, whilst there are financial risks in litigation the RNIB has considerable financial resources. A partnerships strategy could be formed to share litigation risks with other interested Charities and Groups. In addition a 'fighting fund' for the support of litigation, in the same way as the NFB organises, could be formed. The NFB approach of directing settlements and damages awarded into a further legal fund could be explored. The over-cautious approach of the RNIB also underestimates the public relations pressure on any defendant not to exact costs revenge on charities. In this sense, defending actions places them in a no-win situation. This calculation probably lies beneath the eventual capitulation of corporate giants such as Amazon and Target in the USA. Both these corporations eventually settled out of court rather than endure the adverse publicity such a claim would have produced. It needed vigorous legal proceedings, and not just vague legal threats, however, to force this climb down by these organisations. The NFB needed to see the 'whites of their eyes'.

The final and more damning judgement on the RNIB stance on litigation is provided by their record on Employment Tribunals. As the RNIB pointed out in their own 2000 report, there are no equivalent costs pressures in Employment Tribunal claims. Yet the RNIB has failed to figure in any of the numerous landmark employment cases which have appeared since the DDA. This is a major concern for visually impaired people. We have seen in Chapter 2, how Discrimination Law will be relatively ineffective without enforcement in the Tribunals and Courts.

What is holding back the RNIB? Part of the problem may well be their conception of their role as a Charity. Gordon Hughes has traced the tradition in negative attitudes of UK charities. These attitudes are bound up with ideas of 19th century good words, religious philanthropy and patronage. Charities are set up **'for'** disabled people. He argues that mainstream, traditional UK charities project patronising, negative identities for disabled people. He refers to charity publicity literature to demonstrate how charitable conception of disability is bound up with medical modelling of disability. In particular he criticises those charities that find the 'pity button' irresistible in the drive to raise funds (Hughes 1998).

Certainly historically, the different organisational images projected by the NFB and RNIB could hardly be greater. In 1969 the dominant public projection of the image of blind people the RNIB was the pathetic depiction of 'Blind Billy' a series of model boy collection boxes where you variously inserted coins into slots in his head or his Braille reading book (Flix 2012). At the very same time the NFB were issuing their famous call for blind workers to join them on the barricades of revolution.

The problem is not that the RNIB are campaign adverse. They are actually quite good at campaigning. It has a successful record of defending visually impaired people's interests in both Social Security benefits and NHS Care. Significant concessions have been won in the Government's reform of Disability Living Allowance and pressure for sight saving drugs for Age Related Macular Degeneration has been successful (RNIB 2013).

The RNIB also celebrate local campaigns. In 2011 their web site described 10 successful local campaigns. The page listed various successful local initiatives, all of which were laudable and important for visually impaired people. They included campaigns to have audio announcements of on the Tyne and Wear Metro, and to have hospitals provide information in accessible format. What is striking though is that in the entire report there is not a single reference to the Equality Act, let alone litigation. (RNIB 2011).

It is as if, for the RNIB, the Equality Act is background music. There is no sense that this is a legal tool to deploy in the interests of visually impaired people. We might conclude the RNIB may have an identity crisis. Is it a radical campaigning organisation or a more, behind the scenes, conservative influencer? To what extent are they militant pursuers of rights as opposed to insiders lobbying within a UK establishment for reform? Above all, is this simply a question of leadership or are there more systemic factors underpinning their approach?

McCreath in *The Politics of Blindness* (2010) argues that the RNIB has moved from being a charity representing the interests of blind people to be a multi-million commercial enterprise. The RNIB used to have a policy of reducing the extra costs of visual impairment by selling access equipment at one third of cost. This has been abandoned in favour of a business model which no longer supplies subsidised goods. Rather, the RNIB resembles a profit driven commercial outfit dedicated to selling full priced products. (McCreatt 2010 p 45-47) Certainly the RNIB, have in the last 16 years, seemed more interested in forming partnership relationships with business organisations rather than litigating against them (RNIB b. 2012).

There is some evidence that the RNIB are aware of the historic deficiencies in the way they organise. In September 2002, they attempted a late stage conversion to emulate the NFB model of mass membership. They announced that they would no longer be the Royal National Institute for the Blind but would henceforth be rebranded as the Royal National Institute of Blind People and would ensure majority visual impairment memberships on its Boards of Trustees and Committees. They finally announced an ambitious plan to recruit 50,000 members (Little 2002). Yet there is no evidence, eleven years later, in 2013, of a transformation of the RNIB into a mass membership model on NFB lines. The problem is that the RNIB have a long standing ambivalence towards developing a membership base. Initial plans for a membership drive in 1997 were scrapped because of fears about the impact on existing local voluntary groups (Little 2002). The dilemma for the RNIB is that, as it has never developed a genuine infrastructure of local branches; other grassroots groups have emerged to fill the vacuum. In Waltham Forest for example there are three substantial Visual Impairment Groups, two of which have developed to a stage where development workers are employed. The RNIB has shown no interest in integrating any of these organisations into any national structure. It would involve a huge organisational effort as well as a massive cultural shift for them to treat this as a viable project. So, despite the 2002 announcement, the RNIB has failed to develop an equivalent system of local branches on the NFB model. The RNIB remains a national charity with an overwhelmingly passive customer base.

So finally, despite all the deficiencies of the RNIB compared to the NFB, does this matter? There is an argument to suggest that actually both the NFB and RNIB models have not delivered on the key area of visual impairment exclusion from the labour market. As we saw in my introduction, unemployment rates for visually impaired people are actually higher in the USA than in the UK. Both countries, along with other advanced economies, have structurally organised employment exclusion for visually impaired people. Yet if Anti-Discrimination Law is to have any relevance to the problem, we have to look at effective enforcement of that law. An approach where law exists but is not enforced is not a viable strategy. We saw in Chapter Two how formal legal rights may have limited social impact without effective enforcement. Part of the reason for this is the relative impact of organisations. It is impossible not to conclude that the RNIB must simply do better, if we are to have any chance.

The shared relative failure of the NFB in the USA indicates that individualised enforcement alone is unlikely to deliver the structural changes necessary. It is not, in the end, simply a question of the RNIB becoming more like the NFB. The National Federation of the Blind actually created a UK organisation in 1947 (NFB UK 2012). However the same factors behind the relative decline of the National League of the Blind would have inhibited the growth of the UK National Federation. The closest thing to a campaigning unit for visually impaired people was probably Action for Blind People. However, this has been effectively assimilated by the RNIB (Peck 2008). It will be a long road to recreate a mass membership organisation without a shared service or employment base providing a natural collectivising of visually impaired people.

The final lesson of this comparative Chapter is to show that if Anti-Discrimination Law for is to have any impact for visually impaired people, the RNIB need to do even more than a paradigm shift to become a litigious defender of our rights. The persistence of exclusion in the USA indicates that this is an insufficient approach. It may be that visually impaired people in the USA may also have something to learn from their UK counterparts. The breaking of employment exclusion for visually impaired people will require initiatives beyond individual litigation campaigns. In the quest for this solution we will have to have recourse to a theoretical model which is peculiarly British, the Social Model of Disability. The discussion in the rest of this thesis will be closely involved with the application and possible future adaptation of this model. In the next chapter we will start through an investigation of the founding principles of the theory and, why, in the UK, it was essential for disabled people to use this theory to break the mould of their oppressive ideology and wrought legal change, for the first time, in the 1995 Disability Discrimination Act.

Chapter 4

Breaking the Mould
Framing Disability as Discrimination

In Chapter Three I used a starting point of the international Telethon protests to compare the traditions of the NFB and RNIB. I concluded that the campaigning tradition of the NFB supported their efforts to enforce Discrimination Law, whereas the charity tradition of the RNIB hindered this process. In this chapter I will start with another set of iconic protests to investigate a further key aspect of Anti-Discrimination Law. As in previous Chapters, we will gain insight through the answering of a neglected, unasked question. In pre-war Britain, and post war USA, visually impaired people are at the forefront of Equality campaigns. Yet in the 1992 UK protests, it was wheelchair users and not visually impaired people who were the iconic leaders for the campaign for change. Why then did the wheelchair replace the white stick as the dominant symbol of disability protest? Answering this will provide surprising insight into a peculiarly British theory, which may provide the best support for future Anti-Discrimination Law. We shall also see that the British campaign against Disability Discrimination had surprising roots in the Anti-Apartheid struggle.

On the 28th January 2012 wheelchair users blocked traffic across Oxford Street for two hours in response to planned benefits cuts (Walker 2012). These protestors were consciously echoing the iconic anti-discrimination protest of 1992 (Disability Now 2012). Then wheelchair users blocked Oxford Street by chaining themselves to buses to highlight inaccessible public transport provisions (Shakespeare 1993). Throughout the 1990s wheelchair users dominated disability rights protests, despite evidence that they formed only a minority of disabled people. In 1996 the NHS estimated that there were 750,000 wheelchair users in the UK (NHS 1996). Not all of these users would have been disabled, with some simply recovering from injury. In contrast the 2001 census recorded 11 million disabled people in the UK (ONS 2002). Yet this relative smallness does not prevent the wheelchair becoming the overwhelming image, not just of disability protest, but also of the disabled condition in general.

The tactic of using wheelchairs to block traffic originated in New York's Madison Avenue protest against Nixon's veto of the 1972 Rehabilitation Bill. The 1992 Oxford Street protest indicates again a 20 year political time lag between the UK and the USA. Whilst in the previous chapter we pointed to the relative maturity and militancy of disability organisation in the USA compared to the UK this is not the whole picture. The National Federation of the Blind has had an organisation in the UK since 1947, but has failed to grow to any significant size, despite a similar philosophy to their American cousins. As a starting point in this chapter we must first return to complete the concluding reasons for this time lag.

There was some consensus amongst the 1992 activists for this delay. They referenced special features in US society, including the Civil Rights struggle and the Vietnam War (Gooding 1992 P 98-106) (Shakespeare 1993) (Barnes and Oliver 1992).

The Vietnam experience can be analysed as causing two discrete drivers for Discrimination Law reform. The first is the impact of those directly disabled by the conflict. The second is the wider political consequences of conscription. The most obvious distinction between the US and the UK is the relative radicalism of veterans disabled in the Vietnam War. In both numbers and political profile Britain did not have an equivalent, war impaired, disabled constituency. Britain's military intervention in Northern Ireland never approached the scale of violence in Vietnam. Yet this does not complete the answer. Disabled veterans, though more numerous than their equivalent UK counterparts, formed a tiny proportion of the body politic in the USA. They needed a backdrop to their actions which to move them to the centre stage of politics. This backdrop was the draft.

The draft created a far higher political profile for Vietnam and forced concern beyond those directly involved in, or disabled by, the conflict. The size of the Vietnam draft penetrated deeply into USA society. The level of conscription approached that of the First World War. 1.99 million men were drafted out of a theatre deployment of 3.4 million (Gill 2012). This created the social phenomenon of widespread legal and illegal draft evasion (Conason 2007). Vietnam had a transformative effect on American society, including driving a rising educational attainment amongst young men opting to stay in Higher Education to avoid call up (Wagener 2009). Conscription then, as well as the violence of the war, forced a higher profile for a military intervention which became increasingly political with protracted military setbacks (Cronkite 1968). There were other factors increasing the political profile of the draft. Its organisation was unpopular, not least as it was seen as a biased system targeted against men from lower socio-economic backgrounds (Angrist 1990 p 313-335). In addition American veterans did not profit from their war service. They suffered a 5% earnings penalty due to their absence from the labour market. Non serving males had opportunities for career advancement whilst their serving compatriots were in Vietnam. (Angrist and Stacey 2008 p 11).

Whilst Northern Ireland troubles were long running, and seemingly intractable, conscription was not a political issue in the UK. As a result, Northern Ireland had a relatively low political profile. In fact it was precisely the relative indifference of the British public to the troubles in Northern Ireland which prompted the extension of IRA bombings to the mainland. Despite these attacks, Northern Ireland did not persist as a political priority, featuring at less than 10% in polls, just two months after the Birmingham bombings (Beckett 2010 p112).

In sharp contra-distinction in the USA, Vietnam remained a central issue of wider personal and political concern. The activists in the USA anti-discrimination struggle were operating in a high profile sphere of national politics. It provided a stage whereby militant disabled veterans could provide catalytic connections between disability Civil Rights and anti- war campaigns. Nixon's reservations on the economic impact of reform were overwhelmed by the mature, Vietnam veteran inspired Civil Rights campaign (MSCIL 2012). This had two wider political drivers. The first was the 'hidden army' of comrades and relatives affected by the disablement of their loved ones (Shapiro 1993 p 21). The second was the resonance of those who would have time to reflect that 'but for the grace of God there go I', that is, the anti-war Americans who avoided either injury or the draft. (Barringer1998).

Various other factors are considered by the activists of 1992. Some are more convincing than others. Shakespeare, for example, argued that there was a greater tradition of individualism and a lesser tradition of collectivism (Shakespeare 1993). This oddly ignores the NFB history of collectively organising thousands of visually impaired Americans. He is more convincing when he references the stronger Civil Rights tradition in the USA.

Vietnam needs to be linked to this Civil Rights movement for its full political impact to be understood. After all the Second World War produced greater rates of both disablement and conscription (Gill 2012), but did not result in Disability Discrimination legislation.

Gooding described how rights enshrined in the American Constitution gave a stronger ideological import to the concept of disabled rights (1992 p 98-106). This political and cultural backdrop enabled a clearer mandate for Civil Rights campaigning against Disability Discrimination. Although disability was specifically excluded in the 1964 Civil Rights Act, the institution of protection for gender and race provided a template, both in the structure of legislation, and the direct action campaigns to achieve this reform. It provided an example which crystallised the political demands of the disability activists. A similar process was provided in the UK by the template of the Sex and Race Discrimination Acts, which provided a model for disability activists to advance their demands for reform (Bynoe 1992), (Barnes 1991), (Barnes and Oliver 1992).

So the strength and militancy of US disability and visual impairment organisations, Vietnam and the Civil Rights tradition, were inter-related factors in determining the relatively early Disability Anti-Discrimination Law in the USA. Yet for our legal analysis, possibly the most important, and arguably the most interesting, difference is not in the special features of the USA, but the special features of the UK. Gooding, Barnes, Shakespeare and Oliver all agreed on the restraining influence of Welfarism in revealing discrimination in the UK.

In the UK the traditional legislative response to disability was through the paradigm of state Welfarism. Compensation in benefits and services for disabled people was organised through the structures of the NHS, Social Services and Social Security Department. A focus on this collectivist social welfare approach detracted from the need to consider the mainstreaming of the rights of disabled people. To a limited extent disabled people were compensated for their segregation and exclusion from society by welfare support. (Gooding 1992 p 4-6).

In contrast to Nixon's administration, the Labour Government adopted a different legislative route to the issue of disability. This did not reflect indifference. Alf Morris was appointed the world's first ever Minister for Disabled People after designing the Chronically Sick and Disabled Person's Act 1970. (CSDPA1970) (RADAR 2008). This legislation provides a useful comparison point with the USA Rehabilitation Act and encapsulates the difference in approach. Although the CSDP introduced landmark reforms, it was essentially in the tradition of UK Social Welfarism. It did not extend significant employment rights to disabled people. Although the duty to have regard for accessible buildings was extended to places of employment in the Chronically Sick and Disabled People's Amendment Act 1976 (c.49) (CSDPA1976).

The litigant in these breaches was not the disabled person. Rather a range of supervisory duties were placed on Local Authorities with residual powers to serve Notices for Improvement under Section 89 of the 1936 Public Health Act. (CSDP

1970 S 5 ss 6) (15). These legislative enactments reflected a mould into which both the legislators and disabled people were set. They were to receive patronage and support from the welfare state rather than assert legal rights to demand social adjustments.

The most convincing answer then to why 1970s Labour did not introduce a Disability Discrimination Act was that the legislators', and just as importantly disabled people's, world view was focussed on compensatory benefits rather than recognising Disability Discrimination. There was no interest in passing legislation if there was no political pressure for this change. The mainstream disabled organisations and activists were insufficiently vigorous in challenging social and economic discrimination. Disability was a medically defined issue, best addressed by management of and possible extension of welfare provisions.

This tradition was mirrored in the structure of UK campaigning groups, who initially focussed on enhancing benefit income for disabled people, rather than fighting discrimination. (RADAR 2008). Good examples of this approach include the priorities present in 1965 at the formation of the Disablement Income Group. (DIG 1985). The All Party Parliamentary Group on Disability was similarly focussed on the need to enhance benefits. (RADAR 2008) This compensatory focus undeniably improved the financial support disabled people enjoyed in the UK (Shakespeare 2007 p57).

The exclusivity of this welfare approach nevertheless militated against any Civil Rights anti-discrimination agenda. The ability of a Welfare State to mitigate the militancy of disabled people is demonstrated in the divergent paths of the National Federation of the Blind, and the National League of the Blind in the post-war years. In Welfare State Britain, the National League lost its 'raison d'être' whilst in the USA the conditions for struggle were formed. The welfare state created alternative lobbying opportunities to enhance disabled people's lives. In the USA, in contrast, the weaker opportunities for state welfare increased interest in rights based campaigns against exclusion, segregation and discrimination. Different paradigms for advancement were established. If Disabled Civil Rights were to develop in the UK there was a need for a new factor, a game changer to break the mould of the welfarist disability paradigm.

Whilst the militancy of UK Blind Workers receded in post-war years, there was another group who were dissatisfied with their welfare conditions. Crucially their predicament compelled them to address issues beyond disability income. The locus of this discontent was amongst physically disabled people in residential care.

Discriminatory accommodation infrastructure was a more acute issue for a wheelchair user than a visually impaired person. Visually impaired people continued to face discrimination but encountered fewer problems with building environment, steps, narrow corridors and doors, smaller toilets and so on. In contrast this inaccessible built environment increased the likelihood that physically disabled people would have to rely upon institutional care. There was less pressure for visually impaired people to enter residential care before old age. The sharper consequences for wheelchair users in particular meant that physically disabled residents of residential homes campaigned, through the 1960s against segregation and the stigma of residential care homes. Resistance to the stigmatising and constraining affects of Welfarism arise from those receiving the most acute representation of that care (Hunt 1966).

In 1966, one of the most high profile of these, Paul Hunt, was establishing a reputation. He was a long term wheelchair user with muscular dystrophy living in a Leonard Cheshire Home in Hampshire. He led residents in a long and bitter struggle over the right of disabled people to have control over their lives. Hunt and fellow residents eventually won representation on the Home's Management Committee. Residents in other institutions followed their lead (Hunt J. 2001). In 1966 Hunt edited Stigma, a collection of essays from disabled recipients of social services (Hunt P. Ed. 1966). The foreword to this book was written by the eminent sociologist Peter Townsend. In this work the glimmer of some of the ideas which were to come to fruition in the Social Model of Disability are present, especially in the essay Hunt contributes called *Disabled Britain: a Critical Condition*. In his essay Hunt argued that people with impairments were seen as **'unfortunate, useless, different, oppressed and sick'**, they presented a direct challenge to dominant Western values. Hunt observes that people with impairments are perceived as unfortunate **'as they are unable to enjoy'** material and social benefits of modern society. They are seen as useless because they are considered unable to contribute to the wider economic good, and marked as a minority group because, like black people and homosexuals, they are perceived as abnormal and different. Hunt is clearly influenced by the analysis of, American sociologist Irving Goffman who wrote his landmark study *Stigma* in 1963 (Goffman 1963).

His analysis led him to the conclusion that disabled people face **'prejudice which was expressed in discrimination and oppression'** (Hunt P. 1966).

However, the political vision is not generalised and the need for reform is focussed on extension to the quality of service provision rather than the addressing of wider social infrastructure. There is certain fatalism in the predicament of disabled people.

In 1972 Hunt wrote to the Guardian after long standing campaigner Ann Shearer released a report on the privations of life for 'people with mental handicaps', arguing that these applied also to people with physical handicaps.

Hunt's letter is reproduced below.

> **'Sir, - Ann Shearer's account of the CMH Conference of and not on the so-called mentally handicapped, challenges our patronising assumptions about such people. It also has important implications for anyone who genuinely wants to help other disadvantaged groups. For instance, practically every sentence in her article could apply with equal force to the severely physically handicapped, many of whom also find themselves in isolated and unsuitable institutions, where their views are ignored and they are subject to authoritarian and often cruel regimes.**
>
> **I am proposing the formation of a consumer group to put forward nationally the views of actual and potential residents of these successors to the workhouse. We hope in particular to formulate and publicise plans for alternative kinds of care. I should be glad to hear from anyone who is interested to join or support this project'** (Hunt P. 1972).

Vic Finkelstein expressed an interest in Hunt's appeal (Finkelstein 2001). As a result of the coming together of Finkelstein and Hunt, a process was set in motion which ensured that disability politics in Britain, and arguably internationally, would never be the same again.

Vic Finkelstein was an intensely political man whose ideas and convictions were tempered by the harsh experience of the struggle against apartheid in South Africa. Born in Durban, he broke his neck after a pole vaulting accident. He travelled to Britain for rehabilitation and, after a period in Stoke Mandeville hospital, he returned to South Africa. His status as a disabled person, who could only be mobile with a wheelchair, did not prevent him continuing his campaign against apartheid. The restraining orders the regime placed upon him had relatively little impact as he was restrained by the conditions of his disability. Nevertheless the regime decided to sentence Finkelstein to 18 months hard labour for the crime of being a 'communist agitator'. This sentence was reduced on the grounds that he was 'a cripple'. Fearing further imprisonment, because of his continued opposition to apartheid, Finkelstein fled to London to continue his campaign there (Independent 2011) (Finkelstein 2001).

Hunt's ideas are transformed in the years after joining forces with Finkelstein. The sentiments of 1976 are sharply differentiated from the views he expressed in 1966. What Finkelstein appeared to give Hunt, an erstwhile mainstream disability sociologist, was a focus on the wider social issues of discrimination caused by segregation (Hunt J. 2001). For Finkelstein the meeting with Hunt at the Association of Disabled Professionals was also an epiphany. He had not, until then, considered disability as an explicitly political issue. (Finkelstein 2005). Finkelstein was to compare famously the discrimination against disabled people to the discrimination against the blacks in apartheid South Africa. He surprised many by claiming that the extent of discrimination caused by disability was equivalent to that endured by blacks under apartheid (Finkelstein 2001).

Finkelstein became fascinated by Mandela's claim that racism towards black men in South Africa was akin to having a disability. He made a lateral conclusion. If being black was like having a disability then being disabled was like suffering racial discrimination.

It is worth re-producing the segment of Mandela's speech which Finkelstein claims was the founding inspiration for the Social Model of Disability.

> **'Africans want to be paid a living wage. Africans want to perform work which they are capable of doing, and not work which the Government declares them to be capable of. Africans want to be allowed to live where they obtain work, and not be endorsed out of an area because they were not born there. Africans want to be allowed to own land in places where they work, and not to be obliged to live in rented houses which they can never call their own. Africans want to be part of the general population, and not confined to living in their own ghettoes. African men want to have their wives and children to live with them where they work, and not be forced into an unnatural existence in men's hostels. African women want to be with their menfolk and not be left permanently widowed in the Reserves. Africans want to be allowed out after eleven o'clock at night and not to be confined to their rooms like little children. Africans want to be allowed to travel in their own country and to seek work where they want to and not where the Labour Bureau tells them to. Africans want a just share in the whole of South Africa; they want security and a stake in society.**

> **Above all, we want equal political rights, because without them our disabilities will be permanent'**
> (Finkelstein 2005)

Finkelstein with Hunt, and other supporters, founded the Union of the Physically Impaired against Segregation (UPIAS). The symbiosis of Hunt and Finkelstein's ideas created a cutting edge new theory of discrimination which was finally the game changer, the catalyst for a new movement which would break the mould. UPIAS set out to operate as a radical challenger of conventional ideas, highlighting discrimination and oppression in the treatment of disabled people (Hunt J. 2001) In particular; they forced an internal debate on these new ideas in the Disability Movement. In order to achieve this they targeted Hunt's erstwhile sociologist mentor, Peter Townsend. The opportunity arose when Townsend helped form the Disability Alliance.

When the Disability Alliance was founded in 1975 they again focussed exclusively on enhanced disability welfare benefit as its aim. The DA's first publication was a Parliamentary Submission on Disability and Poverty (DA1975).

Hunt and Finkelstein attacked this narrow focus on income and its failure to expose wider discrimination. In an attempt to address UPIAS concerns DA agreed to a historic summit meeting.

Representing the Disability Alliance at this summit were Paul Lewis, Bent Stueland, Charles Taylor, and Peter Townsend. Representing UPIAS were Ken Davis, Liz Finkelstein, Vic Finkelstein, and Paul Hunt.

We are fortunate to have available a transcript of proceedings agreed by all those attending.

The transcript makes surprising reading. The 'amateur' Hunt makes theoretical 'mincemeat' out of the allegedly 'expert' academic Townsend. Hunt sets out clearly a model of discrimination that would eventually be assembled into the Social Model of Disability and relentlessly criticises the operations of the Disability Alliance. An obviously shocked and confused Townsend can make no headway against this view except to acknowledge that there is much 'food for thought' in Hunt's submission. He obviously needs time to assimilate these ideas and can only make repeated appeals for unity. However the last thing on Hunt's mind is unity. Instead he sets out the clearest possible distinction between the philosophy of UPIAS and the Disability Alliance. (UPIAS and DA 1976).

Hunt wanted the highest profile for these new ideas and assessed correctly, that this was best achieved by forcing a schism in the Disability Movement. It is this strategy which eventually breaks the mould of Welfarism in the UK.

Only four people represented the views of UPIAS at this meeting, but from this small beginning, their ideas were increasingly seized upon. UPIAS themselves are not immune from criticism in the developing debate, they represented only a narrow section of disabled people and were criticised for equating Disability Discrimination with discrimination against wheelchair users (White 2012).

Whilst this was a valid criticism over time, it was developmentally inevitable that those with energy and theoretical clarity would initially dominate. The reality is that it was wheelchair users who broke the mould. UPIAS was never a generalised Disability Movement, but rather a Union representing a section of physically disabled people.

These new theoretical ideas were unified formally into the Social Model of Disability when another wheelchair user, Mike Oliver, contributed his landmark 1983 paper, *The Individual and Social Models of Disability* (Oliver 1983). Over the next 10 years the Social Model was developed and made more complete as a theory. It spread rapidly and was adopted by 'Disabled People's International' (White 2012). In 1991 Oliver wrote his landmark work '*The Politics of Disablement*' which laid out a developed historical and political context for a Social Model of Disability (Oliver 1991). The Disability Movement also began to assimilate ideas of discrimination from the feminist movement.

Jenny Morris, yet another high profile wheelchair user, published *Pride against Prejudice* in 1991(Morris 1991). Morris, like Finkelstein, came to a fuller understanding of Disability Discrimination via the route of another political tradition. In Morris's case the political tradition was not so much the anti-apartheid struggle, but feminism. Morris was a Labour Party activist, feminist campaigner and Islington Councillor when her life was turned upside down after she fell from a wall, attempting to rescue a small child. Morris was catapulted into the world of disability as she lay, paralysed, on a railway line.

Four of the five most high profile developers of the new Disability Movement were wheelchair users. In the 1960s wheelchair users had already achieved an emblematic status for the wheelchair as a symbol of disability. The Orange Badge parking permit introduced in the 1970 Chronically Sick and Disabled Act was available to people with a wide range of impairments, including blindness, nevertheless had a wheelchair icon. The prominence of Social Model theorists, who were wheelchair users, and the high profile use of wheelchairs chained to buses in Oxford Street and the Telethon Protest completed the imagery of disability as equivalent to using a wheelchair. It is undeniably also true to say the Social Model of Disability originated primarily from the brains of wheelchair users facing exclusionary segregation in acute form in the residential care homes of the 1960s. It is not surprising, therefore, that the wheelchair user replaced the blind workshop worker as the iconic lead in disability protest.

To see disability as discrimination required an ideological shift away from charity and Welfarism to a struggle for rights. The Social Model was an essential intellectual lever to achieve this shift in mind-set. We shall have a lot more to say about the Social Model in Part Four of this enquiry. A brief introduction is required if we are to provide a coherent account of the political context of reform.

Until UPIAS split with the Disability Alliance, disability had been primarily located in impairment. Oliver described this traditional view as the individual or medical model of disability. So if you had mobility impairment the appropriate response was to provide medical treatment, then rehabilitation support. If these interventions failed to overcome the impact of impairments then walking aids or a wheelchair were provided. In addition to help with these problems compensatory benefits were available. The new disability activists regarded this as far too narrow an approach. The Social Model regarded this medicalised conception as an oppressive ideology. It focussed responsibility for adjusting to impairment on the disabled person. This approach was discriminatory as it failed to recognise the wider collective responsibility of discriminatory infrastructural organisation. The Social Model argued that disability was not exclusively or even primarily a medical issue, but rather a social construction conditioned by society's exclusionary organisation of barriers for people with impairments. The oft cited example was the avoidable physical construction of steps which disabled them rather than their impairment. Many of the early examples of discrimination were highlighted by reference to barriers for wheelchair users. We shall consider wider examples of how the model can be applied later. In particular how the move to electronic and virtual commercial infrastructure has increased the interest of visually impaired people in non-discriminatory and accessible software implementation. It turns out that a PDF document can be just as much a barrier as a flight of steps.

The Social Model gave legitimacy to radical action. It enabled disabled people to have the confidence to shock and angrily chant 'piss on pity'. It enabled the confidence to protest against what had previously been unthinkable. Disabled people were given the intellectual ammunition to break from any guilt at challenges of being 'ungrateful'. Oxford Street could be legitimately blocked as an expression of political anger and 'Jobs not Charity' became a viable slogan. (Gooding 1992 p 22)

In short, the only credible conception of disability as discrimination, rather than as a locus for charity, relied on the Social Model. It was the engine room providing the energy and legitimacy for the grievance expressed by disabled people. Morris, Oliver, Barnes and, to a lesser extent, Shakespeare developed this critical analysis during the 1980s and demonstrated, through myriad examples, how society was organised to erect barriers ensuring the segregation of people with disability. The theoretical banner of the Social Model facilitated clarity of intellectual criticism and formed the conditions for the increasing collectivism of disabled people.

So the development of the Social Model gave political and theoretical coherence to the legitimising of anger. Breaking the mould of Welfarism and gratitude meant that for the first time since the marches of the blind in the 1930s that the politics of Disability Discrimination was forced onto the centre stage at Westminster.

Over the last two chapters we have examined factors which accelerated the advancement of legal protection from discrimination in the USA compared to the UK. In the USA the militancy of disability organisations, working in the tradition of Civil Rights were radicalised by the experience of war to force through reform. War however is not the radicalising catalyst in the UK. A developed radical theory, the Social Model of Disability, was required to break the mould of charity and paternalism and allow the birth of militancy.

All these factors inter-related to create the dynamic interplay which characterise the development of legislation in these respective jurisdictions. What are the persevering contexts which guide or assist us in our contemporary context?

The existence of the Welfare Paradigm remains powerful, even today. Charities like the RNIB will now formally ascribe to the Social Model of Disability, indeed they will offer consultancy in the topic (RNIB 2011). But there appears to be a longer hangover of traditional approaches and they appear locked, still, in the Welfare Paradigm in the organising of their resources. The RNIB remains a low level litigator.

The intellectual development of the Social Model of Disability provided increasing coherence to the demand for equality and an end to the discrimination of disabled people. This coherence increased in force over nearly two decades until a formerly intransigent neo-liberal administration was compelled to enact reform.

The lessons may not be all one way. We have expanded opportunities in the UK. Paradoxically, the relative slowness of development potentially assists us. The specific need to break from the narrow focus of the Welfare Paradigm has helped the development of a stronger theoretical position in the UK. The Social Model of Disability is an overwhelmingly British concept. So much so, that it is described as 'British Social Model Theory' (Hasler 1993). The theory, in the UK has generated a completely new academic discipline known as the Disability Studies Movement set up in opposition to Sociological Approaches to Research. There is no equivalent in the USA to the Disability Studies Movement at Leeds, Lancaster and Newcastle Universities. Without exception all the eminent contributors to the Social Model of Disability are British.

In Britain then we have a more developed discourse analysing the roots of Disability Discrimination. The influence of the Social Model has been expressed in the Disability Discrimination Acts of 1995, 2005 and Equality Act 2010. The Social Model has been particularly important in the application of the concept of Positive Duties to disabled people. Whilst there are equivalent structures of Affirmative Action in the USA these are looser initiatives with reduced potential for social transformation. In the UK the Government's attempt to retrench itself away from the concept of Positive Public Sector Duties is potentially a target for Disability Discrimination campaigns. There is little doubt that the Social Model of Disability will be a key reference point in these campaigns. These issues will be developed in more detail in Part Four of this enquiry.

Thankfully, Britain did not have to experience the Vietnam War to generate the radical campaign necessary for reform. Instead an intellectual model of disability which revealed social discrimination arose from, and then inspired, a protest movement, starting narrowly and slowly with wheelchair users in the Residential Homes in the 1960s finally erupting into generalised political demonstrations of disabled people on the streets from 1988 to 1994. The ensuing battle for the Disability Discrimination Act is the subject of the next chapter.

Chapter 5

Scott v Scott

The Battle for the Disability Discrimination Act.

We have analysed the peculiar British route to the emergence of a disability movement. Now we must turn to review its eventual legal victory. As before, we shall review a historical oddity to achieve some insight. This time the peculiarity is that Anti-Discrimination reform is overwhelmingly a feature of Labour administrations. Nine of the ten Anti-Discrimination Statutes enacted up to and including the Equality Act were passed by Labour Governments. The sole exception was the 1995 Disability Discrimination Act. Why is it that Major's Conservatives, instinctively hostile to social engineering, enacted this reform?

The tensions underlying this Government's agreement for reform, against its political instincts, resulted in Britain developing an Anti-Discrimination framework which was distinct not just from the USA, but also the EU. Along the way these tensions created a family drama which fascinated the nation's media.

We have seen how the Social Model of Disability helped create the concept of disability as discrimination. Now we must consider how a maturing disability rights campaign won wider political recognition for this idea.

From the small beginnings of UPIAS in 1972, the alternative modelling of disability as discrimination increasingly bolstered the confidence of disabled people to articulate political demands. For the first time a coherent political analysis provided an intellectual basis for legitimate militancy and anger. The Social Model allowed disabled people to break from identity which was socially responded to by charity and welfarism. Disabled people could be transformed from being grateful receivers of benefits into potential dynamic wealth makers.

In the dying embers of Callaghan's Labour administration, Alf Morris appointed the Committee on Restrictions Against Disabled people (CORAD). In 1982 CORAD recommended US style legislation as Disability Discrimination was as real as Sex and Race Discrimination (RADAR 2008 p11). Thatcher's Governments resisted this recommendation and as the decade wore on, it became increasingly apparent that routine parliamentary lobbying would not achieve reform. For the first time, people with a range of impairments started to organise under the broad label of disabled people. Wheelchair users found themselves in unity with visually impaired people and both welcomed people with mental health impairments to their ranks (Campbell and Oliver 1996 p115-117).

A new generation of organisations subscribed to the Social Model of Disability. In 1981 UPIAS brought together Disabled People's organisations, including the National Federation of the Blind, to form the British Council of Organisations of Disabled People (BCODP) (Campbell and Oliver 1996 p73-80). In the same year the USA Movement was finally joined by their British colleagues when BCODP joined the Disabled Peoples International (Davies 1996). The BCODP eventually brought together 80 disabled organisations representing 200,000 people with disabilities (Pagel 1988 p 15-18).

The first stirring of direct action by this new movement was in July 1988. In the 'Battle of Elephant and Castle', 2,000 disabled people demonstrated for 'Rights not Charity' outside the DHS (Campbell and Barnes 1996 p153). Further demonstrations followed. In September 1990, thousands protested in simultaneous demonstrations in London, Glasgow and Manchester (Barnes C. 1991 Ch9 P11). These were followed by four years of direct action. These included the iconic Oxford Street and Telethon protest of 1991 and 1992 (Campbell and Oliver 1996 p10-11) (Slorach 2011).

These actions had wider results. The sight of disabled people demonstrating challenged perceptions. Some activists compared this to a similar process of perceptual transformation experienced by Blacks in the USA Civil Rights movement (Pagel 1988 p8). Direct comparisons were also drawn between segregated transport for Blacks and segregated transport for disabled people (Shakespeare 1993 p251). Demonstrations also increased the political confidence of disabled people by re-affirming self- worth and rejecting negative stereotyping. Jenny Morris expressed this in her influential 1991 book *Pride against Prejudice*;

> **'The obvious challenge that we were mounting to people's assumptions was also a source of my sense of power. Indeed, each time I had to explain to a non-disabled friend why I was going on such a demonstration, I was very conscious of the way that this issue challenges the root of our oppression and that even to explain my motivations very briefly brings people up short against the core of their own prejudice'** (Morris 1991 p 191).

This campaigning spurred supportive parliamentarians and by 1992, 11 Private Members Disability Discrimination Bills had been blocked (Gooding 1992 p 159

174). The run up to the 1992 election saw the release of important publications. In 1991 Jenny Morris released *Pride against Prejudice* and Oliver produced *The Politics of Disablement*. Also in 1991 a visually impaired academic, Colin Barnes, published his *Disabled People in Britain and Discrimination, a Case for Anti-Discrimination Legislation* (Barnes 1991). It became, alongside other key texts, a manifesto for reform amongst the growing political force of the disabled people's movement. Barnes provided ten chapters of detailed exposure of the discrimination that disabled people face, covering the history of oppression, and detailed breakdowns of the discrimination faced in crucial areas such as employment, housing, health, welfare benefits, transport, and political life. It was a handbook which conveniently assembled the arguments a disabled campaigner needed to advance the case for legal reform. In 1992 Gooding delivered *Disabling Laws Enabling Acts* to demonstrate the practicality of reform by extensively referencing existing USA legislation.

The combination of theoretical confidence, organisation and direct action began to have a political impact. The Conservative Government could no longer routinely block Bills.

Nicholas Scott led on disability issues for Major's Government. A successful Northern Ireland Minister, he was once regarded as a future world leader (Barnes J. 2005), his early potential was never realised due to Thatcher's suspicion of his 'wetness' and a lurid private life (Barnes J. 2005) (Telegraph 2005). When Major appointed him as Minister for Social Security in 1987, Scott could have little insight into the future storm which awaited him.

Scott was an unlikely candidate for the role of right wing 'hate figure'. A liberal 'Tory that Roy Jenkins attempted to recruit into the SDP (Roth 2005), he was opposed to apartheid, protested against Powell's 'Rivers of Blood' speech, and opposed immigration restrictions on Ugandan Asians (Roth 2005).

In 1990 he faced pressure from increasing disability direct activism, encouraged by the example of the Poll Tax protests. He responded by adding a additional portfolio as 'Minister for the Disabled' to his existing Social Security office (Barnes 2005). Government parliamentary strategy was also altered in the run-up to the 1992 election. The 1991 Private Member's *Civil Rights for Disabled People* Bill was blocked, for the first time, by 'talking out', rather than confident outright opposition. The Government began to have concerns over the electoral impact of the direct action campaigns (Gooding 1992 p164).

In the event Major overcame a weak labour campaign to lead the Tories to a surprise fourth term (Mughan 1993). However, Disability Discrimination did not retreat to the margins. The MP responsible for talking out the Civil Rights for Disabled People Bill, Robert Hayward, was targeted. Despite an abject apology to the House (Hansard 1992), he lost his seat to Dr Roger Berry campaigning on a commitment to reintroduce the defeated bill (RADAR 2008 p 12).

In response, Scott shifted the focus of Conservative policy. Prior to the election the Government had disputed the existence of Disability Discrimination, and asserted that focussing on the education of employers was the best approach. Now discrimination was accepted. In a landmark parliamentary statement, Scott attested:

> **'I do not think that anyone who has listened to the debate can doubt for a moment that there continues to be considerable discrimination against disabled people. Everyone who has done my job must be aware that discrimination exists. It exists and it is wrong.'** Nicholas Scott (Hansard 1993).

In an important concession, Scott agreed to work with an all-party parliamentary group looking at disability and discrimination. Whilst his involvement was carefully conditioned by his need to identify **'cost free'** policy changes (Bailey and Shinkwin 1998 p112), this did allow the growth of cross party consensus.

In 1993 Dr Berry's proposed, yet again, a Disability Discrimination Bill. This was the third Bill in three years. It received high profile support in the media including an editorial in The Sun on 17 February 1993. In the same year the New Statesman reported that 1,000 disabled people had signed up to a Civil Disobedience Register (Fletcher 1993).

Cross party support meant that, unusually for a Private Member's Bill, it passed through the Committee Stage with a vote of 231 for and none against. Hope increased that a Bill could pass into law. It was not until it reached the Report stage in the House of Lords that the Government finally intervened by introducing 80 amendments to ensure time ran out (Millward 2012). Nicholas Scott and Lady Olga Maitland received wide criticism for this manoeuvre. They first denied, and then admitted, that they had used Civil Servants to draft these amendments. Both had to submit apologies for misleading the House in relation to their inappropriate use of Civil Servants (Parliamentary Information List 2011) (Hansard 2004). This blocking ensured that disability now moved from the margins into the centre of political debate. Although Major's Government had continued anxiety about the 'dead weight' economic consequences of reform, they also faced increased moral and political pressure. The interplay of these pressures produced behaviour unusual for a governing administration. During the debate of Berry's Bill, an anonymous leaflet was circulated in Parliament claiming that the Bill would wreck the competitiveness of British industry and costs billions to implement. The leaflet was interpreted as a Government attempt to lobby against the Bill without incurring the political risk of explicit opposition (Bailey and Shinkwin 1998 p113). The leaflet, assumed to be the work of Scott and Maitland, caused wide outrage, Conservative MP, Terry Dicks, accused his own Government of **'telling a pack of lies**' (Foley and Pratt 1994).

In early 1994 the political stakes were raised when yet another Bill, supported across the House, appeared again to have a realistic chance to pass into Law. Berry complimented the level of all-party support in its Second Reading. He reported that MPs had received 250,000 postcards as well as thousands of letters and telephone calls supporting the Bill. He had not received a single call or letter opposed. A clear majority supported the Bill, 310 MPs had signed an Early Day Motion in support. A further 20 Front Bench Members gave their approval in writing. Eight MPs from all parties spoke in favour of the Bill in its second reading, and not one in opposition (Foley and Pratt 1994 Sec 1).

At this time a new element emerged which gripped the nation's media. This was a family drama caused by criticism of Scott by his daughter (Parker 1995). Victoria Scott, in normal circumstances, would have achieved a relatively low profile in the Disability Rights Movement. She was a Parliamentary Officer for the disability charity, RADAR. In 1994 RADAR published her 53 page booklet entitled *Lessons from America* which summarised Gooding's description of how Disability Discrimination Law in the USA was clearly in advance of the UK.

When Nicholas's tactics were vilified in sections of the disability press, the media found that Victoria was perfectly willing to add her voice (Parker 1995). She castigated her father's **'shameful behaviour'** in a radio interview on the 11th May 1994, though she stopped just short of calling for her father's resignation (LBC1994).

None days later, Berry made one final attempt to launch his Bill, accepting all amendments, only for Nicholas Scott to again block it. He was accused of cynically manipulating ex- Labour leader John Smith's funeral by filibustering until Labour MPs had to depart for the service. Once sufficient Labour members had departed, Liam Fox proposed that they move to a vote knowing that a quorum would not be achieved. This forced the shelving of the Bill. Looking on was his daughter Victoria who said it was **'a terrible thing to watch'** (Brown 1994). Victoria now called for her father to resign. She said **'Professionally, I am very, very angry. Personally, I feel rather let down'** (BBC 2005).

The combination of the unusual spectacle of disabled people resorting to direct action allied to this family drama propelled disability discrimination onto the front pages. Nicholas Scott faced concerted demands for his resignation (Roth 2005). He was forced to depart his post in Major's June re-shuffle (Bailey and Shinkwin 1998 p114).

Scott's last political act was the announcement that there would be a consultation on a law for Disability Discrimination reform (Hansard 1994). His career plummeted thereafter. Major's consolation of a knighthood brings little relief. In June 1995 his political career is threatened after he is arrested and later convicted for drink-driving, and walking away from the scene of an accident (Mirror A 1996) (Telegraph 2005). By October 1996 Scott's political career was over when he was photographed and found by the police, drunk, face down, in a Bournemouth gutter at the Conservative Conference, (Mirror B 1996). By January 2005 he had died from Alzheimer's disease (Telegraph 2005).

It is important not to overstate the importance of the conflict in the Scott family. Without the maturity and strength of a disability campaign built over the previous 15 years, Nicholas's disagreement with his daughter would have been embarrassing, but not ultimately politically fatal. However the existence of this wider campaign gave him no room for manoeuvre and allowed the emergence of his daughter as his Nemesis. The extent to which Nicholas Scott's machinations were due to Cabinet pressure is unknown, but he was believed, privately at least, to support disability rights (RADAR 2008 p 14).

With Scott removed, a political avenue for reform opened. In an echo of the pressures experienced by the National League in relation to the Blind Person's Aid bill, the disability protestors were urged to unite with traditional charities (Millward 2012). An uneasy alliance was formed. Despite the fact that Radar's Victoria Scott had propelled the campaign onto the front pages; activists were suspicious of reliance on traditional charities. RADAR, under the leadership of Bert Massey, had previously worked closely with Government to agree recognition of disability as discrimination (Hansard 1993). Caroline Gooding secondment from RADAR to work with the Government on the drafting of a Bill caused fears that this would lead to a betrayal of the campaign's aims by providing legitimacy for half hearted reforms (Millward 2012). Fearing an unwarranted compromise Disability Activists started to wear T-shirts announcing 'Rights not RADAR' (Parker 1995).

The Government alternative to Berry's Bill provoked concern that it offered only narrow protection for people with 'substantial' disability against 'unjustifiable' discrimination (Foley and Pratt 1994). It also proposed the abolition of the statutory 3% employment quota established in the Disabled Persons (Employment) Act 1944. The consultation dismissed the need for an enforcing commission such as the Race Relations Board or the Equal Opportunities Commission and instead recommended an 'advisory' National Disability Council. It also criticised Berry for failing to take account of cost and business concerns. It rejects 'sweeping' legislation and instead proposed 'education and persuasion' (Foley and Pratt 1994).

The resulting Disability Discrimination Bill was published in January 1995 (House of Commons Library 1995). William Hague was appointed Minister for the Disabled, and in what he described as his proudest political moment, steered the Bill into Law (Hague 2012).

The final Act was a mix of good, bad and confused. It did not reflect the narrow scope of the consultation, so was not as watered down as some feared. On the other hand, Caroline Gooding is vulnerable to criticism as the villain who enabled a Bill with critical shortcomings. As a result there were key departures from the five pillars established in the Race and Sex Acts. The first pillar, that of Direct Discrimination, was amended to a new concept called 'Disability Related Discrimination'. Indirect Discrimination was completely excised and the concept of Reasonable Adjustment was conceived as a replacement. The problematic consequences of these changes are the subject matter of the following part of this enquiry.

The reality for Gooding is that she had to assist with drafting a Bill which not only reflected the ambitions of disability campaigners, but also the concerns of a Government with continuing economic anxieties. She enabled a process whereby a Conservative Government had by 1995 passed the kind of comprehensive legal protection against Disability Discrimination that only 12 months earlier they had stretched every political sinew to avoid. There is, in addition, absolutely no evidence that Labour would have passed an Act with any significant extra powers apart from consolidating the role of the Enforcing Commission. In this context Gooding is less of a villain, and more a hero.

We have to return then finally to our organising question. How is Gooding able to persuade a Government with instinctive hostility to enact this reform? The first answer lays in the unpredictability of events. The high profile drama of the Scott family split and its political consequences was a factor. The Tories were politically vulnerable to such bad news stories. Major's splits in Cabinet were famously revealed when he hit out at the **'bastards'** (Observer 1993). The leadership could not organise Tory opposition to the Bill. Crucial to this was the example of existing disability discrimination protection in the free market USA. It was Tory support for reform that eventually made this new law a reality.

Yet none of these factors would have any significance without the pressure of the campaign launched by Disability Activists. USA Disability Discrimination legislation had been in place since 1973 but in the UK it needed the Disabled Peoples Movement to push Disability Discrimination up the political agenda. This campaign succeeded not just because of numbers of supporters but also sheer persistence. Sixteen Disability Discrimination Bills were moved in the House before the Government finally capitulated.

A final two factors are worthy of mention. We have seen how ideas of charity and Welfarism had hindered the growth of a political Disabled People's Movement in the UK. Ironically at this late stage, however, the principles of the 'deserving poor' and charity probably assisted the passing of the bill amongst this key Tory constituency. A discussion of the concept of the deserving poor is beyond the scope of this chapter but the disabled are one group that Tories, until recently, have thought of in this way. The extent to which all mainstream parties have now diverged from this view will be discussed in the final Part of this inquiry.

Finally, some Tories were realising that they needed to change. Traditional suspicion of 'minority' politics was becoming increasingly an electoral liability, especially with demographic changes in society. It would take another election defeat for this to emerge openly with Theresa May's condemnation, at the 2002 Conservative Party conference, of their image as the **'Nasty Party'** (Perkins 2002).

None of these factors would have been drawn into the mix without the hard work and sacrifice of thousands of the disabled activists who worked relentlessly to pressure a reluctant Government. Given these circumstances it was unlikely that the activists would achieve all that they wanted but perhaps in the end they achieved more than was realised. In the following chapter we will analyse the persevering impact of economic anxieties by progressing our legal survey to record how disability employment law developed in the 15 years up to the current Equalities Act.

Part 2

How Reasonable is Reasonable Adjustment?

Chapter 6

The Strange Death and Resurrection of Indirect Discrimination

In Part One of this inquiry I described the protracted campaign to win Disability Rights in the UK. This revealed opposition to reform based on a perceived deleterious economic impact. In this second part, I will examine the consequences of this opposition by reviewing features of the Disability Discrimination Act which departed from the template of the five pillars established in the Sex Discrimination and Race Relations Act.

The anxieties of 1994 left their mark on the 1995 Act. They caused three departures from the five pillars. The first was the loosening of the concept of Direct Discrimination and its amended version of Disability Related Discrimination. It would take eight years for Direct Discrimination to be re-instated as prohibited conduct. The amendment and re-instatement of Direct Discrimination and the unforeseen legal consequences will be addressed in the next chapter.

The second pillar shaken loose was the initial rejection of an Enforcing Commission for Disability Discrimination. Instead a National Disability Council was offered as an advisory body. This legal deficit was relatively short lived, and by 1999 the incoming Labour Government had legislated to create the Disability Rights Commission.

In this Chapter, we will focus on the most obvious and persistent pillar deficit, by considering the strange death, and even stranger resurrection, of protection from Indirect Discrimination for disabled people.

For 13 years the Labour Government refused to accept a need to provide Indirect Discrimination protection for disabled people. They maintained Indirect Discrimination and Reasonable Adjustment were equivalent mechanisms, particularly in relation to their duty to transpose EU directives. Yet, with the 2010 Equality Act, we finally have Indirect Discrimination protection re-instated alongside Direct Discrimination. This re-instatement has not occurred at the expense of Reasonable Adjustment duties, but in addition to them. From October 2010, both Reasonable Adjustment and Indirect Discrimination protection are in the Equality Act. The Government had legislated two separate provisions that they had, for 13 years, claimed were legally equivalent. This is a strange and confusing sequence of legal enactments. If it was necessary to kill off Indirect Discrimination in 1995 because Reasonable Adjustment was sufficient and more appropriate protection, why was it necessary to bring it back to life in 2010?

To understand how and why the concept of Indirect Discrimination was killed in the 1995 Disability Discrimination Act, we need to examine the parliamentary catalyst of Dr Berry's Civil Rights Disabled Persons Bill under which the campaign for reform coalesced. The campaign to support Berry's Bill did not regard Indirect Discrimination as equivalent or as an alternative to Reasonable Accommodation; they were instead considered distinct but essential partners (Barnes 1991 p1).

Yet Berry's Bill made no explicit reference to Indirect Discrimination. This obscurity allowed the possibility of a damaging consensus and made it easier for the Government to exclude Indirect Discrimination. Nevertheless, it can be inferred that the concept of Indirect Discrimination is implicit in the text of Berry's Bill. In Part 1 the grounds of discrimination are laid out. Part A defines Direct Disability Discrimination and Part C describes further conduct which would constitute discrimination;

> **'treats him by reason of the fact that he does not comply, or is not able to comply, with a requirement and the nature of the requirement is such that a substantially higher proportion of persons who do not have such a disability comply, or are able to comply, with the requirement than of those persons who have such a disability, and the requirement is not justifiable in the circumstances of the case'** (House of Commons 1993).

It is useful to compare this clause with pre-existing clauses of Indirect Discrimination established in Law. The first incarnation of Indirect Discrimination in the UK was defined in Part I of the Sex Discrimination Act 1975, this provision was designed to be invoked in circumstances where an employer:

> **'applies to her a provision, criterion or practice which he applies or would apply equally to a man, but—**
> **(I) which is such that it would be to the detriment of a considerably larger proportion of women than of men, and**
> **(ii) Which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied and**
> **(iii) Which is to her detriment.**

So Indirect Discrimination is determined after an analysis of the conditions of work and whether these conditions impact adversely more on women than men.

It involves an analysis of conditions for groups rather than individuals. If we compare the SDA definition of Indirect Discrimination with Berry's Bill, this also included an implied concept of Indirect Discrimination. It mentions **'requirements'** rather than **'criteria or practices'** but the core message of arrangements, which have a disproportionately adverse effect on groups of disabled people, is nevertheless contained.

Berry confirms, in his 1996 reflection on his Bill, that it was intended as an instrument for the provision of protection from Indirect Discrimination. Unhelpfully though, he also conflated the legal concepts of Indirect Discrimination with Reasonable Adjustment. This is how he described the intent of the Bill;

> **'It is comprehensive: covering employment, housing, education and the provision of other goods and services. It would tackle not only Direct Discrimination, but also Indirect Discrimination and 'unequal burden' discrimination, where an employer or service provider fails to make Reasonable Adjustments to policy or the environment to secure access for disabled people'** (Berry 1996).

In this muddled paragraph Berry brought together three concepts, Indirect Discrimination, Reasonable Accommodation and something called 'Unequal Burden Discrimination'. Rather than distinguishing these concepts, he grouped them as facets of a single idea. This legal muddle helped the Government to develop a legal strategy which obscured the need for discrete protection from Indirect Discrimination.

This obscuration was a UK experiment. Commonwealth jurisdictions such as Australia and Canada retained explicit Indirect clauses in their disability legislation, resisting the USA's ADA model in favour of the UK Sex and Race template (Hamilton 2000 p206). Citing the absence of explicit Indirect Discrimination protection in the USA, ADA is also misleading. Indirect Discrimination protection is also clearly implicit here (Gooding 1992 p59). It was actually in the USA that the concept of Indirect Discrimination was first conceived and enforced. In the context of USA law, the ADA can offer important protection from Indirect Discrimination. Unfortunately this context is not yet available in the UK. To understand this we must first consider a legal mechanism that is relatively unfamiliar in the UK, the use of class actions.

Class Actions are cases where people pursue a common claim using a single legal team. They allow the sharing of legal fees. There are also efficiencies for the legal system in dealing with group actions rather than numbers of individual claims.

The UK conception of Indirect Discrimination originates from USA class actions, specifically the landmark case of the US Supreme Court in Griggs -v- Duke Power Company (1971) 401 US 424. Duke Power was an electricity generating company which had an unusually high academic requirements for employment of power station workers. Willie Griggs filed a class action, on behalf of several black co-workers, challenging the Company's promotion policy. This required employees to hold a High School Diploma and to pass aptitude tests (Oyez 2005). Although apparently neutral, these criteria operated within a historically segregated and unequal US education system which disadvantage blacks, and consequentially inhibited promotion. Griggs successfully lodged his action under a 1964 Civil Rights Act which was intended to help redress historic discriminatory practices. The case was heard against the backdrop of campaigning against Vietnam and its negative impacts on poorer sections of US society (see Chapter 4). More pertinently, pressure for change had grown across America with the Black Power and Black Panther movements. These had gained a worldwide stage when medal winning black athletes gave Black Power salutes at the 1968 Olympics (Allen 1990).

The Griggs judgement referred to duties under Section 703(a) of Title 7 of the 1964 USA Civil Rights Act. This section prohibited employers from practices that limit, segregate, or classify employees to deprive them of employment opportunities or adversely to affect their status because of race, colour, religion, sex, or national origin. Section 703(h) of the Act does authorise the use of tests for employment or promotion, but these test were only lawful if they were not designed, intended, or used to discriminate unfairly. Duke Power defended their test by arguing that any disparate impact was unintentional.
Finding against Duke Power, the Supreme Court held that Section 703 only permitted the use of tests that related to an objective assessment of skills for job performance. Duke Power could not justify its level of qualification against objective job requirements. The tests were therefore unlawful as they provided a negative impact on the recruitment and promotion of black workers. An innocent intention was an insufficient defence.

Griggs confirmed the possibility of outlawing measures which indirectly discriminated against disadvantaged groups. This principle was introduced into UK Law as Indirect Discrimination following Roy Jenkins' visit to the USA in 1974. In Chapter Two we recorded Jenkins's motivation for the passing of the Sex and Race Acts as his conviction that there needed to be an alternative radical tradition of individual rights rather than rights asserted through collectivised union power. However, in his visit Jenkins learnt about the principle of disparate impact in Griggs (Connolly 1998). This principle inspired him to conceive a legal mechanism to tackle measures which discriminated unfairly against groups. Jenkins could also have adopted class actions as a further alternative to Trade Union collectivism but instead proposed a reinforcement of his individualised litigation model. The result was a hybrid proposal, designed to combat disparate effect but articulated through tribunal mechanisms. An individual had to pursue a single rather than a group claim of indirect discrimination, no matter how widespread the adverse effect. Nevertheless the new concept increased the radical scope of the proposed Sex Discrimination Legislation. Despite the duty's absence from the White Paper (HMSO 1974), Jenkins organised a late stage insertion of an indirect discrimination clause in the new Act (Jenkins 1994 p376).

Of the five pillars of discrimination law established in 1975, Indirect Discrimination potentially offered most fundamental reform. This new, last minute, duty took discrimination away from the personal to wider, resource implicated adjustments. Twenty years later in the 1990's the extension of this principle to Disability Discrimination was at the heart of anxieties around the cost implications of implementing legislation. Scott and Maitland's discredited campaign demonstrated the depth of concern about resource implications for radical integration of disabled people into the UK economy. A Neo-liberal Government may have gathered the confidence to enact reform, but this confidence would not extend to the removal of general systemic policies, procedures and infrastructure.

The conflation of Indirect Discrimination with Reasonable Adjustment allowed this fundamental change in the five pillars template to slip under the radar. William Hague used code to refer to the dropping of Indirect Discrimination, by stressing the advantages of flexibility in the Government Bill compared to previous proposals (Hansard 1995).

The limited, individualised duty to provide Reasonable adjustment became the sole mechanism to support disabled people into employment. This deficit cannot be simply attributed to Conservative intransigence. Hague can be seen as standing firmly in the tradition of Jenkins. Both, in their respective tenures as law makers, instinctively drew back from solutions which implied wider, even societal state led systemic adaptation. The individual and the market were to remain kings. In addition Labour offered no complaint on the dropping of Indirect Discrimination. Tom Clarke's reply to Hague's statement failed to include any reference to this most significant loss, and instead focussed on the limited application to small businesses and the absence of an Enforcing Commission (Hansard 1995). From 1995 until the 2008 Bill, as far as Indirect Discrimination is concerned, there was no daylight between the Tories and New Labour. As a consequence we have had, in the UK, a peculiar consensus in the 15 years between the DDA and the Equality Act. There was scant discussion of this deficit in legal literature until the abrupt change in the Equality Bill.

The story of the resurrection of Indirect Discrimination is complicated. It reveals the extent to which governments and commentators will place themselves in logical impasses to defend the indefensible.

Gooding's time at Berkeley Law School assisted her in drawing upon the insights provided by the ADA, in particular the concept of 'Reasonable Accommodation'. This became the centrepiece of the DDA bill she helped the government draft. In the DDA this was amended to 'Reasonable Adjustment'. Generally the concepts are considered to be legally equivalent, except in as much there has been a long standing assertion of equivalence between Reasonable Adjustment and Indirect Discrimination. There has not been a similar emphasis of equivalence between Reasonable Accommodation and Indirect Discrimination. In contrast, as we shall see, especially in the European context, Reasonable Accommodation and Indirect Discrimination are clearly distinct.

So in what sense can we understand how the gap left by the removal of the pillar of Indirect Discrimination in the DDA, could ostensibly be filled by the duty of employers to make Reasonable Adjustments? The DDA described Reasonable Adjustment as:

> **(a) Provision, criterion or practice applied by or on behalf of an employer, or**
> **(b) Any physical feature of the premises occupied by the employer, which places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.**

The key term here is "person". This is a duty applying only to individuals. There is no expression of wider adjustments for groups of impairments. Many commentators celebrated the concept of Reasonable Adjustment as a positive replacement for Indirect Discrimination. In this view Reasonable Adjustment was seen as a positive duty on employers rather than a more passive Indirect Discrimination duty (Alston, Bustle, Heenan 1999 p 291).

This consensus on legal commentary helped deflect potential criticism of the individualised focus of Reasonable Adjustment. In hindsight the keenness of Alton and others to explain away the deficit of Indirect Discrimination as an alleged benefit is peculiar. Other eminent legal scholars were also prepared to interpret the deficit of Indirect Discrimination as somehow a benefit. Yet today, no one would seriously suggest that protection from Indirect Discrimination for disabled people should be removed from the Equality Act. Despite this, until 2008 there was little support for including disabled people with the formal protection from Indirect Discrimination.

Although the Government claimed legal equivalence between Indirect Discrimination and Reasonable Adjustment, they are situated at extreme and opposite arms of an accommodation spectrum. They have to perform different functions at the early and late stages of accommodation. It is difficult to see how one can work effectively without the other.

Reasonable Adjustment is a reactive process taken at the end stage of employment arrangements. The operative word here is 'adjustment'. There is nothing radical proposed in removing systemic barriers. There is no requirement for 'reasonable planning'. With Indirect Discrimination, in contrast, employers have to look beyond the individual employee to the impact on groups of people of their premises, systems, organisations and planning. Once an intelligent, inclusive, pro-active planning process has been undertaken, Reasonable Adjustments can be applied to fine tune arrangements for visually impaired staff. Reasonable Adjustments have most chance of guaranteeing accommodation within inclusive design arrangement.

The absence of Indirect Discrimination protection created daily problems for visually impaired people. A perusal of online discussion forums will show how visually impaired people have to grapple with problems of electronic access. People who use magnification are inhibited by layout and people who use screen readers are often completely excluded by software produced with non-standard code.

These problems are relatively invisible because they do not appear in high profile Tribunal or Court hearings. There is one exception.

The Williams v J Walter Thompson Group Ltd [2005] EWCA Civ 133 case in the court of Appeal 2005 is often cited as expanding the understanding of employers justification defence. However I have found no legal commentaries on the far more interesting and important problem of Indirect Discrimination deficit revealed in this judgement.

JWT was a large global advertising agency employing 65,000 people with extensive HR expertise and resources. In 1999 they recruited Sue Williams to develop applications using Lotus Notes Software. Williams was described as a 'remarkable' woman in the judgement. The Tribunal also describe her as highly competent in information technology and able to work on her own initiative. Williams also held a post-graduate Diploma in Computer Science.
Despite her blindness Williams was generally able to work effectively with the aid of her Jaws Screen Reader, but had warned her employers before appointment that she was unfamiliar with IBM's Lotus Notes. Lotus Notes is software that provides specialised communication for employees, including email, shared calendars, information bulletins and databases.

Ms Williams indicated she was prepared to undertake training on Lotus Notes. She also contacted Access to Work before starting employment so that she could have her Jaws Screen Reader updated and a Braille display purchased. Access to Work did not, before she started work, assess what software and equipment would be required for her specific job, nor did they secure any agreement from JWT that they would meet this need.

Consequently when Sue Williams arrived at work she found no suitable arrangement in place. Her equipment had not been purchased and the Tribunal found that the employers were ill prepared to accept a blind member of staff into its organisation. Access to Work advised JWT that they would be reimbursed if they purchased the equipment needed. They refused and the familiar delays of Access to Work in purchasing equipment meant that Sue Williams was effectively excluded from attending work for five and a half months.

In the meantime she requested training in Lotus Notes to no avail. Three months after receiving her equipment she was given a task of working on a holiday database. However her employers refused to pay for training costing £4,800 despite an offer from Access to Work to contribute £3,500 from unused taxi travel expenses due to Williams enforced absence from work.

Access to Work engaged a further assessor to try to break the log jam. This consultant identified that the obstacle lay in the Lotus Notes software. Neither the Jaws Screen Reader nor her Braille display worked with it. IBM programmers had used non-standard Windows elements which made it impossible for access technology to interface with it. The only solution was to use special scripting. Scripting is a process where an extra level of code is introduced between an inaccessible program and the Jaws Screen Reader to make them accessible for a visually impaired person. A consultant concluded that the work needed to make Lotus Notes accessible was so extensive it required the virtual rewriting of the software and estimated combined training and scripting costs of £100K. JWT were prepared to fund a day's training, during which the trainer predictably identified that she was unable to use Lotus Notes with her Jaws Screen Reader. After further months of delay JWT proposed that Sue Williams work at providing video conferencing. This in no way matched the work for which she had been engaged.

In 2001 Sue William resigned and made a number of complaints to an Employment Tribunal. She claimed constructive and unfair dismissal, Disability Related Discrimination and failure to make Reasonable Adjustment. She won at the Tribunal on all counts but her employer succeeded at the Employment Appeal Tribunal. The reasons why they supported a justification defence for the employers will be returned to in the next chapter. For now we just need to know that the Court of Appeal reinstated the original tribunal decision (BAILII (A) Undated).

The major interest in the case for a visually impaired person is the issue of Indirect Discrimination that it reveals. Lord Justice Chadwick is clearly aware of this as a background issue. He refers, almost bad temperedly to the tendency to equate Reasonable Adjustment duty as a protection from Indirect Discrimination. In paragraph eight he comments on how unhelpful it is, in this case, to consider any equivalence between Reasonable Adjustment and Indirect Discrimination. Chadwick does not develop this line of reasoning but it is easy to see why he regards the association with Indirect Discrimination as so unhelpful here. The reality is that underlying the facts of the case, there is a clear prima facie case of Indirect Discrimination, but the perpetrators were not defendants in the courtroom.

IBM Lotus is the undeclared discriminator in this case. Whilst there is a reasonableness test for an employer to assure themselves that software they purchase is accessible for visually impaired staff, that test is far easier to comply

with by the software provider. The relative ease of adjustment at the planning stage of product development should, in turn, make the duty stronger. If, at the planning stage of software development, accessibility for people with visual and other impairments had been included in the design specification of Lotus Notes, the worst problem Sue Williams would have encountered would have been delays in the provision of her equipment. She was clearly qualified to develop software applications and with an accessible interface there is no reason to suppose she would not have continued in a successful career. From this perspective both Sue Williams and J Walter Thompson were victims of Indirect Discrimination through the inappropriate and exclusionary provision by IBM. Yet IBM remains undisturbed by any litigation despite the relative ease with which they, as opposed to the employers could comply with access requirements.
This case perfectly encapsulated both the difference between Indirect Discrimination and Reasonable Adjustment, and showed why there was a need for both. No amount of adjustment will help if software is coded in an indirectly discriminatory way. If JWT had used, for example, Microsoft software none of the apparently insurmountable hurdles would have arisen.

It is important to realise that this case is not remarkable or uncommon. It is remarkable only in that Ms Williams had the strength of will to pursue her claim to the Court of Appeal. Every day visually impaired people have to grapple with discriminatory coded programs but, outside the blind computer forums, there is little awareness of this. For example, one of the most common document formats favoured by private and public organisations is Adobe PDF format. Yet the various incarnations of this format create multiple access difficulties. Even the Equality Act was initially only available as a PDF download which my personal Jaws software was completely unable to access.

Despite the clear deficit objectively identified in Williams, the Government continued to display unswerving opposition to the incorporation of a duty to avoid Disability Indirect Discrimination. In part this intransigence appeared to have been conditioned by their view that it was impossible to establish disability group comparators. Their approach was set out in the 2007 Discrimination Law Review. Indirect Discrimination is explicitly precluded, and the review holds fast to a one dimensional reliance on late stage Reasonable Adjustment.
The review argues:

> **'Reasonable Adjustments are designed to remove unnecessary barriers for an individual disabled person in a particular situation. This is because it is not possible to say that one solution will remove**

> **the barriers for every disabled person, even those who appear to have the same impairment.'** (DCLG 2007)

This refusal to acknowledge the existence of groups of impairment was, even at this time, logically bewildering. This denial of common sense is probably only explainable if related to underlying anxiety of economic consequence. It is, otherwise, difficult to understand how any Government could conclude that it was impossible to consider the needs of visually impaired people as a group. The existence of the RNIB, and other visual impairment organisations, is precisely due to the existence of groups of visually impaired people with common interests. The 2007 assertion become even more illogical when considered against wider government policy.

For many years Social Services Departments were organised into structures that met the needs of distinct groups of disabled people. These included specialist services for deaf, learning disabled, mental health and mobility as well as visual impairment. More pertinently, the same Labour Government legislated for a positive public sector duty in the 2005 Disability Discrimination Act. The Government's own guidance on public sector Disability Equality schemes included the need to conduct Equality Impact Assessments. A key part of these was the proactive identification of different impacts by broad categories of impairment. So two years before the 2007 Review claimed that it was impossible to identify appropriate groups, the same Government asserted that not only was it possible, but actually essential to understand the needs of groups of disabled people in the public sector.

The Review tied itself into further logical knots by asserting contradictory perspectives on disability. On the one hand, it argued that there was sufficient homogeneous coherence across all discrimination categories, including race, gender and disability, to justify a single equality strategy. On the other hand disability is such a complex and varied area that the identification of Indirect Discrimination comparators was impossible to achieve.

Despite her role in the drafting of the DDA, Gooding was one of the few legal commentators who identified the incoherence of the Discrimination Law Review and the Indirect Discrimination deficit. However she stops short of a call for the re-introduction of Indirect Discrimination. Instead she calls for an ingenious extension of the concept of Anticipatory Reasonable Adjustment from its application from goods and services to employment. Anticipatory Reasonable Adjustment is an implicit duty and does not appear explicitly in the DDA. It is inferred from the requirement that service providers must make Reasonable

Adjustments for 'persons' in the plural, or in other words consider the needs of people in common impairment groups. This provision is inevitable as it is impractical for a service provider to provide an unlimited number of provisions and practices in respects of their temporary and short contact with individual customers. This is different from the longer term relationship that an employer has with an employee. There is an implied requirement therefore, under goods and services, that service providers must reasonably anticipate the needs of groups of disabled people, a process that the Discrimination Law Review claimed was impossible to apply in employment law.

Gooding argues that extending this approach to employment would encourage employers to act in advance to make their practices or premises more accessible to disabled people. This new duty would provide pressure on managers to consider measures similar to that fostered by present Indirect Discrimination duties, creating coherence across the different discrimination categories. (Gooding 2007).

She illustrates from one of her own cases how the lack of advanced planning can create systemic barriers:

> **'A visually impaired telephone operator was away from work recuperating from an eye operation. On returning to work, she found that a new telephone system had been installed which she could no longer operate. She had not been consulted about the change in systems. The costs of rectifying the situation for one person may be judged "unreasonable". The real solution is for the employer to be considering visually impaired employees and potential employees when purchasing a system. This is not onerous and in this case would not only have benefited one individual but possibly others in the future'** (Gooding 2007).

Gooding commended such an approach;

> **'It will encourage tribunals to appreciate that an adjustment will benefit other employees or potential employees. It is an approach which works well in other aspects of the DDA'** (Gooding 2007).

Now that Indirect Discrimination protection for disabled people has passed into law, it is easy to lampoon the absurdity of the Discrimination Law Review. We should remember though, that at the time, its conclusions were considered to be solemnly deliberated, considered orthodox and rarely challenged. The difficulty in mounting an outright challenge to this orthodoxy underlay Gooding's construction of an ingenious legal mechanism to introduce a form of Indirect Discrimination

protection through 'the backdoor' of Anticipatory Reasonable Adjustment. The intervention of such a high profile commentator did, however, lay the groundwork for a critique of the DDA. This was objectively reinforced by the development of law under the EU.
In EU Law there was a long standing tension with the DDA's removal of Indirect Discrimination. The Labour Government entered into negotiations in July 2000 to achieve agreement to ensure EU directives were sufficiently transposed into UK law (DLGC 2001 p3) Subsequent amendment regulations to the DDA were passed in 2003. However, even a cursory review of EU law reveals the tensions in this transposition. In Directive 2000/78/EC framework for equal treatment in employment and occupation of the European Union clearly includes disability in the groups to enjoy protection from Indirect Discrimination.

In complete contrast to the DDA, the directive does not consider that there is any equivalence between Indirect Discrimination and what it describes as 'Reasonable Accommodation'. In Paragraph 33 the directive states:

> **'Indirect Discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, at a particular disadvantage compared with other persons unless: (I) that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary'.**

Article 5 of the Directive on Reasonable Accommodation states:

> **'Reasonable Accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer'.**

This directive was to be implemented by 2003 with fall back extension to 2006. It was not until 2010 that in reality the directive was complied with and arguably the UK was in breach of directives for several years. This view was, however, not tested in the courts.
Despite the clear distinction drawn in the Directive, literature on the distinctions between Indirect Discrimination and Reasonable Accommodation was scarce over the decade running up to the Equality act. Two articles, though, address the issues directly.

Waddington and Hendrix identified that Indirect Discrimination and Reasonable Accommodation were related but distinct duties. They argued that Reasonable Accommodation cannot address the general and the social, as it is focused on the individual. For these authors the important issue is not the reasonableness of the accommodation but 'effective' accommodation. It is through the integration of arrangements in respect of Direct and Indirect Discrimination in conjunction with Reasonable Accommodation that the desired outcome of 'effective' accommodation is realised. They suggest this is a model that could be applied across all discrimination categories (Waddington and Hendriks 2002).

De Schutter addressed the issue from the standpoint of human rights. He concluded European case law was scarce and none of the cases bought to the ECJ under Reasonable Accommodation relate to employment. Nevertheless, he argues that a 'religious belief' case raised in the European Court of Human Rights under Article 14 of the European Convention on Human Rights has relevance. He cites the case of Thlimmenos v. Greece - 34369/97 [2000] ECHR 162 as of interest. In this case, a Jehovah's Witness was barred from taking up a position as a Chartered Accountant because of a criminal record associated with a conscientious objection to military conscription. The ECHR found that whilst on the one hand a right to institute a ban on those having a criminal record was legally justified, the imposition of a blanket ban, without regard to possible exceptions, breaches Article 14 by discriminating against religious belief (BAILII (B) Undated).

De Schutter argued that this was of interest to disability campaigners. The case distinguishes between Indirect Discrimination which provides general protection, and the exceptional, which must be met by Reasonable Accommodation:

> **'In this sense, Thlimmenos is not a case about Indirect Discrimination, despite the fact that this is how it is usually presented (even, indeed, by the Court itself). It is, rather, a case about Reasonable Accommodation and its reasoning is, therefore, immediately useful to Disability Rights advocates.'** (De Shutter 2007 p 53).

De Shutter's construction provides a helpful reference to the structure under which new rights in the Equality Act could be exercised for visually impaired people. Indirect Discrimination protection should be articulated against discriminatory computer coding; inaccessible programming such as the Lotus Notes application endured by Williams and difficult inaccessible PDF documents would become unlawful. The general should be inclusive and accessible to all to prevent breach of Indirect Discrimination. Everybody should be able to use Lotus

Notes, whether they are visually impaired or not and everybody should be able to easily use PDF documents, no matter how they access them.

Reasonable Adjustment remains essential for the exceptional though. For the visually impaired computer user this might equate to the Braille display. Not every employee will need a Braille display but it remains a Reasonable Adjustment for an employer to make to ensure effective access to detailed information for their visually impaired employees.

The tension which had underlied the Government's attempt to subsume Indirect Discrimination into Reasonable Adjustment was to be stretched to breaking point in 2008. The event that broke this strange orthodoxy was to arise out of legal challenge. Oddly though, this was not in a successful challenge to the European Court, but as a result of a legal reverse in the House of Lords. The peculiar next stage to this strange journey to our current indirect and direct discrimination legal framework will be continued in the next Chapter.

Chapter 7

The Peculiar Case of the Vanishing Comparator

In analysing the strange death of Indirect Discrimination we have, so far, focussed on the assertion that this formal duty was unnecessary because of its alleged equivalence to Reasonable Adjustments. In the 14 year consensus after 1995 there was a further aspect of the DDA which persuaded some to almost celebrate the legal deficit of Indirect Discrimination. This was the DDA concept of Disability Related Discrimination. Yet this concept was to die also in the Equality Act. This chapter continues this investigation into a further death of a key legal instrument, the comparator, a mechanism which has facilitated discrimination law for over 20 years. We will answer two further questions. Why was the resurrection of Indirect Discrimination inextricably linked to the peculiar case of the vanishing comparator? We also examine another paradox. Whilst the 1995 legislation arose from successful political campaigning, why did advances in the 2010 reforms owe just as much to a legal defeat?

We must initially reconsider the first pillar in our five pillar discrimination template, Direct Discrimination. This was defined as 'less favourable treatment on the grounds of a personal characteristic'. So in the original Sex Discrimination Act, Direct Discrimination was less favourable treatment because of his or her sex. In the Race Relations Act it was less favourable treatment on grounds of race. So the test was a 'but for' test. If Person A was treated less favourably than Person B and this would not have happened 'but for' his or her sex, this was illegal. This is the longest standing and most established aspect of discrimination law and has persevered, largely undisturbed, into current legislation.

Including an unlamented concept of Direct Discrimination in the 1995 disability reform was problematic. Considering Direct Discrimination in the SDA and RRA with regards to an application to be a bus driver was relatively straightforward. You cannot bar an application on grounds of gender or his or her race. What if the applicant is blind? In law, it is not enough to resort to the common sense, and whilst the absurdity of a blind bus driver is obvious, the situation is less clear across the spectrum of visual impairment. For example, could a colour blind person claim discrimination if precluded from employment as a bus driver?

In legal terms we would first have to establish if the potential blind bus driver would be entitled to protection under the DDA. This would require either registration as sight impaired, ensuring automatic protection, or alternatively to demonstrate that their visual impairment had a 'substantial, long term, adverse effect on their day to day living'. Assuming that a visually impaired person could prove disability in either way they could be defined as disabled. This presented the drafters of law with a problem. Logically the existence of registration as a severely sight impaired person should help disqualify, and not help a person's employment as a bus driver. An unaltered definition of the Direct Discrimination clause could perversely increase the rights of would be blind bus drivers.

To redress this difficulty, in Part Two, Section five of the DDA, the drafters removed the concept of Direct Discrimination and replaced it with 'Disability Related Discrimination'. This introduced a defence where less favourable treatment could be justified. The justification was only allowable **'only if, the reason for it is both material to the circumstances of the particular case and substantial.'** What constitutes 'material', and 'substantial' continues to occupy Tribunals and will be discussed in the next chapter when we revisit the case of Sue Williams.

For now we have to consider how the introduction of this justification defence created a legal mechanism, whereby a would-be blind bus driver could be legitimately discriminated against and excluded from employment. Although the possibility of lodging a complaint against London Transport on the grounds of less favourable treatment remained, there could be confidence that a justification defence, which was material and substantial to the case could be made. Disability Related Discrimination as a legal concept allowed then a recognition that a blind person is entitled to protection under the Act. It could allow that the blind applicant had been treated less favourably but crucially also allowed a framework where an assessment could be made as to whether this treatment could be justified. So our would-be blind bus driver finds the application justifiably blocked because of the material, substantial factor of danger to passengers and other road users. So the DDA, unlike the SDA and RRA introduced, for the first time, the concept of justified Direct Discrimination against a protected group through the provisions of Disability Related Discrimination.

Yet, as we have seen in the previous Chapter, The European Equal Treatment Directive of 2000 specifically outlawed Direct Discrimination against disabled people. This directive was duly transposed into the DDA in 2003. In the DDA Amendment Regulations 2003 Section 3 subsection (5) it states:

> **'A person directly discriminates against a disabled person if, on the ground of the disabled person's disability, he treats the disabled person less favourably than he treats or would treat a person not**

> **having that particular disability whose relevant circumstances, including his abilities, are the same as, or not materially different from, those of the disabled person.'**

How can we understand this? Are we back to the blind bus driver? Well the blind bus driver is catered for in the passage '**....particular disability whose relevant circumstances, including his abilities, are the same as...**' This focus on abilities as well as disabilities allows the preclusion of the blind bus driver. The relevant comparison here is that the blind bus driver has to be compared against the abilities of the sighted bus driver. This is a fine but important legal distinction. Given the similarity to some aspects of Disability Related Discrimination what was the point of reaffirming this form of Direct Discrimination? After all it does not help the blind applicant to become a bus driver. However, the principle does become important when considered in relation to discriminatory actions fuelled by prejudice. If an employer refuses to employ a blind person through prejudice, fear or any other negative belief, this became clearly unlawful. As a result of this Direct Discrimination provision, disability was now included alongside race and sex where negative actions arising from prejudices became explicitly prohibited. No justification defence is available to an employer exhibiting these attitudes. It is illegal for an employer not to consider a blind person for employment simply because, for example, they consider blindness to be abhorrent, or because they believe them to be untrustworthy or unreliable.

So after 2003 we have two related but distinct prohibitions of Disability Discrimination. Direct Discrimination, for which there could be no justification defence, and Disability Related Discrimination, for which there could be a justification defence provided this was both material and substantial to the case.

Some argued that this doubled barrelled protection was sufficient to overcome the Indirect Discrimination deficit. For example, McColgen argued that Disability Related Discrimination compensated for the lack of an Indirect Discrimination clause. She argued that this made the Disability Discrimination text legally stronger;

> **'Uniquely, the Act does not employ the concept of Indirect Discrimination, but defines 'Disability Related Discrimination' (a term coined by the Disability Rights Commission) in some ways more widely than 'Direct Discrimination' as less favourable (and unjustified) treatment for a reason which relates to the disabled person's disability, as distinct from less favourable treatment on the grounds of sex etc. This form of discrimination being subject to justification.'** (McColgen 2005 P 562).

McColgen's optimism is based on The Court of Appeal's clarification of the Disability Related Comparator. The concept of the 'Comparator' was introduced in Sex and Race legislation to provide a legal mechanism where unfavourable treatment could be assessed against the treatment given to another real or hypothetical person. The notions of appropriate and hypothetical comparators have been frequent visitors to Tribunals and Courts. They have been amongst the most complicated parts of discrimination law. In order to assess our current context we need to consider two landmark Disability Related Discrimination cases.

In 1999 the application of the Disability Related Comparator was determined in Clark v TDG Ltd (t/a Novacold) [1999] EWCA Civ 1091. Although an employment case, the rights of guide dogs owners to enter a café had, surprisingly, a defining influence.

Lord Justice Mummery acknowledged the complexity of the issues by stating that if anybody considers the case straightforward they have probably not understood the law. Darren Clark injured his back whilst working in a Novacold frozen food factory. He was then dismissed after spending 16 weeks off sick. Novacold concluded that there was no prospect of his return to work in the near future, and that they had no alternative work available.

Mr Clark claimed unfair dismissal under the Disability Discrimination Act. He felt that the company should have held his job open pending recovery and that they had made insufficient efforts to identify an alternative post and so had failed to make a Reasonable Adjustment.

The case revolved around a consideration of who should be the hypothetical comparator to assess whether the treatment was unfair. The contention of Novacold was straightforward. They argued that if, hypothetically, somebody else had been absent from work for reasons such as sickness, misconduct or incompetence for 16 weeks then they too would have been dismissed. They argued Mr Clark had no grounds for complaint as he had not been treated any less favourably than any other employee who is absent from work for this time.

In his judgement Lord Justice Mummery agreed that Mr Clark was disabled as defined by the DDA. The next consideration went to the nub of the case. Was Mr Clark dismissed for a reason relating to his disability? If so, did Novacold treat him less favourably than they would treat others to whom that reason would not apply?

The **phrase 'less favourably than they would treat others to whom that reason would not apply'** is an awkward construction. It causes confusion because of the use of a negative 'not apply' at the end of it. However Mummery's concern is the causal link between the disability and the reason for dismissal. Crucially, having established this causal link, with whom should Mr Clark be compared in order to establish whether he has been treated less favourably?

Mummery explained his legal reasoning. First he considered Novacold's defence of their actions;

> **'First, the existence of "a reason" for the treatment (the dismissal). Second, the causal link between the reason and the disabled person's disability. It must be a reason "which relates to the disabled person's disability.'**

Thus 'that reason' embraces the significant causal link to the disability. The person to whom 'that reason' would not apply would be one who, like the disabled person, is incapable of performing his job, but for a reason which does not relate to disability. This is the interpretation favoured both by the Employment and Appeal Tribunals.

However Mummery was disturbed by the implications of using this kind of comparator. Under this comparator Mr Clark's disability became almost irrelevant as he is compared to somebody who has, for example, simply missed work for reasons of misconduct or sickness. Disability became then, legally equivalent to sickness and misconduct.

This view did satisfy formal equality, Clark was after all, treated entirely equally with another person who may have missed work for reasons of sickness or misconduct. However Mummery did not believe Parliament intended to enact legislation which caused a disappearance of a positive approach to disability.

He argued that the DDA was a completely different legal instrument to the SDA and RRA, and, in this case at least, the reference to these Acts and the principles developed from them are not helpful. The main drive of these Acts had been to construct equality of treatment between men and women and between members of different races.

The intention of the DDA was somewhat different. The DDA established principles which allowed disabled people not just to be treated equally, but more importantly, to be treated differently.

Lord Justice Mummery looked for guidance as to the intention of the DDA by referring to the comments of William Hague during the second reading of the Disability Discrimination Bill. At this stage Hague attempted to reassure the House about the deficit caused by the exclusion of Indirect Discrimination;

> **'The Bill is drafted in such a way that Indirect as well as Direct Discrimination can be dealt with. A situation where dogs are not admitted to a cafe, with the effect that blind people would be unable to enter it, would be a prima facie case of Indirect Discrimination against blind people and would be unlawful." (253 HC Official Report)'**. (BAILII (A) Undated).

By reference to this passage Lord Justice Mummery was able to make some general inferences about the role of the comparator.

He commented;

> **'Consider his example. If no dogs are admitted to a cafe, the reason for denying access to refreshment in it by a blind person with his guide dog would be the fact that no dogs are admitted. That reason "relates to" his disability. His guide dog is with him because of his disability'**
>
> **In the Novacold interpretation of the comparison, the blind person with his guide dog would not be treated less favourably than the relevant comparator to whom that reason would not apply, would be sighted persons who had their dogs with them. There could not therefore be any, let alone prima facie, discrimination."** (BAILII (A) Undated).

Lord Justice Mummery rejected that this could have been the intention of Parliament. He pointed out that the Minister specifically stated that a refusal to allow a guide dog into a café would be a prima facie case of Disability Discrimination. He discerned a different implicit definition of the comparator in Hague's remarks;

> **'It could only be a case of less favourable treatment and therefore a prima facie case of discrimination, if the comparators are "others"**

> **without dogs: "that reason" for refusing access to refreshment in the cafe would not apply to "others" without dogs'** (BAILII (A) Undated).

So in the case of the guide dog owner who complains of discrimination, the comparison was not another sighted person with a dog. If that was so then guide dogs would be barred from cafes as there was no less favourable treatment. Instead the disability related feature of the comparison had to be set aside. The valid comparison was not sighted people with dogs, but sighted people without dogs. The essential point is that sighted people did not need to take a dog to a café to access the café services. The blind person did need to use a dog because of their disability. For comparison then the disability related feature had to be set aside. Unless the comparison is this way around, with the disability related feature removed, there are no grounds on which the guide dog user can claim the intended right to use the café. The guide dog owner is compared with sighted people who do not need dogs. This way around the discrimination against the guide dog owner who is refused access was clear. Sighted people are being allowed access, but the blind person with a dog cannot access the service.

Extending these principles to Clark the valid comparison was, therefore, not another worker who has had 16 weeks sick leave or has been absent from work. He has only had this period off work as a result of a disability created whilst he was working for Novacold. The disability related feature in this case was the 16 weeks that he had spent away from work. Removing this feature resulted in a completely new comparison. Mr Clark treatment has to be compared not with another worker who has been absent for 16 weeks but a worker who has not had any absence from work. Mr Clark therefore won his appeal against both the decisions of the Employment and Appeal Tribunals (BAILII (A) Undated).

The success of Clark at the Court of Appeal was the first landmark case to determine the legal use of the comparator in Disability Discrimination law. It was a difficult case and the result was certainly a positive one for disabled employees. From Clark v Novacold the concept of protection for disability related leave afforded disabled workers considerable protection from dismissal. The findings may not have been intuitive but Lord Justice Mummery's analysis provided a convincing rationale for constructing comparators in this way. The biggest argument to support this construction was the realisation that if the opposite view was taken, then most of the intention of the 1995 Act would have been undermined. It is not helpful to treat disabled people equally with non-disabled people. The simple comparison test of equal treatment would not work. If, for example, a blind worker have equal access to a computer on the same terms as a sighted person they would not achieve equality but remain disadvantaged. The blind workers need different, potentially unequal treatment. They may need special software and a more powerful computer. They may require different accommodation, possibly more office space for a support worker, or may require taxis for mobility rather than public transport. The essential point is that disabled people, to achieve equality of outcome, may have to be, treated differently, not equally, and may have to be treated more favourably.

The positive interpretation of the comparator test in Clark v Novacold held sway for most of the first decade of the millennium. Whilst unpopular with employers the judgement became an accepted part of discrimination law. It helped inform the positive concept of Disability Related Discrimination expressed by legal commentators such as McColgen.

In 2008, out of the blue, the House of Lords overturned the principles established in Clark. Although the case related to housing, the dismantling of the comparator principles set out in Clark, meant that within months it had been applied to all sections of the DDA, including employment cases.

The case which undermine disability employment rights was London Borough of Lewisham v Malcolm [2008] UKHL 43). Mr Malcolm was a council tenant who suffered from schizophrenia. He stopped taking his medication and his condition deteriorated. During this time, he sublet his flat in breach of his tenancy agreement. The council evicted Mr Malcolm despite his claim that his behaviour was caused by lack of judgement whilst in an episode of schizophrenia. He argued that the Council's actions amounted to Disability Discrimination as they made insufficient allowance for his schizophrenia.
(Cooke 2008).

In order to establish any discrimination, the Lords had to determine a comparator. Under Clark there was no need for the comparator to be in the same or similar circumstances as the disabled person. The disability related feature could be excluded from the comparison. Therefore, the comparator would be a non-disabled tenant who had not sublet. As the Council would not have sought possession from a tenant still resident, it would be possible to show clearly that they had treated Mr Malcolm less favourably by requiring him to leave his flat as he had a disability underlying his unwise actions. However, by a 4-1 majority, the House of Lords held that the correct comparator was a person who was in similar circumstances as Mr Malcolm. That is to say a non- disabled person, who had also breached his tenancy agreement by subletting his flat (BAILII (B) Undated).

The effect of this judgement was that Mr Malcolm's disability was made irrelevant and the Council did not have any duties to treat him differently. In effect the Lords sided with the rejected comparator definition articulated by Novacold in 1999.

The effect of this change was that it became harder to show that employers were treating disabled people less favourably. Returning to Novacold it was now the case that if an employee is dismissed because of sickness absence exacerbated by disability, they were now compared to a non-disabled person having equivalent sick leave.

A further aspect of the Malcolm case is that the Lords judged that liability for discrimination can only arise if there is knowledge, or should be knowledge of a disability. This overturns previous case law that discrimination could occur without explicit notification of disability if it could be reasonably inferred.

This judgement was controversial. Anna Lawson argued that the Lords had, at a stroke, made the capacity to claim disability discrimination vanishingly small by reversing the Guide Dog test. After Malcolm, a blind person could no longer claim Disability Related Discrimination if prohibited from entering a café because of their guide dog. Only the narrower and less certain legal remedy of Reasonable Adjustments was available. (Lawson 2008 p 90).

The Government also realised that the legal intent of the Disability Discrimination Act was undermined by Malcolm, and began consultations on rectifying the damage in the new Equality Bill (EHRC 2009), (Parliament 2009). This consultation recognised that, in the light of Malcolm, excluding disabled people from protection from Indirect Discrimination was now unsustainable. Hague's reassurance as to the intent of the DDA in relation to Guide dog owners and other disabled people was now in tatters.

The Lords, in Malcolm, had swept away any grounds for his assurance that disabled people were already protected from Indirect Discrimination. The Government now had no legal justification for withholding Indirect Discrimination protection from disabled people. The Malcolm case had made the prospect of a successful challenge in the European Court of Justice more likely. As we shall see in the next chapter, the European Court had already intervened to force the

UK government to increase the scope of protection provided for people associated with disability.

So in the end the strange resurrection of Indirect Discrimination protection for disabled people was achieved not through militant action or campaigns in the streets, but instead through legal defeat in the Lords. It is a testament to the unpredictability of events that a Government which had in 2007 insisted it was impossible to institute Indirect Discrimination protection for disabled people had by 2009 celebrated its inclusion in the Equality Act.

But what of the comparator test? We have had two radically different interpretations of the comparator in Malcolm and Clark. Which comparator was to win the day in the Equality Act? Disability campaigners certainly argued for Malcolm to be reversed and Clark to be reinstated. However the comparator test was turning out to be more trouble than it was worth. Whilst the Clark interpretation was positive for disabled people, it was regarded as negative for employers. It is certainly not intuitive that a valid comparison for somebody who had been absent for 16 weeks would be somebody who has not been absent at all. The comparator test, rather than helping to illuminate issues was making life more difficult. Whilst a comparator was retained for cases of Direct Discrimination, quietly, and without fanfare, the Government arranged for the comparator test to vanish in cases of Section 15 Discrimination arising from disability. We now had the peculiarity of the vanishing comparator to add to the strangeness of the death and resurrection of Indirect Discrimination.

In the Equality Act the concept of Disability Related Discrimination has been replaced by a new concept **of 'Discrimination arising out of disability'**. The terms of the grounds are also different as we now have discrimination 'because of disability'. The reasons for these amendments in terms will be discussed in the next chapter by reference to further key cases. This time, the results were more favourable to the interest of disabled people and visually impaired people in particular.

Chapter 8

Where to Stand on the Grounds?

Catch 22 and a Paradox Revisited.

We have addressed some of the social, economic and political pressures which first underpinned and then inhibited the implementation of Discrimination Law. I argued that we could trace these tensions in the Catch 22 underlying the attempts to enact reform in the 1970s. These tensions were illustrated by the unanswered question 'whatever happened to the Race Discrimination Act'?

In this chapter we return to this theme of paradox and analyse specific tensions in Disability Discrimination Law. This time there are three organising questions. The first is why was the model of Justification adopted in the UK Court, in the end, not justified? The second is why is disability more legally equivalent to Race rather than Sex in Discrimination Law? Insights gained from this analysis, in turn, lead us to a further Catch 22 paradox. Why does victory in Employment Courts create perverse pressure for the continued unemployment of visually impaired people?

We must first continue with our review of the Justification defence. We have described the requirement to prevent irrational pressures on employment decisions through the extreme example of a would-be blind bus driver. We reviewed how Justification could permit Disability Related Discrimination provided it was material and substantial.

In 2001 the Court of Appeal heard the landmark case of Jones v Post Office [2001] IRLR 384, which was to become an authority on the parameters of Justification. Jones was a diabetic Royal Mail driver who had initially controlled his condition by diet. Royal Mail's Occupational Health Service concluded his risk of hyperglycaemic attack had increased after he started administering insulin injections. As a result Royal Mail removed Mr Jones from driving duties. Mr Jones made a complaint of unfair dismissal on grounds of Disability Discrimination. At the Employment Tribunal, he provided alternative medical evidence from both his GP and his consultant which attested that he was competent to drive safely. After an examination of conflicting medical evidence the Tribunal were persuaded to uphold Mr Jones claim as they considered the medical evidence he assembled had more credibility.

Royal Mail successfully appealed to the Employment Appeal Tribunal and Mr Jones submission to the Court of Appeal, in turn, was dismissed. The Court determined that a tribunal could not **'substitute its own appraisal'** for a reasonable view held by an employer. The Tribunal had erred in concluding that the medical evidence provided by Mr Jones' GP and Consultant carried more weight. At the time Royal Mail made the decision to withdraw Mr Jones from driving duties, it had not availed itself of reports from Mr Jones' GP or Consultant. The Court of Appeal determined, however, that Royal Mail was not required to make exhaustive medical investigations into the impact of Mr Jones' diabetes. The question was whether, at the time, it was reasonable for Royal Mail to take this decision, given the information provided by their Occupational Health Service.

The Court of Appeal set a low bar for Justification. In assessing Justification the Tribunal should had confined itself to the facts known, at the time, to Royal Mail and not the totality of evidence now available. The Tribunal had to perform a narrower assessment, whether the decision Royal Mail had made was reasonable in the circumstances. More controversially the Court decided that to test the reasonableness of Royal Mail's actions, the Tribunal should have confined itself to whether Royal Mail had completed a full risk assessment which was not 'irrational'. The Tribunal may not have reached the same decision or taken the same steps as Royal Mail but this was not sufficient to deny material and substantial Justification (BAILII (A) Undated).

So the Tribunal should have confined its deliberations to a narrower judgement of whether Royal Mail's use of an Occupational Health Medical Report could be considered irrational. This is a much lower test for reasonableness. The Tribunal was removed from direct consideration of the case to a narrower assessment of whether Royal Mail actions were illogical and not just unfair. The Court of Appeal was supportive of Royal Mail's prioritisation of Health and Safety over support for a disabled driver, and concluded their actions had been reasonable in the circumstances.

Jones set a low bar for employers but a high bar for disabled employees. Cases became harder to win if employers could justify any actions that were not 'irrational'. In 2002 the Disability Rights Commission tried to put a brave face on Jones by advising disabled people not to 'despair'. They highlighted that the Court had also confirmed employers had to complete a risk assessment before taking decisions which were adverse to the interests of disabled employees

(DRC 2002 P 5-6). Despite this, Jones was a legal setback to potential future disability discrimination actions.

Jones is then the context for us to return to the case of Williams v J Walter Thompson Group Ltd [2005] IRLR 376 CA discussed in Chapter 6. We described then how Ms William, a blind software application developer, had experienced difficulties due to Indirect Discrimination barriers which had prevented her from carrying out her work. Her employers had also declined to co-operate with Access to Work offers of support.

This appeared a case that the Disability Discrimination Act was precisely intended to rectify. Yet JWT initially succeeded in their appeal by citing Jones in their defence of justification for their relative inaction.

Ms Williams was, therefore, forced in 2004 to turn to the Court of Appeal. The precedent of Jones must have given JWT ground for cautious optimism. Ms William's appeal was, however, allowed. In his judgement in 2005, Lord Justice Chadwick confirmed that the original Tribunal was correct and that the Employment Appeal Tribunal had relied too heavily on Jones, concentrating so much on the alleged 'sins of substitution' they had failed to consider the more important aspect of this case. In his judgement Chadwick stressed that this case was not routine and involved special features which distinguished it from Jones. JWT had employed Ms Williams for a specific job in the full knowledge that she was blind and that she would need equipment, software and training to perform her tasks. JWT's knowledge of William's blindness, prior to her appointment, was critical and allowed a separation from the principles established in Jones. In Jones the relevant impairment had increased after appointment. In contrast, JWT's knowledge of Ms William's circumstances, at the stage she was appointed, created different responsibilities. It was, therefore, easier to establish that they had not met their duties to provide Reasonable Adjustment. Ms Williams could reasonably have had confidence in her employer to respond to her need. They had failed to investigate the cost and time involved to train Ms Williams. They had not properly assessed her needs for equipment and software. As a consequence, she was unable to perform tasks for which she had been employed and no other suitable work had been found for her. They had not conformed to their implied contractual terms of trust and confidence and it was held that the original Tribunal had determined correctly that Ms Williams had been constructively dismissed (BAILII (C) Undated).

This case became important, therefore, in establishing an expanded concept of duties to make Reasonable Adjustment. Responsibilities are increased where there is full knowledge of impairment at the point of appointment. Employers needed to consider the Reasonable Adjustments required prior to their offer of employment.

This case was important for visually impaired people for whom, without Williams, Employment Rights would have been thin. However, unsatisfactory features remained. Williams had not overturned Jones. It was confined to circumstances where appointments are made where applicants had pre-existing visual impairment. It could not be cited where visual impairment arises from accident or disease subsequent to employment.

In 2008 the legal defeat of Jones was compounded by the reversal of the Malcolm Judgement. The Lord Justices had created a bleak legal position for disabled people which the Government acknowledged did not represent the intention of legislation (Parliament 2009). The UK also seemed at increasing variance with EU Law.

My view is that the decision in Jones, in particular, was vulnerable to challenge in the European Courts. In the EU Directive 2000/78, the concept of Justification had been articulated, especially in relation to Indirect Discrimination against disabled people. It is worth visiting Paragraph two of this directive;

> **'(b) indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons having a particular religion or belief, a particular disability, a particular age, or a particular sexual orientation at a particular disadvantage compared with other persons unless: that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary'**.

The key phrasing here is 'objectively justified'. Elsewhere in the Directive the Concept of Justification is defined in a limited way which contradicts the broad range offered in Jones. For example, in Paragraph 23:

> **'In very limited circumstances, a difference of treatment may be justified where a characteristic related to religion or belief, disability, age or sexual orientation constitutes a genuine and determining occupational requirement, when the objective is legitimate and the requirement is proportionate.**'

Throughout the Directive, Justification is not seen as a broad range of options for employers but a limited or narrow margin for the allowance of Discrimination or an assessment which has to meet the test of objectivity.

It is arguable that in Jones the Court of Appeal had removed the 'objective' power of Tribunals to assess Justification. Rather than being an exceptional narrow concept, the Court had instead greatly widened the scope of Justification defence for employers by allowing Tribunals only the narrow power of adjudicating against the **'irrational'** actions of employers. Arguably Tribunals had been stripped of powers to make objective assessments in light of all known facts. My view is that the UK parameters of Justification could not be aligned with EU directives.

In the event, no challenge was made to the ECJ on the UK definition of Justification. We cannot, with certainty, know the outcome of such an appeal. We can infer a general attitude, though, of the ECJ from their rulings on another disability related case. This was Attridge Law (A Firm of Solicitors) & Anor v Coleman [2006] UKEAT 0417_06_2012. The extent of positivity exhibited by the ECJ in this case provided some insight to their general interpretation of the Equal Treatment Directive.

Before considering Coleman, we must briefly review the legal background. Coleman's claim involved the concept of Discrimination by Association. The principle of associative discrimination is revealed when people who are friends or family of a person with a protected characteristic suffer negative consequences as a result of discrimination. The first recognition of this principle in UK Law was in the case of Showboat Entertainment Centre v Owens [1984] 1 All ER 836. This case is interesting because it indicated how a neutral and minor variation in the text of law can produce unforeseen consequences.

We can recall that in the template of the first pillar of the 1975 Sex Discrimination Act, Direct Discrimination was defined as **'less favourable treatment on grounds of his or her sex'**. However when the drafters of the Race Relations Act produced their legislation a year later it did not refer to less favourable treatment on the grounds of his or her race. Instead the Act made a slight variation and simply referred to less favourable treatment on **'grounds of race'**. This slight variation in the description of the terms in which discrimination could be described led to the possibility of a wider definition for all race discrimination. There were implications of a possible wider definition for sex discrimination, for protection to disability in Coleman, to the eventual extension of protection from Discrimination Association to all characteristics in the Equality Act.

Mr Owen was a Manager of an Amusement Arcade business called Showboat Entertainment. In 1982 he received instructions that he should not allow young black customers in his arcade. Mr Owen would not comply with his employer's instructions as he considered them to be racist. Showboat responded by dismissing Mr Owen (FRA 2009).

There is no doubt that the instructions given by Showboat were discriminatory and racist. The case revolved though around whether, Mr Owen, as a white man, could claim protection under the Race Relations Act, even though the racist attitude by his employers was to black customers rather than him as the white manager. The Employment Appeal Tribunal found that the wording of Section 1 of the 1976 Race Relations Act prohibited not only discrimination on the grounds of an applicant's race, but also determined that it was necessary to take into account his attitude to race. Mr Owen was indeed protected by the Race Relations Act precisely because it does not refer to 'grounds of his or her race'. Instead a more general phrase of 'grounds of race' is used. This allowed a wider association where people suffering negative consequences arising out of racism could claim Associative Protection, even though the racism may not be directed at them personally. The Employment Appeal Tribunal had regard to the purpose of the legislation when passing their judgment.

> **'are two possible meanings of the words "on racial grounds," we should adopt the meaning which gives effect to the intendment of Parliament, and Parliament cannot have intended that an employee, faced with an unlawful racialist order, would have to choose between complying with such an unlawful order (thereby himself committing an unlawful act) or disobeying the order thereby jeopardising his job.'** (BAILII (B) Undated).

So from 1984 the concept of Discrimination by Association was formulated in UK law. However, this Associative Protection was confined to the arena of race, precisely because the wording of the Race Relations Act was distinct from the Sex Discrimination Act.

Coleman attempted to extend the principle of Associative Discrimination from race to disability by arguing some degree of equivalence between disabilism and racism (Honeyball2007). As in Owen, the claimant was not in the primary group which the legislation was intended to cover. The claimant was not disabled, but a the carer. Ms Sharon Coleman, was a Legal Secretary for Attridge, a law firm in the City of London. She gave birth to a son with significant physical impairments requiring a high level of child care. Her requests for flexible working were refused and she experienced abuse in relation to the condition of her child. After resigning, she brought a claim of unfair and constructive dismissal, alleging breaches of the Disability Discrimination Act 1995, and the Amendment Regulations 2003, introduced in an attempt to ensure compliance with the EU Equal Treatment Directives.

When Ms Coleman returned from maternity leave, she had been treated in a way that parents of non-disabled children would not have been, in that she had not been allowed to return to her existing job. She, therefore, had less flexibility of working hours. She also complained that she had been subjected to abusive and insulting comments about her and her child. Ms Coleman left her job and claimed Constructive and Unfair Dismissal (Wainwright 2008) (EHRC Undated).

Coleman lodged her claim under a third pillar of Discrimination Law, one that we have not, so far, discussed, that of harassment. In making their judgement, the Judges made extensive reference to provisions in the 2000 Directive. These included:

> **'(3) Harassment shall be deemed to be a form of discrimination within the meaning of paragraph (1), when unwanted conduct related to any of the grounds (my emphasis) referred to in Article 1 takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment'**

Article 3 provides:

> **'(1). This Directive shall apply to all persons... in relation to: c) Employment and working conditions.' (Directive 2000/78/EC), (Europa. EU 2000).**

In exactly the same way as defined in Owen, a quarter of a century before, the ECJ gave a wider definition of the concept of 'Grounds' in the Directive. As in the Race Relations Act, there is no reference to 'grounds of his or her disability'. Instead 'Grounds' is left unattached to the person with the specific protected characteristic and therefore interpretable as a wider concept (BAILII 2006).

Coleman's successful appeal to the ECJ proved that Disability was legally equivalent to Race as a category in which Discrimination from Association could be prohibited. After the Coleman case, however, it became impossible to sustain a position where only Race and Disability were categories deserving Associative Protection. In Article 3, every protective characteristic was listed and consequently it was necessary to extend Associative Discrimination not just to Disability but to Sex and all the other protected characteristics in the Equality Act.

Coleman's importance is not just in the welcome extension in the rights of the wider community surrounding disabled people. It is also important in demonstrating the scrutiny that a creaking Discrimination Law framework was likely to experience from Europe. It provided encouragement for disabled people by demonstrating a legal mechanism by which the European Directives can be shown to enhance protection from disability discrimination.

The Coleman case was a welcome extension of rights for visually impaired people. It reaffirmed principles of social solidarity in Discrimination Law, encouraging support for disabled people. It is a rare exception to the individualism prevalent in the rest of discrimination legislation.

After 2008, for a Government presiding over the damage wreaked by their Lord Justices in Jones and Malcolm, it must have seemed that it would only be a matter of time before there would be further challenge in the European Courts. The response, in the Equality Act, was not only to reintroduce Indirect Discrimination, not only to drop the need for a comparator in discrimination arising out of disability, but also to extend Associative Discrimination to all protected characteristics, and stipulate firmly that Justification had to be objective in all the circumstances. The burden of Jones, which disabled people had experienced since 2009, has now been lifted in discrimination arising from disability. The narrow definitions of material and substantial are now replaced by the Equal Treatment phrasing of proportionate means of achieving a legitimate aim. The Labour government considered this had redressed the damage done by Malcolm. Indirect discrimination protection was intended to tackle the deepest and most persistent disadvantage faced by disabled people. The resurrection of objectivity in both the Tribunals and Courts redressed negative impact of Jones (parliament 2009).

Yet after nearly three years of the Equality Act, there have been no reported cases of Indirect Disability Discrimination. There have been two reported cases of Section 15 Discrimination arising out of disability. In 2011 McGraw v London Ambulance Service NHS Trust ET/3301865/11, an ambulance driver unsuccessfully argued that his employers should not have dismissed him for his abuse of 'laughing gas' as they had not taken proper account of his disability, that is, depression, in affecting his conduct. The tribunal found that in the light of evidence of substance abuse that London ambulance had exercised a proportionate means of achieving a legitimate aim. In contrast Williams v Ystrad Mynach College ET/1600019/11 was a case involving the compulsory transfer of a disabled lecturer, whose level of sickness absence concerned his managers, to less favourable terms. The ham-fisted management of this case, including a refusal to consider the Lecturers request to work on existing terms for reduced hours and pay convinced the Employment appeal tribunal that the College had not exercised proportionate means to achieve a legitimate aim (Xpert HR 2012).

The initial evidence from this trickle of cases is that the new law may be technically competent to respond to issue of discrimination arising out of disability. The problem remains that only a trickle of cases are reported. The RNIB continue to be litigation adverse despite the plethora of examples where groups and individuals are discriminated against. Assemble any group of visually impaired people and they will produce lists of issues including problems with work, finding work, transport, libraries, the NHS and DWP services and information and media services.

Without enforcement discrimination law has reduced impact. If the most comprehensive set of legal instruments to which visually impaired people have ever had recourse are to make a difference then cases will have to be fought and won. The RNIB, as the major visual impairment organisation, must address its relative indifference to Discrimination Law. These laws are the result of the campaigning by generations of blind, partially sighted and disabled people. We are in uncertain economic and political times and negative reform of the Equality framework is not inconceivable. We should be using the law before we lose it.

However there is a deeper sense in which cases such as Williams and Coleman, create perverse pressures for visually impaired people. The welcome for these legal victories are circumscribed by paradoxical concerns around their general impact.

A cursory Google search will reveal the typical commentary that Williams provoked in the legal community. The *Veitch Penny Employment Law Update* is typical;

> **'This case is noteworthy because the Court of Appeal felt that an important point in reaching their decision was that the company had employed Ms Williams knowing of her disability. This would suggest**

> **that employers would need to consider the Reasonable Adjustments required prior to making the offer of employment (at a point when they are unlikely to know litter about the disability, and practically, will be more easily excused for failing to make adjustments). It has been commented that this could mean that fewer disabled candidates would receive job offers, which would clearly be against the social policy aim behind the legislation'** (Veitch Penny 2005).

This perception returns to the 'free market' idea that the employment of disabled people is a form of charity, the arguments against which the campaigners for the Disability Discrimination Act had to fight. Yet despite arguments against employment for disabled people based on notions of charity, it is naive to suggest that there is no business impact of Discrimination Law on employment decisions.

Williams, in particular, seems to demonstrate an increase in the risk and cost of employing visually impaired people. Certainly the negative outcome for JWT arising out of their inept recruitment of Ms Williams was considerable. Not only had they to pay damages, they employed her for two years with no productive outcome. They had also to meet the costs of their defence and were in an expensive cleft stick if they were to comply with their Adjustment Duty. The action of Lotus in designing an inaccessible software application left them with a massive adjustment bill exceeding £100,000. It would be a brave HR manager who would have advised JWT in 2005 to employ a further blind Software Developer.

It is unlikely that many visually impaired people will have sympathy for JWT, but in a financial sense it is possible to see how both they and Williams are victims in this negative dynamic driven by the failure to implement Indirect Discrimination protection.

Beyond the difficulties of the non-implementation of Indirect Discrimination, Williams, and to an extent Coleman, demonstrate a further perverse Catch 22 paradox at the heart of Disability Discrimination Law. The employment rights of individual visually impaired people create perverse disincentives for their employment. Williams, in particular, was a Pyrrhic victory. It tended to increase the negative perceptions of employability. Formally in the process of recruitment it implied that there needed to be an extra stage of assessment needed for the practicality of Reasonable Adjustment prior to the offer of an employment contract. The potential risk of Williams is that it erected a barrier rather than removed it.

Coleman, welcome as a victory in its own right, creates hidden pressures for, smaller firms in particular, not to employ people with significant caring responsibilities. There is a social and economic need for care but competitive business pressures will tend to deter firms from adopting responsibility to meet these wider social objectives beyond their business goals.

Within this Catch 22 there is a yet deeper paradox, exposed by, but not resolved by the Disability Rights Commission. This is how they describe the problem in 2001;

> **'Typically, an applicant must argue simultaneously that the consequences of his or her condition for daily life are serious enough to count as a disability, yet not so serious as to justify dismissal, non-recruitment or other unfavourable treatment'** (DRC 2001 p 6).

So a visually impaired person has to demonstrate their need for help but at the same time that their employment makes business sense for individual employers. This is the tension at the heart of all current disability employment.

This is the practical outcome of the flawed legal mechanism developed by the Disability Discrimination Act. In the end expensive and time consuming litigation had, at exhausting cost, resulted in the partial protection of rights of visually impaired employees. Yet this legal mechanism had not in the end delivered complete satisfaction to either party.

From the employer standpoint, objective disincentives to the appointment of visually impaired people had been reinforced through the expanded risks of adverse time consuming and expensive draining of resources away from business priorities.

From the standpoint of the visually impaired employee, Ms Williams, the legislation had not worked either. Not only had the legislation failed to prevent her from experiencing the two years of stress whilst she was employed with JWT, but she was subsequently embroiled in four years of litigation, during which it may well have been difficult for her to move on with her life.

So the Discrimination Law achieved today, from 30 years of political and legal struggle and defeat contains at its heart, the Catch 22 paradoxes which have beset it from its very inception. The problem is that our current legal framework stresses the individual and the atomised. There is insufficient social solidarity, with risks of failed employment arrangements falling too squarely on both individuals and businesses.

In the next section of this inquiry I will start to advance proposals for an alternative legal and social policy framework. I will investigate strategies which will counter act paradoxes, breaks with the dead end of individualism, and provides rational support for social solidarity.

Part 3

Resolving Paradoxes

Chapter 9

Burning A Bridge Too Far

This inquiry began by reviewing the social, economic and political context shaping the creation of UK Discrimination Law. In the second part we reviewed the legal implementation of the Disability Discrimination Act and the delivery of reforms in the 2010 Equality Act. Throughout the first and second part we revealed paradoxes and contradictions which diminish the effectiveness of this legal framework. In this final part, whilst continuing to identify barriers to the effective employment of visually impaired people, these will now provide the material not just for theoretical reflection but also the context for constructive, pragmatic reform.

Over the following two chapters we will consider an arm of Discrimination Law which arguably underlies its entire effectiveness, that of enforcement. First we will review tribunal enforcement before, in the next chapter, turning to more modern theories of Positive Duties. We will finally conclude with proposals for a radical alternative model of Positive Enforcement. In this chapter our organising question is not a paradox but the following vicious circle. Why do historic systems of redress tend to increase barriers to enforcement?

Enforcement can operate on a number of levels. For example, even a theoretical threat of litigation can help interest managers in the development of personnel policies and procedures. The problem is that often these are only a paper tiger without transformative substance. The Hepple Report concluded that employers often paid 'lip service' to such procedures and were frequently more interested in policy documents than genuine equality (Hepple et al 2000 Paragraph 1.37). Hoque and Noon's research concluded that this phenomenon could be described as the 'empty shell' hypothesis where a plethora of formal policies documents failed to deliver sufficient impact on conduct (Hoque and Noon 2004). Cunningham's research also pessimistically concluded that managers failed to bridge the gap between their positive rhetoric and actual discriminatory practices (Cunningham, 2004).

These empty shells required more substance. Despite our current expanded range of rights, powers and Positive Duties, enforcement is still centred on the Tribunal or County Court. There are long standing concerns that these litigation arenas do not deliver effective enforcement (Hepple 1992), (Fredman 2008 p 10-20). In an effort to redress this problem, two Government reviews prepared the grounds for the 2010 Equality Act. Both the Discrimination Law reviews and Equalities Review concluded that previous Discrimination Law had not worked (Cabinet Office 2007 (A) p2). (DCLG2007). The continued employment exclusion of visually impaired people was an example of this erstwhile failure and underpins a case for reform. We need, before mounting this case, to clarify current arrangements.

Five Generations of Enforcement

Bob Hepple, long regarded as a key opinion former on Discrimination Law, usefully provides a historical schemata which describes five generations of enforcement (Hepple 2010). This historical schema is optimistic and describes increasing enlightenment and progress in the enforcement of discrimination law. This historical analysis can also be described as a variant of Whig History. Hepple's grounds for optimism have been disturbed, since 2010 with the advent of the 'Red Tape Challenge' which has sought to roll back aspects of Equality law reform (Home Office (A) 2012). Nevertheless his schemata provide a useful methodological structure with which we can support our analysis.

The 1965 Race Relations Act introduced the first generation of enforcement. This was the first legal attempt to legally enforce norms of equality, essentially that like must be treated alike. The enforcement mechanism was the Race Relations Board, whose main remit was to seek conciliation. Only when conciliation failed would the Board refer to the Attorney General to seek an injunction. In addition, the scope of the 1965 Race Relations Act was narrow and confined to public resources such as hotels and public houses.

The second generation of the 1968 Race Relations Act was also underpinned by a conception of formal equality. This Act extended protection to employment, housing and access to goods and services. Whilst the Race Relations Board continued to organise conciliation, they could now independently organise injunctions without the involvement of the Attorney General (Hepple 2010).

The third generation arrived with the passing of the 1975 Sex Discrimination and 1976 Race Relations Acts. Hepple describes the introduction of protection from indirect discrimination as the start of change from the right to 'formal equality' to 'substantive equality'. This is the first suggestion that Discrimination Law may require more than simply treating like people alike. A policy, practice or procedure became illegal, even if applied equally, if it discriminated more against one group than another.

Enforcement was also revolutionised with the first right for an individual to seek compensation at Tribunals, or County Courts in the cases of access to goods and services. The Race Relations Board was replaced by the Commission for Racial Equality, and the Equal Opportunities Commission addressed Sex Discrimination. These boards no longer heard individual cases, though they could support applications to Tribunal. Instead they focussed on strategic enforcement, including written guidance for employers and service providers (Hepple 2010).

The Disability Discrimination Act, although 20 years later, is also within the third generation. The new duty to provide Reasonable Adjustment is considered equivalent to existing Indirect Discrimination duties. Here also, as we have seen, it was impossible to organise enforcement by treating like alike. The concept of Reasonable Adjustment was precisely founded on the realisation that disabled people needed different treatment in order to achieve equality of outcome.

Hepple characterises the fourth generation of equality law as arriving in 1997 with Article 13 of the Treaty of Amsterdam. The resultant directive on e 27 November 2000, established a framework for equal treatment in employment and occupation. The fourth generation is characterised by the move towards comprehensive equality legislation, with an increasing drive to represent discrimination as a matter for common enforcement across all protected groups. This fourth generation underpinned the 2006 Equality Act which created a single Equality and Human Rights Commission, and a unified Equality Act in 2010.

Whilst the fourth generation creates a comprehensive, single framework, there are no significant changes in enforcement mechanism. Enforcement is instead supported through simplified law which promotes compliance. It is with the fifth generation that further formal duties in enforcement are advanced.

The fifth generation is characterised by the addition of pro-active Positive Duties. Hepple enthusiastically welcomes Positive Duties, describing them as a new mechanism for 'Transformative Equality'. The aim of Positive Duties is to extend rights from protection against negative action, that is, to react to discrimination, to pro-active promotion of equality. He argues that this mechanism will transform the lives of people who have faced erstwhile discrimination (Hepple 2010).

If we consider Hepple's model of five generations of Discrimination Law we see that each successive generation does not necessarily supersede its predecessor.

In Hepple's schema only the first two generations of enforcement are rendered obsolete. In the contemporary enforcement framework is a patchwork of enforcement measures which are variously defined through third, fourth and fifth generational characteristics. Hepple's schema helps us structure our review of the efficacy of enforcement for visually impaired people. It also provides a theoretical context for the logical extension into a sixth generation of Positive Enforcements. In the concluding part of this chapter we will consider third and fourth generational enforcement. In the following chapter we will review the fifth generation and advance proposals for a new sixth generational model.

Third Generational Enforcement

In the Disability Discrimination Act disabled people finally achieved access to the third generation of enforcement rights. Individual rights were enforced by application to Employment Tribunals, in the case of work issues, and the County Court for access to goods and services. A successful claim can result in the award of compensation damages against a discriminator.

This right to protection through application to a Tribunal is characterised by Fredman as a ‘negative’ right. It is reactive not pro-active. It enables seeking redress after the fact of discrimination. (Fredman 2008 p10-20). Its main hope for structural change in employment practices is its ability to operate as a deterrent to future discriminatory employer conduct. There is little evidence for its success.

The limited workplace based research into the enforcement employment rights for disabled people points to common difficulties. An Arthritis Care Survey into 1,161 disabled employees revealed employees were often struggling but also often forced to quit work prematurely. Amongst respondents reporting problems 80% cited employer failure to facilitate Reasonable Adjustment as a contributing issue. 85% feared that disability would force a premature redundancy. These dissatisfactions were not resolved by applications to Tribunals (Arthritis Care 2009 p 1). Whilst this research relates only to arthritis there is no evidence of better satisfaction amongst visually impaired people.

Employment exclusion can itself create pressure not to enforce rights at Tribunals. As we shall see, there are no rights of reinstatement or reengagement in discrimination (Lewis (A) 2012 P35). Employment exclusion, preserved by the failure of enforcement, can operate as a vicious circle to exacerbate difficulties. It can make taking up current enforcement rights irrational. Only under the Employment Act 1996 are recommendations for re-instatement or re-engagement possible. Whilst some progress might be achieved by introducing remedies of re-instatement and re-engagement into the Equality Act, this is unlikely to deliver significant progress. Even under the Employment Protection Act, agreed remedies for returning to employment after an unfair dismissal Tribunal Hearing is unrealistic in the vast majority of cases, Tribunals cause a breakdown of trust between employer and employee. In 2010-11 there were only eight orders for re-instatement or re-engagement. This equates to only 0.2% of successful cases or 0.02% of total claims (Ewing and Hendy 2012). This indicates that the Tribunal is an unlikely venue for any reconciliation and positive relationship building between visually impaired employees and their employers. It is not advisable, in the majority of cases, for anybody who values their employment to contemplate a Tribunal.

Disabled employees already face unemployment at twice the rate of the non-disabled. (Cabinet Office 2007 B, 14). 73% of visually impaired people experience exclusion from the workplace (Simkiss 2005). Jobs are precious for a visually impaired employee, anybody who loses their job faces a demographic hurdle to re-enter employment. There are massive disincentives to taking any action which may damage irretrievably the employer relationship.

DWP Research concluded'

> **'The process of taking a case also had a negative impact on some applicants' ability to participate in the labour market. Tensions between the two parties to a case could make it difficult to return to the same job, or even find similar employment with another employer in the same sector'** (Hurstfield et al 2004 P22)

There is some evidence that these exclusionary pressures affect behaviour at work. Employers report better than average attendance records for people with disabilities (EFD 2001). This impression is supported by case study evidence showing disabled people more likely to remain with a single employer (Watson et al 1998). RNIB research suggests that this perseverance and commitment to attendance has less to do with loyalty and more to do with insecurity. Their research concludes;

> **'Throughout the interviews it was evident that users were mindful of the discrimination people with disabilities faced in the job market and this cognisance tended to have a strong influence on users' decisions. This was particularly evident when users were asked whether, in the absence of Access to Work, they would continue in their current job or look elsewhere. Users often expressed reluctance**

> **to look for work elsewhere even when they were unhappy with their current situation. Users felt that it was more difficult for them to obtain jobs than non-disabled peers'** (RNIB 2004 p 96).

Disproportionate rates of unemployment will undermine levels of employees' assertiveness in confronting difficulties. Visually impaired employees may think that jeopardising their employment with a Tribunal claim would simply be burning a bridge too far.

This demographic background is the context against which we must evaluate the Tribunal system. The potentially negative consequences in relationship with an employer must be measured against the ratio of successful applications and level of compensation awarded at Tribunal.

Since their introduction in 1996, disabled people have never enjoyed a high rate of success at Employment Tribunals. DWP research organised by Hurstfield between 1998 and 1999 showed a success rate of 22%. (Hurstfield et al 1999 p 207). Research by Leverton, also for the DWP, showed that by 2001 this had reduced to 19.5% (Leverton 2002 P 12). The latest statistics released by the Tribunal Service for year 2010-2011 shows the success rate little changed, returning to 22% (ETS 2012). Yet these figures, in the absence of wider context, are profoundly misleading. They relate only to the minority of claims which have succeeded in passing successive hurdles to achieve a hearing. Employment Tribunal Service statistics show that in 2010-2011 only 190 of the 6,800 Disability Claims (2.8%) lodged with the Employment Tribunal service were eventually successful at a hearing. Rates across all categories are low. Disability is joined by Race, Sexual Orientation and Religion, also at 3%, whilst Age is even lower, at 2%. The rates for other types of applications are significantly higher. For example, 23% of all redundancy complaints are eventually successful at a full Tribunal hearing. Across all jurisdictions disposed at the Employment Tribunal Service, the average is 4 to 6 times higher than discrimination claims at 12% (ETS 2012 Table 2). The Employment Tribunal Service does not comment on this disparity but it probably indicates a harder task in proving discrimination as opposed to referencing the relatively incontrovertible contractual facts of redundancy settlement.

The vast bulk of disability claims are disposed of before Tribunal hearings. 2,100 (31%) are simply withdrawn. 510 cases (7%) are struck off before the hearing as having no case to answer. If a claimant is successful in achieving a full hearing, the odds are still not good. In 649 (10%) cases the claim fails. To this we must add the 200 claims (3%) which are dismissed at hearing, giving a total of 849

(13%) failed cases. Against this there are only 190 (3%) successful cases (ETS 2012 Table 2).

These low hearing appearance rates are the consequence of procedural hurdles erected by the Tribunals system. Firstly there is a general expectation that in-house procedures are utilised before an application can proceed. Ostensibly this appears a reasonable requirement, yet this adds a potentially daunting barrier before a visually impaired person can achieve any independent assessment of their difficulties. Visually impaired employees, facing likely job insecurity, have to raise complaints in an internal grievance procedure, possibly against the pressure of their entire management and HR hierarchy. Only In a proportion of cases will Union support be available.

Secondly Tribunals are preceded and supported by formal mediation procedures. Yet this mediation arrives after a formal complaint. Referring your employer to Tribunal, even for mediation, is not a step which can be taken lightly.

Finally, passing through internal grievance and mediation procedures will not guarantee a Tribunal hearing. Claimants must first assemble evidence and arguments that will convince a Tribunal Chair that they have a prima facie case for their employer to answer. Only then will the burden of proof shift to an employer.

In relation to Reasonable Adjustment this continues a pattern of a significant onus on a visually impaired employee. If they have not indicated what Reasonable Adjustment they need with sufficient clarity their claim will fall. In establishing this prima facie case the visually impaired person has to show the fact of discrimination but also an outline of how it could have been reasonably avoided.

This situation, for visually impaired people, was outlined in the judgement in Project Management Institute v. Latif [2007] UKEAT 0028_07_1005. This case is reviewed in Chapter 12 but for now we should note that this claim involved a successful discrimination complaint arising out of a refusal by an examination body to allow a blind student to use her Jaws screenreader in their exam. The affect of the Latif Judgement was that, although successful, it added an additional onus on a visually impaired person to gives clear, prior indication of what Reasonable Adjustments are needed (BAILII Undated). The Equality and Human Rights Commission confirms that Latif should still hold under the current Equality Act (Lewis B 2012 p63). Whilst generally the employee only needs to give enough detail for the employer to understand broadly what sort of adjustment is required, Latif indicated that where specialist adjustment is needed, as is often the case with a visually impaired person, using adaptive screen readers and magnifiers and so on, it has to be explained explicitly to the employer.

If the combination of hurdles at an Employment Tribunal do not deliver good odds, the prospect for claimants at Appeal are even worse. Whilst not broken down by category, the Employment Tribunal Service reported that in 2010-2011 only 47 (2.3%) of 2,048 cases at the Employment Appeal Tribunal were successful.

Tribunals are then difficult arenas for visually impaired people, especially as legal aid is not available for representation. DWP Research concluded that this contributed to a generally negative experience of the Tribunal system.

> **'.. for the majority of applicants the longer-term impacts were perceived negatively. Many were left with large legal costs that they could not meet in the short term, even if their case had been successful. Others had found the process so stressful that they said that they would not have taken the case if they had realised what was involved. There were also those who believed that the impact had affected not only their own physical and mental wellbeing, but also that of their friends and family'** (Herstfield et al 2004 p22).

Leggett's 2001 Review rejected Legal Aid in favour of a system of supportive Tribunal Chairs and a range of community sources of support (Leggett 2001 ch. 4) Claimants must seek support from their Trade Unions or, on declining occasions, Commissions. Even in the relative halcyon days of a well resourced Disability Rights Commission, the provision of legal support was rare and available in cases involving legal principle only. (Howard 2006).

The evidence for the influence of representation on the success rate of tribunal claims is unequivocal. Leverton showed applicants represented by a barrister were almost three times more likely to win than those represented by a friend. Applicants represented by solicitors were over twice as likely to win. (Leverton 2002 p11)

This deficiency in support and advice provoked concerns that this was a breach of Human Rights. In 2006 Labour MP Marsha Singh introduced a Private Members Bill to highlight this problem (Parliament 2006). In response the Government asked Michael Gibbon to institute a review. Disappointingly, it called for more mediation and a tracking of procedural cases, but like Legitt, stopped short of recommending funding for representation. He acknowledges that users of the Tribunal Service have a 'low awareness' of how the system works (Gibbon 2007 sec 3.2.5) but fails even to discuss the possibility of resolving this by funded representation.

Appearing without funding for representation disadvantages the 50% of Employment Tribunal claimants who are unrepresented. Research has also shown employers spending on average over four times more than their employees on representation (Renton 2008). The problem with relying on Chair support is that employment law is not just complex, the needs of the claimants may also be complicated. The challenge can be higher for the most impartial Chair. For example, in one tribunal I observed in October 2010, the claimant was a hearing impaired Chinese man attempting to represent himself. He clearly could not hear the Chair's questions and directions properly, and even worse the Chair was struggling to comprehend the claimant accent and diction. The employer, in contrast, was represented and supported by Human Resource Managers. For the employer there was complete comprehension. For the claimant, despite the Chair's best efforts, there was chaos and confusion. Although this is an anecdotal example it does describe what can go wrong for an unrepresented disabled applicant. A skilled advocate, communicating with his client in his first language, could have avoided much of the difficulty.

If third generational enforcement was to achieve not just fairness but effectiveness then greater equality of representation seemed a target for reform. A tweaking of Gibbon's scheme for mediation hearings could have provided at least a partial solution. This could include an adjudication on whether the claimant has provided enough evidence to show that there is a 'prima facie' case. This would make two stages of the Tribunal process into one. The proving of a prima facie case could then act also as verification for funded representation. This 'gate keeping' function would mean that only well founded claims, receive public representational funding. The provision of this earlier stage screening would satisfy any concern that public funds would be misdirected to speculative or ill- conceived claims. This leaves the question of how should this funding be organised? It may be advisable that rather than simply increasing the drain on legal aid funds, a system where a specialist representational service is provided under the auspices of the Equality and Human Rights Commission may be more efficient, cost effective and preferable.

These legal and procedural hurdles, allied to poor outcome statistics, make it more rational for a visually impaired person to welcome mediation and conciliation. In 2010-2011 3,100 (46%) of Disability Discrimination cases were conciliated by ACAS before a Tribunal Hearing (ETS 2012 Table 2). This is a slight increase in the 41% rate identified in 1999 (Hurstfield et al 1999p 401). We may also conclude that in, at least some of the 31% of withdrawn cases, private settlements underlay these decisions.

Successful mediation is likely to increase the prospects for a visually impaired person to retain employment, and to that extent must be welcomed. In nearly half of these applications to Tribunal, it was eventually possible to reach a conciliated agreement, yet surprisingly this possibility was apparently not available in the workplace. Although potentially less adversarial, mediation hearings will still provide stress and anxiety for employers and employees. Residual employer resentment and lack of trust may persevere if they are required to pay compensation to employees.

The availability of compensation even at this earlier stage may be of limited value to a visually impaired person. Gooding was sceptical about the value of these pre-Tribunal settlements. The vast majority of settlements are confidential, but she considers they are likely to be at quite a low-level, reflecting the level of most awards at Tribunal Hearings (Gooding 2000).

If you are in the small minority who succeed in making it to a hearing and in the smaller minority who win, you are unlikely to excite your Bank Manager. In 2010-2011 only four claimants managed to exceed an award of over £50,000. In one case a high payout of £181,000 was achieved. This high pay out artificially raised the average award across all claimants to £14,137. However, most claimants do not achieve anything like this average. The compensation detail for 2010 -2011 reveals that the mode was between £2,000 and £3,000. The Employment Tribunal Service themselves provide a median average of £6,142. These mode and median figures more accurately reflect the scale of pay out than the mean average which is distorted by the exceptional high award (ETS 2012 Table 8).

The 2010-2011 figures reflect the history of low pay outs for disabled people. The Disability Rights Commission reported in 2005 that Reasonable Adjustment compensation averaged only £7,000. Awards in respect of all disability related cases, including dismissal, were larger at £15,888 (DRC 2005). Mean average may again be artificially inflated by the rare high award. Despite the perception created by media reporting of spectacular awards, the chances of a disabled person receiving a life transforming payout is more akin to winning the Lottery.

Even the mean 2005 average of £15,888 and 2011 average of £14,137, are not sums which would encourage a visually impaired person to jeopardise their employment. It is an option as a last 'throw of the dice' for an employee who has already faced dismissal or constructive dismissal.

None of this is new to the Equality Act. From the early days of the Disability Discrimination Act, disabled people were unhappy with even successful Tribunal hearings. Dissatisfied applicants felt they should have received more compensation for stress and injury to feelings (Hurstfield et al 1999 p 25).

It is not surprising that these low compensation levels were insufficient to amend employer practices. Research from the Chartered Institute for Personnel and Development reported 33.1% of CIPD members automatically excluded people with a history of long-term sickness or incapacity. This behaviour was maintained despite the potential of legal challenge (CIPD 2005).

Yet potentially the biggest barrier to successful third generational enforcement is yet to arrive. This is the Coalition plan for charging Tribunal fees from mid-2013. A claimant will need £1,250 to raise a claim of employment discrimination. This will rise to over £2,000 if there is more than one strand of complaint (MoJ 2012 p 83). Application to a Tribunal will then become an expensive gamble with poor chance of success. It seems likely that justice will be inhibited in least some cases by the imposition of these deterrent fees.

The Equality and Human Rights Commission has expressed concern that, by increasing obstacles which hinder people from realising their employment rights, the plans may breach the principle of effectiveness in EC law. They further argued that the plans were a potential breach of Articles 6 and 14 of the European Convention on Human Rights. They argued that by introducing a deterrent to enforcement, these plans contradicted the stated aim of the Equality Act; 'to enable progress towards equality in the workplace'. They suggested that the scheme created indirect discrimination, and were particularly concerned with its impact on disabled people (MoJ 2012).

The Coalition Government has dismissed these concerns and has accorded higher priority to the need to protect tax payers;

> **'In relation to discrimination we do not accept that charging a fee is unlawful under EU legislation. We think that our revised approach will not lead to direct or indirect discrimination and that access to justice is protected via the remissions system we will apply across the fee structure.'** (MoJ 2012 p 24)

It is true that fees will be exempted for applicants receiving unemployment benefits such as Income Support or Job Seekers Allowance. This will help unemployed applicants, presumably lodging a claim for dismissal or constructive dismissal. However only in rarer occasions will support be available for those in work. This funding scheme acts then as part of a system for compensation for employment exclusion rather than as an incentive for employment inclusion.

Surprisingly, visually impaired people may find agreement with some aspects of Coalition policy. The Coalition intends to move away from over reliance on the Tribunals system. They state'

> **'In relation to the possibility of fees deterring individual claimants with the suggestion that this will have wider societal impacts of fewer discrimination... claims, we do not accept that it is only the threat of the employment tribunal that forces business to abide by their legal obligations. The Government supports a wide range of guidance, advice provision and help-lines which help business to observe their legal responsibilities and helps employees to understand their rights.'** (MoJ 2012 p 24).

Interestingly the Government also cites the business case for diversity as a justification by which it is safe to introduce fees for appearance at Employment Tribunals;

> **'There is also independent research that highlights the potential wide-ranging benefits for employers from fostering a diverse workforce.'** (MoJ 2012 p24)

The idea of a business case is important as, under this view, developed enforcement becomes unnecessary. A rational employer will find business incentives to avoid discrimination. This idea is discussed in Chapters 13 and 14.

For now we must review whether Government optimism in the efficacy of modern enforcement options is justified. To do this we must review the further elements of Hepple's schema.

Fourth Generational Enforcement

Hepple directly influenced the structure of fourth and fifth generational enforcement. In 2000 he produced his landmark review entitled *Equality, a New Framework: Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation* [hereafter called the Hepple Report] (Hepple et al 2000). This was an independent review established after Jack Straw had informed Hepple and Lord Lester that the Labour Government did not have time to look at Discrimination Law (Hepple 2010). Despite this initial lukewarm reception, the Review was to form the cornerstone of New Labour policy for the next decade. It was this report which sparked the call for a unified Equality Act with a unified single Equality Commission.

The report mounts a number of arguments to support a fourth generational single equality strategy. A unifying reform could improve compliance and, as a consequence, enforcement through more efficient, comprehensible legal structures. The bringing of legislation into one framework provided simplicity to employers and service providers. The different definition of Indirect Discrimination, across different groups, was a famous example of the complexity which Hepple concluded only lawyers benefit. Simpler law is easier to enforce. It also felt that a single equality strategy helped encompass a more effective, simplified approach to issues of multiple discriminations. Rather than claiming discrimination on separate grounds of disability and gender, theoretically a visually impaired woman could have both issues addressed at a single hearing. To aid employers, the Hepple Report also argued for a single written questionnaire for multiple claims of discrimination.

Lord Lester wrote the Report's foreword. In 2003 Lester attempted to enact the report's recommendations by introducing the first Equality Bill in the House of Lords (Parliament 2003). This Bill achieved cross party support, before falling, and interest in reform was increased. There was an apparent rationale for a more efficient single Enforcing Commission to encompass the new additional categories of Age, Sexual Orientation and Religion. It seemed inefficient and cumbersome to establish new commissions in respect of each new category. There was logic in a single legal framework. After all, disabled people may be black, lesbian or gay, or belong to a particular faith. Disabled people may face discrimination because of their gender or age. However even the original Hepple Report recognised that disability was a special case. There is a risk that the complexity of disability issues has insufficient focus within a unified Commission. Hepple recommended that, uniquely, the Disability Rights Commission should be allowed to continue, initially for at least five years after the establishment of a single Equality Commission (Hepple et al 2000 Chapter Two Recommendation 23).

The fears expressed by Hepple were well founded. The pressure to unify discrimination strands has failed to provide a profile necessary to tackle employment exclusion. As we have seen, disabled people struggled, through much of the 20th Century to achieve wider recognition that disability had equivalence to discrimination. The Social Model of Disability, whilst well known to disability activists, does not have a similar profile within wider public discourse. The Social Model has to compete alongside more long standing models, including welfarism, charity, paternalism and patronage. Of particular importance is the dominant medical modelling, now reinvented in the biopsychosocial model, which constructs disability as an individual organic impairment rather than society's response to it. This difficulty with perceiving disability as discrimination creates a dynamic, a further paradoxical tendency which excludes disability, despite the formal inclusionary principles won in Discrimination Law and Human Rights Charters.

This is a complex idea, but to demonstrate its relevance, we might consider how these difficulties shaped media discussion of the case for the Equality Act.

On the 26th June 2008 the Government published proposals for an Equality Bill in the White Paper entitled **'Framework for a Fairer Future'** (OPCSI 2008). Whilst these proposals were intended to reform legislation into a single inclusive equality strategy, disability was strangely absent from mainstream media discussions. None of the major news organisations, including the BBC, the Guardian, Times, and Independent mentioned disability within this context. I requested a media search from a London Development Agency Project Manager whom I supervised. A search on the 27 June confirmed that none of the major news outlets recognised the relevance of the Equalities Bill for disabled people.

By Friday 28 June, disability was beginning to receive minimal mentions in detailed accounts, by the inclusion of disability in the list of discrimination protections covered by the publication. Yet despite this disability was still failing to appear on the radar of any news reporter, or commentator, in the national media. The following summary of the Bill from the Guardian on Friday 28th June was typical.

> **'An equality bill will: impose a duty on public bodies to ban discrimination on grounds of age, sexual orientation or religion;**

> **require public bodies to use their £160bn purchasing power to award more contracts to companies with a good equality record; allow companies to recruit more women or people from ethnic minorities by favouring them in job interviews over equally qualified white men; require public bodies to publish information showing the gender pay gap'** (Guardian Online 2008).

Disability was strangely absence from this report. This unique exclusion was replicated across national print media and Radio and Television commentaries.

This small exercise revealed the difficulty disability has in establishing a discrimination category within a single equality discourse. At worst, as on this occasion, it becomes invisible. At best, it tends to be peripheral compared to other categories.

In my view this exclusionary reporting arose because of dominant perception, which continues to inhibit understanding of disability as discrimination. Even after Discrimination Law reform the political profile of disability continues to be closely allied to campaigns to protect welfare benefits which, whilst important, stress dependency rather than discrimination. This clouding does not occur in other categories, for example the debates around Child Benefit do not obscure issues of sexism. Whilst disability and sexism can be understood as discrimination, welfare tends to define disability.

This clouding means there is a mixed analysis of disability within mainstream discourse. Discussions of the legitimacy of disabled people's dependency on welfare dominate. Describing resistance to discriminatory constructions of dependency is a harder, more complicated message. Commentators can more straightforwardly discuss discrimination in relation to sex, race, age, sexual orientation and religion.

The Equality and Human Rights Commission struggled to overcome these difficulties when it took over from the Disability Rights Commission. Rather than driving forward a strategy on equality it stumbled to an inauspicious start. Reports emerged that staff were unhappy with an insipid approach to campaigning and that there was an atmosphere of crisis (Bennett 2009). The new Commission underperformed when compared to its specialist predecessors. Figures in 2009 revealed that helpline support for Disabled People seeking protection from discrimination plummeted by at least 80% (Pring 2009). The poor performance of the new Commission led to a spate of high profile resignations (Guardian Society 2009).

Unfortunately the new Commission has little opportunity to demonstrate that these were teething difficulties, as the coalition had added new challenges. Ten years previously, the Hepple Review had received warnings from lawyers on the vulnerability of a unified commission to cost cutting (Hepple et al 2000 Paragraph 2.87-89). Although Hepple dismissed these fears they were realised when in 2011 the Coalition passed the Public Bodies Act. This gave the Government the right to abolish and restructure a number of independent bodies, and the Equality and Human Rights Commission was firmly in their sights. In the Lords second reading of this bill, Lord Taylor of Holbech said:

> **'Clauses 3 and 4 give Ministers the power to modify respectively the constitutional and funding arrangements for bodies. For example, the Government intend to improve the accountability of the Equality and Human Rights Commission to Ministers and Parliament by requiring it to lay its annual business plan before Parliament, and to emphasise the importance of effective internal governance by placing the EHRC's Audit and Risk Committee on a statutory footing.'** (Hansard 2010).

The Act provided an instrument with which to curtail functions and spending. In May 2012, Theresa May announced plans to reduce powers by weakening its resources and reducing scope. It was to experience draconian reductions in its enforcement support and curtailment of its investigative powers. The Commission was instructed to reduce its personnel from 450 to 180 over the course of a year (Ramesh 2012). The skeletal remains of the reformed Equality and Human Rights Commission will have only a fraction of the enforcement resources which were available to the separate Race, Sex and Disability Commissions.

Theresa May's antipathy towards elements of the Equality Bill is significant for the functioning of the government Equality Office, which operates under her stewardship at the Home office. The declared aims of the Equalities Office (GEO) is to develop equality strategy and legislation across government. They are also supposed to lead on issues relating to women, sexual orientation and transgender equality (GEO 2013).

Some of the Fourth Generational reforms in the Equality Act have now fallen. May's leadership of the Government's Red Tape Challenge placed the entire Equality Act under review (Home Office (A) 2012). As a result Hepple's suggestion of a single Equality Tribunal questionnaire was revoked (Home Office (B) 2012). Whilst applicants can still request information from employers, the absence of a pro-forma increases complexity for claimant, and increases risk that relevant information will not be sought. Another casualty of the "Challenge" review was the repeal of the duty to protect employees from Third Party harassment (Home Office (C) 2012). This arose, for example if a residential worker faced sexual harassment from a resident in a care home, and required their employer to make their conditions of work safe. A further casualty was the removal of the right for Tribunals to make recommendations to employers as a result of a hearing (Home Office (C) 2012). The recommendation system was intended to deter repeat offenders, whilst recommendation had no immediate force, they could be referenced in future claims.

The Government also delayed implementing protection from dual Discrimination. Rather than Hepple's view of a single procedure, separate claims for multiple discriminations will continue. The Government feared that widening the scope of discrimination implied extra costs for business. The Act explains the concept by example. An employer prejudiced against black women could defend their actions by showing employment of white women to refute a charge of sexism, and similarly employment of black men to refute a charge of racism. The technical nature of dual discrimination means that it is most relevant for complaints relating to gender discrimination. The absence of dual discrimination protection means that a loophole exists where it is possible to discriminate against men, yet not women, and vice versa. Nevertheless, it is fairly straightforward to imagine scenarios involving visual impairment where this problem of dual discrimination may apply. For example, an employer may exhibit negative prejudice against a black man with visual impairment. He could potentially avoid sanction by employing black women and white men with visual impairment. Such an employer would have evidence to defend against a claim of discrimination whilst in reality maintaining prejudice against black men, irrespective of their visual impairment.

The Government arguments to support these changes appear logically incoherent. In relation to both third party harassment and the power of Tribunals to make recommendations, they argue these duties are not needed as they are so little utilised. The Government reports that, since the Act was passed in 2010, it has only found one case of third party harassment and one case in which recommendations were made. This is perhaps not surprising given the newness of the duties. However, puzzlingly, in both consultation responses the Government nevertheless concludes that these allegedly under utilised duties must be abolished as they constitute an unacceptable burden on business (Home Office (C) 2012 A P1). It is not clear how a rarely enforced measure can constitute an unacceptable burden on business.

For visually impaired people it is not realistic, or even desirable to overturn all the structures of fourth generational discrimination. We have seen improvements in law under the comprehensive framework, including the extension of the duties to avoid Indirect Discrimination to disability. A separate legal framework for visually impaired and disabled people may, in practice, create even more exclusionary pressures. In such a situation, HR departments would have to devote attention to a separate disability legal code. It seems inevitable that the current single equality framework priorities will remain the priority and dominate. We will have to learn to live with a comprehensive single equality framework.

However, the position for an Enforcing Commission is separate. Hepple's reservations about the inclusion of the Disability Rights Commission into a single enforcement commission are still valid. The special exclusionary pressures for disability and the more complicated strategic message indicate a different approach is needed. We require a more specialist voice. A separately resourced, reformed Disability Rights Commission could address the myriad issues concerned with disability and provide a clearer, strategic drive for enforcement. The weakened Equality and Human Rights Commission has little prospect of confronting the challenges of organising a step change to overcome historic discriminatory practices. A reconstituted Disability Rights Commission could, however, rectify this deficit.

We need a reconstituted DRC with an expanded role in the accreditation and training of a national network of specialist employment advisors. These could potentially be hosted in the voluntary sector in organisations such as Citizens Advice Bureaux. These advisers could also support a reformed mediation system. Advisors could support disabled claimants who have demonstrated a prima facie case in the mediation process, and who deserve representational support at Tribunal. Normal rules of means testing under current legal aid rules should apply. This new system would increase fairness at Tribunals. The DRC could receive performance funds allocated pro-rata for the numbers of cases supported.

This proposal for renewed investment in a Disability Commission may seem farfetched but, as I argue in Chapters 13 and 14, these kinds of investments may constitute the only rational way forward in dealing with the burgeoning welfare spend associated with the employment exclusion of visually impaired people.

This does require a different approach with Discrimination Law as a rational step to not just social solidarity but also economic integration and efficiency. In so far as the Coalition Government has responded to the Equality Act with the Public Bodies Act and the “Challenge” this is clearly not a view that has won complete confidence amongst national policy makers. Currently Hepple's fourth generational schema is looking a little battered. However, for Hepple, transformative equality is only delivered with fifth generational enforcement. It is to this final element of his schema that we must now turn.

Chapter 10

Accentuating the Positive

In the previous chapter we reviewed the third and fourth generations of Hepple's enforcement schemata. We concluded that, within the context of employment exclusion, the exercise of Tribunal Rights could jeopardise substantive employment relationship. For many visually impaired employees this would 'Burn a Bridge Too Far'. The result is a vicious circle where continuing employment exclusion decreases opportunities for fair enforcement.

In this chapter I will suggest a new strategy which may break this circle. To counteract historic employment barriers a new generation of enforcement is required. As in previous chapters we will have an organising question to assist our exploration. How can we avoid the sledgehammer of a Tribunal Claim to crack the smaller nut of Reasonable Adjustment? In exploring this we will discover how Health and Safety, a traditional enemy of disabled people, may become our best friend in supporting a structure for Positive Enforcement.

Before describing this we need to first review the final element of Hepple's schemata.

Fifth Generational Enforcement.

Hepple's 2000 Report arose out of a crisis in enforcement. Whilst third generation enforcement had reduced overt displays of prejudice, discrimination remained hidden behind a cloak of avoidance and empty written procedures (Hepple et al 2000 Par 1.39). Employers tended to recruit culturally familiar employees (Hepple et al 2000 paragraph 1.35- 1.37). Discrimination was concealed behind unconscious institutionalised prejudice (Hepple et al 2000 Para 1.38).

To tackle this, Hepple calls for a new generation of Positive Duties. Whilst some consider Positive Duties originating from concern of institutionalised racism revealed in the Metropolitan Police (O'Cinneide 2006), Hepple identifies an earlier inspiration. He is persuaded by evidence, from US employers, of the transformative impact of Affirmative Action (Hepple et al 2000 Paragraph 9.1). From 1973, Affirmative Action contracts were organised by the Office of Federal Contract Compliance Programs (OFCCP). These programmes continue to operate through the US Department of Labour (OFCCP2012). These contracts required firms to demonstrate compliance with equality objectives. Business incentives for equality compliance focussed the minds of Human Resource Departments to ensure that their workplaces were inclusive. All the US employers considered that contract compliance was the most significant influence in reducing under-representation from discriminated groups. Just as important were the robust business goals and timetables. All Equal Opportunities managers interviewed reported that they could not have sustained these changes without this Affirmative contracting process (Hepple et al 2000 Paragraph 9.1).

Hepple concludes that Affirmative Action programmes had a far more transformative affect than individual litigation. One employer reported that the rate of employment for previously discriminated groups had doubled since the 1970s (Hepple et al 2000 para9.1).

This time the USA influence was also the result of direct political intervention. US Catholics combined with their Northern Irish counterparts to campaign for fair representation during peace talks (Hepple 2010). Northern Ireland achieved fair employment participation from both Catholics and Protestants after introducing Positive Duties in the 1989 Fair Employment Act (McCruddenet et al 2009 P 7-14). The Northern Ireland Act 1998 expanded this duty from Protestants and Catholics to include status relating to age, disability, race, sex, marital status, and sexual orientation (Hepple 2010).

It was only after experience of USA Affirmative Action and the Northern Ireland experiment that this approach was extended to the UK. After Macpherson, amendments were made to the Race Relations Act, imposing General and Specific Equality Duties on most public authorities. Similar Positive Duties were introduced in respect of Disability in 2005 and Gender in 2007. The 2005 Disability Discrimination Act imposed general and specific duties (OPSI 2005). The specific duties provided regulations, importantly setting timescales, for the creation and review of Disability Equality Schemes. In addition, public authorities had to involve disabled people and commit to a regular review. The general duties of the Act also applied to contractors receiving funds from public authorities. They did not, however, have to apply the specific proactive duties of developing a Disability Equality Scheme. Finally a Code of Practice was established by the Disability Rights Commission to support implementation (DRC 2007).

Taken together, these duties were intended to provide a proactive approach to the mainstreaming of disability equality in the design and organisation of services. Of necessity, this would also include accessible employment policies and practices in public sector organisations. For the first time, there was a proactive legal framework for the removal of barriers for disabled people. These duties did not extend to any private enterprise but influence, on the US Affirmative Action model, could be exerted by specifying equality performance targets in tenders for public sector contracts.

Whilst Hepple's expectations of transformational equality were overstated, Positive Duties did increase the seriousness with which disability equality was addressed in some organisations. The production of Disability Equality Schemes could structure key performance indicators which could then review progress. Organisations had to assemble basic data, including how many disabled people worked for them and how many had adjustment needs. Equality implications and avoidable discrimination began, for the first time, to be embedded in some service planning through the process of Equality Impact Assessment.

Not all public sector organisations embraced Positive Duties. Across the country, research indicated a mixed picture. Whilst RADAR research (RADAR 2009) provided generally positive feedback, other studies pointed to public authorities failing to involve disabled people (Pearson et al 2011). These difficulties highlighted a further weakness in jurisdiction. Individual challenge to the performance of the public sector duty could only be mounted through Judicial Review. In addition this Review could be mounted only for the General Duty (Bell 2010) (RNIB 2009). The number of organisations deciding to support Judicial Reviews against public authorities in relation to their Positive Duties has increased (Bell 2010). The action could only be substantiated within the normal narrow adjudications of the Judicial Review system. Judicial Reviews provide limited redress. They cannot order remedies or sanctions. They are constrained to instructing public authorities who have perversely or irrationally interpreted their duties to reconsider decisions and actions. The single Equality Duty under the Equality Act was designed to herald a new start in equality law, providing a complementary alternative to individual third generational enforcement. The paradoxical outcome is that they are now, through the process of Judicial Review, another avenue for individualised litigation (Bell 2010). Nevertheless the number of Judicial Reviews is tiny compared to the numbers going through the Tribunal system.

Bell has argued that there are positive outcomes from Judicial Reviews. They tend to reflect collective issues rather than individual dispute. Case outcomes have wider ramifications as they tend to challenge rules and policies, targeting institutionalised discrimination (Bell 2010).

For those of us working to implement the new duties after 2007 there seemed cause for optimism. Positive Duties, applied over time, could increase inclusivity in at least some public sector organisations. The 2010 Coalition was not as enthusiastic. It was predictable that the new Social Economic Positive Duty introduced in the Equality Act, famously described by Theresa May as **'socialism in a clause'** (Guardian 2010), would be scrapped. However, they also watered down the guidance on specific duties. Public authorities are no longer required to produce Equality schemes and can instead simply publish "information". This watering down may constitute only the start of further curtailing, as Positive Duties remain under review under the 'Red Tape Challenge' (Home Office 2012(A)).

A further limitation is that these duties are confined to public and not private enterprises. The Hepple Report argued that firms employing more than 10 workers should conduct a tri-annual Equality Review (Hepple et al 2000 Chapter 3 Recommendation 28). No Government has shown interest in such reform.

Despite current difficulties, Positive Duties remains a useful, if peripheral mechanism through which visually impaired people can argue for inclusion. To advance equality into the mainstream of employment we must consider a new sixth generation of discrimination law, a generation I shall describe as 'Positive Enforcement'.

Sixth Generational Enforcement

A helpful way to introduce the need for a sixth generational enforcement system is to describe some brief scenarios. These are based on issues reported at Low Vision Forums. Names are changed to preserve anonymity.

Scenario One involves a Teacher called Sally. Her school purchased a new email client, however her Jaws software could not interface with this. Consequently she was seriously disadvantage compared to her colleagues in receiving information critical for the effective delivery of her teaching.

Scenario Two involves an Advice Worker called Charles who ran a Helpdesk for a national charity. The Charity invested in an intranet system to distribute key information to staff. Unfortunately the developers indirectly discriminated by producing an inaccessible interface that could not be used by somebody without sight. Rather than use his Window Eyes Screen Reader, Charles had to rely on unreliable colleagues to keep him updated on key performance targets training and promotional opportunities.

Scenario Three involves Kathy, an administrator for a local charity. When it announced plans for a major office refurbishment, Kathy made several suggestions to make her working environment easier for a person with low vision. This included colour contrasted colour schemes on doors and in particular on stairs by providing higher visibility markings on the treads. In the event, to her disappointment, none of these recommendations were accepted.

These experiences would not necessarily constitute job threatening discrimination. However the failure to provide accessible work infrastructure increased the possibility that both Sally and Charles would not work to their full capacity. At the margin this may have constituted the difference between entering competency/capability procedures and performing at an acceptable level.

In Kathy's scenario levels of stress also increased. Avoidable barriers to her confident mobility remained. There is also, of course, an increased Health and Safety risk.

In all three of these scenarios a visually impaired person is facing avoidable discrimination. Under current enforcement procedures there is limited appropriate redress. Whilst an application to third generational Tribunal enforcement is possible this remains extremely unlikely. In reality nobody was prepared to utilise even internal grievance procedures for these issues. For reasons discussed earlier, a high priority is on preserving positive relations with employers and work colleagues. Just as importantly, an application to a Tribunal in respect of these scenarios would be a sledgehammer to crack a nut.

Third generational enforcement is not fit for purpose in these lower level discrimination scenarios. Actually it is not fit for purpose in even more serious discrimination scenarios. Only where there is an irretrievable breakdown in trust between an employee and employer does a Tribunal application seem appropriate.

In contrast Fifth generational Positive Duties initially appear to offer more. All the problems in these scenarios are avoidable by appropriate use of equality impact assessment. However, some problems persist. Firstly the watering down of the requirement to produce equality schemes and consequent impact assessments reduces the chances of positive intervention. In addition the confinement of these duties to the public sector restricts help only to our Teacher. Finally the problem of enforcement remains. In reality Sally was already assisted by a positive public sector duty. Yet the existence of this right had not translated into enforcement in reality. To enforce her rights Sally would have to turn to litigation and consider employing a lawyer to launch a Judicial Review against the Education Authority. Enforcement of the Positive Duty has all the pitfalls of third generational enforcement. It is actually a more daunting step than a Tribunal application. This litigation hurdle would remain a problem, even if Positive Duties were extended beyond the public sector. The prospect of Kathy, for example, taking a Charity to Judicial review for their failure to colour contrast her stair treads is remote.

So we have come full circle. Bell's description of the paradox in the enforcement of Positive Duties through judicial review is realised in our scenarios. Fifth generational positive sector duties are established as a result of the failure of individual litigation, yet the enforcement of these duties require individual litigation. We need an enforcement mechanism which breaks out of the trap of individualised litigation.

We noted in our previous chapter that 46% of applications to the Tribunal Service are conciliated before hearing. In addition, 31% of claims are withdrawn, potentially as a result of private conciliation or settlement. We know that between 46% and 77% of cases, a discussion with an independent Third Party will resolve difficulties. Rather than conducting these discussions under the shadow of a Tribunal hearing, we need earlier, lower level intervention to prevent escalation. This could benefit both employees and employers. Avoiding discrimination could preserve productivity at work for visually impaired employees through a realignment of their Reasonable Adjustments.

Whilst we can welcome a reform of the Tribunal system to ensure fair representation with more realistic compensation, in another sense every application to Tribunal on Reasonable Adjustment represents a failure of policy. Enforcement structures are needed that do not jeopardise employment relationships but support them. We need to establish support prior to any need to make a claim at Tribunal. Our scenarios exposed an important deficiency in the enforcement of Reasonable Adjustment. There are no mechanisms to support workplace scrutiny or monitoring on behalf of visually impaired employee. Minor, but important, Reasonable Adjustment can transform experience for the better or, if not applied, can turn work into an avoidable struggle.

Reasonable Adjustment should not be an arena for conflict and drama. In many cases they do not necessarily involve expense. In Sally's scenario there were no cost implications if another client has been purchased or a free option utilised. All that was required was to give a higher priority to accessibility. This confirms research studies that low cost implications of many Reasonable Adjustments can be as simple as rearranging office furniture. (Newton et al 2007, 610-623).

A flexible system of workplace level monitoring and enforcement would not require excessive investment. Unusually the inspiration for this new enforcement can be located within the heart of 'Red Tape Challenge' policy.

As we have seen, the 'Red Tape Challenge' has targeted a number of protections in the Equality Act for review and repeal. In its consultation response explaining why third party harassment is an unnecessary measure, the Government argued that existing legislation provided protection. There was no need for Discrimination Law in this area as employers had an existing Health and Safety duty to provide a safe work environment (Home Office (B) 2012). In this short response the Government acknowledged Health and Safety as a legal instrument relevant for equality. Developing this, we can apply Health and Safety across many issues of discrimination. We find surprisingly, that we already have most of the legal elements in place for an appropriate enforcement structure.

In 1974 the Health and Safety at Work Act introduced a universal workplace monitoring system to ensure the welfare of workers. This was supported by business leaders as Health and Safety failures were costing industry millions of pounds. (Beck and Woolfson 2000) (Higginson 2008).

Comparing the 2010 Equality Act with the 1974 Health and Safety at Work Act reveals surprising dovetailing which could support workplace level scrutiny of Reasonable Adjustment. The 1974 legislation contains a third element beyond the headline components of Health and Safety. Welfare of workers is also central to the meaning of the Act. In section A Part 1 of the Act the scope of intervention is described as:

> **'....securing the health, safety and welfare of persons at work." Again in relation to codes of practices:**

> **'...of regulations and approved codes of practice operating in combination with the other provisions of this Part and designed to maintain or improve the standards of health, safety and welfare established by or under those enactments.'**

Under the general duties to employers the Act states that:

> **'2. (1) it shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.'**

In paragraph E of the General Duties a clear responsibility for the maintenance of welfare for employees is laid out. Employers must ensure:

> **'The provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health, and adequate as regards facilities and arrangements for their welfare at work'**

Paragraph 10 of General duties extends employer responsibility to provision of welfare facilities;

> **'10. Securing the provision of specified welfare facilities for persons at work, including in particular, such things as an adequate water supply, sanitary conveniences, washing and bathing facilities, ambulance and first-aid arrangements, cloakroom accommodation, sitting facilities and refreshment facilities.**

The importance drafters of the 1974 legislation attached to welfare is also revealed in the amendments made to previous Building Regulations.

> **'1. In section 3 (building standards regulations) • (A) In subsection (2), after the words "health, safety" there shall be inserted the word "welfare"'**

Again in relation to local authority building regulations:

> **'6. In section 11(1) (B) (power of local authorities to require buildings to conform to building standards regulations), after the words "health, safety" there shall be inserted the word welfare."'**

(HMSO 1974)

In total there are a further nine sections of the Act which make reference to the importance of welfare.

So, at the outset, there is a wider remit than simply the Health and Safety of employees, welfare is also at the heart of the legislation.

There is additional resonance with disability discrimination law in the use of the term “reasonable”. The phrase ‘reasonably practicable’ appears 25 times. As in equality Law the use of the term ‘reasonable’ is a legal formulation to provide necessary flexibility.

I believe that the concept of welfare in the 1974 Act is ultimately useful in the 21st century in enabling a crossover enhancement of discrimination law for visually impaired people. It is time to teach the old dog of the Health and Safety at Work Act new tricks by adding clearer guidance to link the statute to the Equality Act.

In his excellent and imaginative article "The Health and Safety Act 1974 - is it too late to teach old dog new tricks", Stephen Humphreys argues that the definition of ‘welfare’ in the 1974 Act is relatively undefined even in case law. The limited case law available has pushed towards wider considerations of welfare. He argues that this lack of definition provides the opportunity for a more positive implementation of the 1974 Act. (Humphreys 2007, 19-35) Although Humphreys nowhere talks about Disability or Reasonable Adjustment, he does focus on controlling workplace environment to counteract the modern perils of stress. My suggestion here is that, in place of Humphrey’s narrower concern for the management of workplace stress, we can substitute a broader concern for Reasonable Adjustment and/or Indirect Discrimination. Humphrey’s legal case is equally applicable to the needs of disabled and visually impaired people. His concern around the issue of stress is in reality a sub-set of a wider duty of welfare for disabled people. The management of stress relates to Reasonable Adjustment for those whose impairment relates to mental health issues.

Turning to this 38 year old Health and Safety legislation may surprise some. Health and Safety has justified exclusion for disabled people in the past. We have already reviewed how Royal Mail used a health and Safety justification for excluding Jones from work as a driver. This perception caused the Health and Safety Executive to issue joint guidance with the Disability Rights Commission to counter negative interpretations. (HSE and DRC 2006)

Despite a positive reference to Health and Safety in one part of the Red Tape Challenge it remains a target for deregulation (Cabinet Office 2012). Fears persist that it adds a clogging layer of restrictions to UK enterprise. This negativity misses the opportunity for a flexible, business friendly, positive enforcement system. Health and Safety could flexibly respond to the myriad technical adjustments required in a variety of workplace settings.

The 1974 Act devolves, localises, and deregulates Health and Safety arrangements by introducing self assessment of risk (Beck and Woolfson 2000)

The involvement of the Trade Unions to facilitating Safety Representatives led to the recruitment of an army of committed administrators to support the enforcement of the Act. Rigid regulations were traded off against increased universality and flexibility of workplace inspection. A Health and Safety Commission and Executive followed to facilitate and enforce the implementation of the legislation. These presage the model adopted in later Anti-Discrimination statutes.

The 1974 Act has been enhanced by the passing of further regulations. Most pertinently the Safety Representatives and Safety Committees Regulations 1977, the Health and Safety Consultation with Employees Regulations 1996 and Management of Health and Safety at Work Regulations 1999 (HSE 2012).

These defined arrangements for two main guarantees of welfare at work. First is the right of a workplace to have a Safety Representative. Second is the necessity for employers to conduct risk assessments in conjunction with them.

We need to enable the effective dovetailing of Health and Safety monitoring of Reasonable Adjustment in the Equality Act. Enabling regulations could be simply drafted as amendment to provide some **'lower level but constructive muscle'** to the enforcement of Reasonable Adjustment. The extent of reform in guidance needed is not great, as disability is already an acknowledged legitimate concern for Health and Safety risk assessment.
(HSE DRC 2006)

A Health and Safety representative could be the supportive validator of Reasonable Adjustment or indirectly discriminating arrangements for a visually impaired employee. For the first time a employee could have their Reasonable Adjustment needs addressed as an issue of objective assessment rather than emotive complaint. An earlier supported negotiation with employers using Health and Safety powers can ensue. Health and Safety, whilst not necessarily popular with employers, is largely a routine matter. Such a system would structure for the first time a formal review process for Reasonable Adjustment.

A revised interpretation of 'Welfare' in Health and Safety statute or guidance is required. This revision would embrace monitoring of Reasonable Adjustments and Discrimination. The benefit of this reform is that new state structures of enforcement are not needed. The infrastructure is already there. Additionally, the review and assessment of any Positive Duties could be incorporated into an annual risk assessment. A current weakness is that there is too much flexibility in the time frames for risk assessments. Whilst the 1977 Act discourages inspections at more than three month intervals there is no specified frequency in law. This makes gaps of several years lawful. This needs to be rectified in guidance.

A final consideration is to assess whether the Health and Safety Executive and Commission should replace the current Employment Tribunal and Equality and Human Rights Commission enforcement structures. I am not persuaded of the need for an exclusive system at present. A dual structure would have benefits. The Employment Tribunal system could be a reference point for compensation claims in respect of failed compliance with Health and Safety notices. However a failed compliance with a Health and Safety notice should entitle the visually impaired employee to two further protections. First they would have no need to prove a prima facie case as the existence of the notice should automatically shift the burden of proof on to the employer. Second the existence of such a notice should entitle the visually impaired employee to automatic entitlement to legal representation from either the Equality and Human Rights Commission, or more positively, a re-constituted Disability Rights Commission.

Whilst these proposals will not guarantee 100% compliance with discrimination law, the incorporation of an inspection regime under the auspices of Health and Safety has the potential to transform disability discrimination enforcement. As with all strategic ideas there are weaknesses. The greatest risk is that the intervention of Trade Unions and their Safety Representatives may not be consistently positive. Hoque and Noon, in particular, are critical of the lack of Trade Union influence on the implementation of Equal Opportunity policy (Hoke and Noon 2004). Establishing a high quality, skilled and positive approach to Anti-Discrimination enforcement would constitute a valuable development goal for the Trade Union movement.

The most positive path for the breaking out of the Catch 22 of disempowered visually impaired employees is through the creation of a workplace level scrutiny. Reasonable Adjustment amendments need to be taken out of the personal and emotive. Enforcement needs to become routine rather than dramatic. I have suggested that Health and Safety amendment is the most cogent mechanism for reform. Tribunals should be truly the cases of last resort. Health and Safety submissions and assessments should, if ultimately necessary, form a key component of evidence to Tribunal hearings. Any visually impaired employee submitting an application to Tribunal supported by their local safety representative should be passported to funding for representation. On a policy level the Equality and Human Rights Commission needs to work closely with the Health and Safety Executive. As this model of implementation develops consideration must be given as to which body would be the most appropriate enforcing commission. This is the reform of impartial workplace scrutiny that will provide the most practical support for ensuring that Reasonable Adjustment for visually impaired employees is in fact reasonable.

Under Hepple's schemata the need for third, fourth and fifth generational enforcement remain. However, my contention is that now a sixth generation of enforcement is required, that is, a synthesised model incorporating elements of both third and fifth generational measures supported by existing Health and Safety structures. I have termed this sixth generation 'Positive Enforcement.' In keeping with Hepple's schema the rights could be characterised as 'Positive Equality Rights.'

The obvious challenge to my scheme is that it is precisely the sort of scheme which would come to the critical review of the 'Red Tape Challenge.' However the underlying driver of the 'Red Tape Challenge' is to increase efficiency and reduce burden on business. Adversarial applications to Tribunals are as unwelcome for employers as visually impaired people. Apart from the cost of compensation there are other costs of maintaining a defence. All this would be a distraction from normal business activity. In addition, as we shall see, maintaining unemployment exclusion for visually impaired people is not cost free, cheap or economically rational. A cost effective investment in a Health and Safety supported enforcement may well constitute economic rationalism.

Chapter 11

From Blind Icons to Blind Guilds

Fawcett, Keller, Blunkett and the Eastern Alternative

Our review has, so far, identified Individualism as an issue which creates problems in many aspects of our legal framework. We have a legal system organised around individualised rights and enforcement. Over the previous Chapters I have revealed some paradoxical and contradictory imperatives arising out of this legal framework. Indeed such measures, unsupported by wider social investment, can operate perversely to decrease the employability of visually impaired people.

Given the scale of employment exclusion, Governments of all hues have provided social investment to accompany rights of legal redress. This is organised through Access to Work, Disabled Students Allowance, and other specialist Disability Employment Advice services. Yet here also collective solutions are abandoned in favour of individualised support arrangements.

The individualism which dominates modern legal and social policy is sustained by wider ideas in our culture. Conceptions of blindness and visual impairment are influenced by the 'great man' view of history. For example, the American Foundations for the Blind historical text is entitled *From Homer to Keller (French 1932)***.** Mannix's historical review is entitled *Heroes of the Darkness(*Mannix 1910). Hank's study of Blindness and the Blind lists dozens, of 'great' blind men throughout the ages (Hanks 1872).

Where histories of blindness depart from accounts of great blind men and women, there is a frequent adherence to a 'Whig Historical' narrative of Charity and Welfare for the desperate and pitiful. Such histories tend to focus on the march of progress through charitable provision organised on behalf of the blind. For example, Phillip's 2004 study *The Blind in British Society* focuses almost exclusively on charitable and state activities for and on behalf of blind people. He pays scant attention, for example, to the history of the National League of the Blind (Phillips 2004).

So in these historical traditions, visually impaired people are either, by dint of their personal characteristics great and extraordinary, or alternatively, tragic or dependent. These accounts are misleading and inaccurate. There is an alternative narrative which, whilst recognising extraordinary characteristics of blind icons, realistically references their social context and support.

Most Western accounts also ignore the possibility of collective blind self organisation. Eastern history provides an alternative narrative of the blind achieving strength through collective self help.

In this Chapter then I review two models for the social management of visual impairment, and assess the indicative policy lessons from each approach. Specifically I assess their usefulness as a guide to redressing employment exclusion. First I will reference the real social context in the lives of celebrated blind icons. Second I will review a lesser known model of social adaptation to blindness. This will allow us answer a further organising question, why is the Blind Guild, rather than the Blind Icon a more useful policy guide to redress employment exclusion?

David Blunkett was a famous Blind Icon in the second half of the twentieth century. In the first half it was Helen Keller and in the nineteenth century it was Henry Fawcett. Each of these Icons became household names and achieved success, even adulation in their fields. They are portrayed as examples of what blind people can achieve and fuel assumptions of the prerequisites for success (Crow 2000). I shall consider each of these icons and evaluate to what extent their pathways to success are generally transferable.

Holt described two of our blind icons as follows.

> **'It is a question of great interest whether either Miss Keller or Fawcett, without their spur from blindness, without that need of iron determination and unflinching pluck to win their race in the dark, would, as seeing people, have attained their distinction and been such great servants of humanity. Many fail on account of the insurmountable barriers which seem to accompany blindness, but not a few heroic souls are developed and stimulated by their blindness in a way that nothing else could'**. (Holt 1914 p65-66)

This iconography transformed Keller's and Fawcett's blindness from an inhibiting impairment into a conduit for heroic achievement. It is a celebration of individualism and emancipation. Just as important is the message of exceptionality. It is only the few remarkable blind who are able to lift their lives from the despair of their condition.

Goldman's 2003 collection of essays on Fawcett reinforced this great man account. His work is entitled *The Blind Victorian*, rendering invisible hundreds of thousands of other blind Victorians. Although Fawcett's achievements are extraordinary, it is certain that more extraordinarily gifted individuals languished, their potential untapped, amongst the thousands of the blind in the workhouse. In fact it was Fawcett's exceptional personal support, more than his abilities which protected him from a similar fate.

Henry Fawcett was a household name (Hardy 2003). Born in 1833 to middle class shop owners (Stephen1885 p 2), Fawcett's life was transformed in 1858, when he went on a shooting party with his father who had cataracts. By modern standards two visually impaired people swinging shotguns and shooting at low flying birds now seem hideously irresponsible.

The father's low visual awareness of his son's proximity was disastrous. His shot ricocheted from a low flying bird to his son. Although pellets entered both eyes, his shaded spectacles prevented the shot entering his brain (Stephen 1885 p44-47) and probably saved his life. This was a catastrophic event but, his previously weak eyesight and need for glasses ensured that he already had adjustment arrangement. His family had sufficient private resources to allow his sister to continue reading material for him (Stephen 1885 p 35).

It is undeniable that Fawcett responded with positive personal energy. He used companion's voices to guide him when skating, a cane for mobility, and innovated further adjustments (Stephen 1885 p 53-5). Fawcett won wide admiration. The reality though is that his achievements were grounded in his social support. In her, equally admiring, reflections on Fawcett's life, Winifred Holt outlined this. She described Fawcett's instructions that his tailor should mark his clothes;

> **'.. carefully and legibly labelled with numbers, placed so as not to show. In this way his garments might easily be identified by anyone unfamiliar with his wardrobe. If he came home in a great hurry to metamorphise his attire, directions like the following to his family or an aide-de- camp were not infrequent. He would call in his clarion, cheerful voice, probably from the door as he entered: 'I must dress quickly. Please help. Coat one, vest six, collar one, trousers three, shoes and socks twelve and thirteen.'** (Holt 1914 p52).

Fawcett had a support network of family, servants, a loyal sister and later secretaries to aid with daily tasks, including reading and writing. His reliance on them is clear as he never got to grips with any form of independent study or correspondence. He never learnt Braille, or any other printing system for the blind. He relied exclusively on dictation and reading support (Holt 1914 p52).

Fawcett's prosperity made possible his sister's loyalty. If she had needed to work, as did the vast majority of women, perhaps in the mills of Lancashire such unstinting support would have been impossible.

Fawcett seemed to have his political radicalism consolidated by his blindness. His instinctive individualistic politics are thereafter complicated by ambivalent support for collectivist causes including Trade Unions (Becattini 2003). His study of Political Economy convinced him to support female suffrage arguing that only with emancipation could women realise their potential in the labour market (Stephen 1885 p172).

This interest in feminism was to shape his future adjustment support. Drawn into contact with female activists, Fawcett became a serial proposer to eminent Victorian feminists. After failed proposals to first Bessie Rayner Parkes and then Elizabeth Garrett Anderson, he was third time lucky in making a successful proposal to Elizabeth's sister, Millicent (Rubenstein 2003). His 1867 marriage proved critical to Fawcett's meteoric rise thereafter. Millicent was a supportive partner, offering not just practical sighted assistance but intellectual support. Stephen described the marriage as a partnership of equals.

> **'she was fully qualified to take an interest in all Fawcett's intellectual pursuits, and shared his main political principles. They published together a volume of lectures and essays, which is sufficient to show that in political and social questions their alliance implied the agreement of independent minds, not the relation of teacher and disciple'** (Stephen 1885 p127).

From the solidity of Millicent's practical and intellectual support, Henry tackled prejudice and challenges to his capabilities. At a Parliamentary selection meeting he was confronted on understanding a planning application if he was unable to see a map. Fawcett replied that he could perfectly well understand a map providing his secretary inserted pins in the map to mark out the roads that he needed to feel (Stephen 1885 p194).

After elections as MP for Hackney in 1870, Fawcett's popularity as a radical politician increased, earning plaudits in the press (Goldman 2003). He added support for Colonial subjects and the plight of the blind to his radical causes (Goldman 2003).

Between 1880 and 1884 Fawcett was a reforming Postmaster General. He developed the National Savings Bank, allowed women to run and own Post Offices, and introduced the first National Telegraph System. He developed Post Office life insurance and annuities, as well as postal orders. He also introduced the parcel post (Holt 1914 Ch 25 -29).

In 1884, after 14 years as an MP, Fawcett died at 51. Before he died he saw his daughter, Phillipa achieve ground breaking success by gaining a First in mathematics at Cambridge. His family's tradition of liberal commitment to Feminism continues today through the campaigning Fawcett Society.

From this brief review of an extraordinary life it is clear that Fawcett's crucial support arrangements with exceptional personal strengths allowed his success. There were no policy lessons from the experience of Fawcett's life which were realistically transferable to the condition of the bulk of visually impaired Victorians.

Turning to Keller we find that Fawcett's contemporary and fellow campaigner Charles Dickens was to have a defining influence on her life. Both dickens and Fawcett campaigned for universal education (West 1991), and the education of the blind in particular. Dickens had considered appropriate provision for the education of blind children during his 1842visit to America. In American Notes He reported favourably on the Massachusetts Perkin's School for the Blind, and meeting a deaf blind woman, Laura Bridgeman. Despite her impairments, Laura received training to enable her to work effectively, including the innovation of finger spelling. When Helen Keller's mother read Dickens' description of this technique, this changed life in the Keller household forever (Keller 1902 Ch. 2).

Helen Keller was born in 1880, the same year Fawcett became Postmaster General. She lost her sight and hearing after an illness when she was 19 months old. Her mother's reading of Dickens' account resolved her to seek help from the well known inventor and philanthropist Graham Alexander Bell.

Bell's support resulted in the Perkins School supplying Ann Sutherland as a specialist teacher for Helen. The story of how Anne initially grappled with, and then supported Helen for the rest of her life is mythologised in the 1962 film *The Miracle Worker*. This film ensured a high profile and legacy for Helen beyond her death in 1968.

After attending the Perkins School, Helen studied at Harvard, learnt several languages, and became a celebrated author. She was an icon of deaf blind achievement. Like Fawcett though she was supported by servants, and Ann Sutherland provided life long assistance. In addition Keller received a private pension from Alexander Graham Bell.

Again the extent of family and private resources make Keller an unrealistic model for most visually impaired people in America at the time. In both Fawcett's and Keller's life, this 'leg up' of sponsored family support provided both with resources for the employment of sighted support.

In the end what unites Keller and Fawcett is not just intellect and drive but unusual enjoyment of exceptional personal support. Neither of them was born into rich families but they were privileged compared to the vast majority of children of agricultural and factory workers in nineteenth century Britain and America. This privilege enabled crucial private and family support.

Politically both Fawcett and Keller were attracted to collectivist responses to blindness. Keller had an ambivalent relationship with the American Foundation for the Blind. Whilst she was keen to help improve conditions for visually impaired people, she was a committed and active Marxist, deeply troubled by the implications of using charity for this support (Crow 2000). Fawcett was also interested in reducing reliance on charity, and helped form the National School for the Blind for this purpose (Mannix 1910 p62)

David Blunkett our final Icon was, like Fawcett, a successful politician who rose to significant office. He did not, however, have access to private support in the form of servants and other resources that Keller and Fawcett enjoyed. What then was the crucial spark which propelled Blunkett to success?

Whilst Blunkett was a beneficiary of a state education, for which Fawcett was a life-long campaigner, he attributes comparatively little of this to his eventual success. In his autobiography, he traced his breakthrough to his rebellion against the Royal National College for the Blind. He castigated the school's non-academic policy. Blunkett's attributed his breakthrough to the determination of a group of six blind students who struggled to Shrewsbury Further Education College where they undertook O and A level evening classes, on top of their Blind School curriculum.

> **'The six of us, comrades in arms, struggled to keep each other up to the mark, not only attending classes but doing homework. We saw it**

> **as a collective challenge to study while other boarders were larking about'** (Blunkett and McCormick 1996 p 71).

Despite the low expectations of their Blind School, he and his **'comrades'** achieved mainstream educational success as a result of their evening classes. The group provides Blunkett with a springboard from which he graduates, becomes Leader of Sheffield Council, and eventually rises to Home Secretary. It is possible, likely even, that none of this would have been achieved without that shared endeavour at Shrewsbury College.

Blunkett detailed how the comradeship of the rebels helped each of them to develop successful careers. They are determined to resist the pigeon holing of blind students away from academic achievement (Blunkett and McCormick 1996 p 71). Blunkett's story is one of the few references to blind comradeship which we can reference in Western literature. It gives a glimmer of a possible alternative, more easily transferable, policy lesson.

Evidence to support a collectivist policy response is easier to locate in the much richer Eastern historical narrative. In the second part of this historical sketch I will turn to the tradition of functioning self-determined blind organisations by reviewing the ancient Blind Guilds of Japan and the more recent Blind Guilds of China.

Dixon in her 1891 *The Habits of the Blind in Japan* referred to a history, which though more ancient, was more extraordinary and potentially more useful than the stories of Fawcett, Keller and Blunkett. Dixon described how the life of blind people in Japan was one of privation and misery until an event about 1,000 years ago. She described the strange story of the blind Prince Amago-no-mikoto:

> **'Providence, in the shape of a blind prince, stepped in to aid them. The emperor Kokan Tenno, who succeeded his father Ninmei in 885 AD, had a son named Amago-no- mikoto who was born blind. Finding that ordinary courtiers could not amuse the lad, he summoned to his palace eight hundred blind men.'** (Dixon 1891 p 579)

The prince establish a 'court of the blind', ushering in an age of enlightenment, where the status of the blind rose to levels unheard of in Western histories(Dixon 1891 p 578-582). Yoshimoto describes how from these ancient times a levy was organised to support the status of the blind. For a period blind people became exalted in the associated honour of the blind prince. Even after the death of the

Blind Prince, blind governors of Japanese provinces remained (Yoshimoto 1908 p 174).

In the heyday of the blind Prince there were apparently some surprisingly modern cultural values which are reminiscent of reasonable adjustment duty on the sighted;

> **‘, whenever blind persons were hurt in the street, the sighted persons who were concerned in the matter were made to pay for the damages, whether they were to be blamed or not’.** (Yoshimoto1908 p 175).

This heyday of the Blind Governors of Japan was to last for over 200 years but they were finally deposed from power in the Civil War of 1180 (Dixon 1891 p 579).

Despite this fall, the institution of Blind Guilds had been established. Both Yoshimoto and Dixon described the period of enlightenment as key to the establishment of the Blind Guilds.

They were not democratic. Dixon described the hierarchical structure of the first Imperial Guild.

> **‘..Imperial guild or brotherhood of the blind was a strong and influential body, that remained intact, without minuter subdivisions. Each of these included ten sub-ranks called Ro, and these again were subdivided into seventy-six others. Different sects or schools also were formed, eight noted blind men founding eight different schools. During the sway of the Tokugawa Shogun, the Shido sect was the most powerful of these’** (Dixon 580).

The Guilds initially provided musicians and chanters and later shampooists and masseurs, Guild occupations that were, at the time of Dixon's report, still active (Dixon 580).

The Blind Guilds were autonomous of state control, supporting and promoting the interests of blind workers and professionals. Complaints, where they existed, tended to be about the undue wealth and influence of the blind (Dixon 1891 p582).

Whilst the story of the blind Prince has been questioned by more modern scholars, who instead argued that the Guilds spread from China (Matisoff 1978 p 19-22), the long term institutions of the Blind Guilds in Japan is indisputable.

Over many centuries Blind Guilds organised workers into specialised occupations that were accessible to their impaired vision. Initially specialising in entertainment performance including singing, story telling, dance and the playing of musical instruments, this grew to include massage, acupuncture, fortune-telling and later money-lending. The Blind Guilds were not ad hoc collections of blind people. They were powerful organisations in their own right. For many centuries they ran specialist schools to train and certify their blind pupils. These schools taught necessary skills in localities across Japan (Matisoff, 1978, p. 43.). Matisoff described the Blind Guilds of Japan becoming **'a country of the blind, controlled by their own system of regulations outside direct government management.'** (Matisoff 1978 p28).

It is important not to create an idyllic view of the blind in Japanese history. The fortunes of the Blind Guilds waxed and waned over the centuries, and life for many blind people would still have been difficult. Nevertheless, the contrast with the European tradition is stark. For example, Farrell described how a young blind academic from Japan was shocked in 1760, to learn about a mock blind orchestra amusing Parisians. Hokiichi Hanawa had, at his Blind Guild School in Tokyo, learnt not just music but also acupuncture and classical literature. He was bewildered by the spectacle of blind people ridiculed, pretending to play music, when in Japan they had earned a living playing excellent music for centuries (Farrell 1956 p 18).

Japan was not alone in having a powerful, established system of Blind Guilds. Chinese Blind Guilds have an even more ancient heritage. It is speculated that these guilds originated from the natural instinct to associate with blind paupers banding together for self-protection (Vaughan 1988).

Burgess in his survey *The Guilds of Peking'* drew upon Gamble's eyewitness accounts of the 1926 meetings of the Blind Guild of Peking. The Guild had over 1,000 musicians, singers and story tellers. It had a central organising committee of 48 blind men. Gamble found the sight of blind men collectively organising strange

> **"and it was a strange sight, many blind people together, each with his long bamboo tapping, tapping, tapping, as they moved around the Hall. They were constantly calling back and forth across the Hall as they tried to locate their friends;. they formed a line, with his hand**

> **on the shoulder of the man in front of him, they were led by a man who still had a little vision and so could avoid chairs and tables. In the evening the executive council of 48 met to commence the business of the gild. They gathered around a row of tables arranged in the shape of a tortoise shell. The, twenty four men on each side of the table all had different titles and duties "(**Burgess 1928 p103).

Some of the Committee's roles are familiar, such as president, time keeper and record taker. However other roles are more startling highlighting the quasi legal disciplinary functions of the Guild. These include the roles of a Judge, Attorney General, Prosecutor, Grand Jury members, police officials and even an executioner.

The meeting discussed reports and proposals for increasing the member's prosperity and strengthening the guild. At the end the names of members were tactilely burnt onto an altar as a record of attendance (Burgess 1928 p 174).

Gamble then described the disciplinary function of the Guild.

> **'After the business meeting, the committee constituted itself a court, tried the cases of those who were accused of having broken the rules and regulations of the gild, and heard and attempted to settle cases where there had been a quarrel or dispute between any of the members. When the cases were brought before the court, testimony was taken and a verdict rendered. Each of the members of the executive committee carried out the duties of the office to which he had been assigned** '(Burgess 1928 p 175).

The Blind Guilds in China were serious organisations offering education and support to blind members and apprentices, including the arrangement of payments for funerals for guild members. The formal disciplinary procedures demonstrated the importance of the Blind Guilds in Chinese civil society. They assumed some of the roles and functions more familiarly attributed to States in European history.

In both Japan and China blindness has a history which can be interpreted with a different emphasis. When organised into Guilds the blind are strong, not weak, integrated, not segregated, productive, not unemployed, resourceful, and not desperate. Where they are despised this may be grounded in the strength of blind communities rather than their poverty and despair. The Blind Guilds were able to operate almost entirely without sighted assistance. They survived and thrived through the collective learning and teaching of adaptive skills learnt by generations of Blind Guild members. Neither private resources, nor employed sighted support were necessarily required to enable members to achieve success in their fields. From the standpoint of effective support for the transition of visually impaired people into employment the Guilds are an example which stood the test of time for centuries in both China and Japan.

It seems that only in China and Japan that we see a model of blind collectivism which is at the same time integrated into mainstream society, with autonomous self-determination for blind workers, and most importantly valued and respected integration into the labour market. It appears with the coming of the Revolution in China and the post war Westernisation in Japan that the importance of the Blind Guilds has all but disappeared. With the advent of mass media and entertainment their commercial skills of music and story-telling with would have been particularly vulnerable. In both China and Japan the issue of visual impairment appears now, as in the west, to be pre-dominantly an issue of welfare.

Nevertheless the history of the Blind Guilds provides several lessons which are more useful than the more familiar lessons of Blind Icons. Firstly there is no need to be a **'heroic', exceptional** individual to achieve employment success. Instead progress into the labour market is normal and expected, even routine. There is no over dependence on sighted assistance and support, where this is organised it is provided for the collective rather than the individual. In place of individual sighted support arrangements appropriate skills are learnt and support structures are set up. The self-determination and autonomy of these Guilds establishes a structure whereby they perform socially valued functions within mainstream society, whether this is through the skills of singing, music, massage or acupuncturist.

We can infer more. In Chapter One and Chapter Two we described how blind people in first the UK, through the National League of the Blind, and then the USA through the National Federation of the Blind, managed to shake their respective governments with their political campaigns for the betterment of the conditions of life for visually impaired workers. We saw how, in both the UK and the USA, it was the creation of blind communities through the organisation of workshops which allowed this collectivism and strength. Visually impaired people moved from the pathetic to the strong and confident.

Yet in the UK our Social Policy framework has returned to principles, established since the Poor Law, that of atomising and isolating people with visual impairment. The capacity of visually impaired people to gain confidence, support and cohesion has again been lost. No workshops for the blind exist in the UK now, and as we shall see in chapter 13, the remaining generic disabled workshops are under severe threat in latest Government plans to organise support for the employment of disabled people. Nobody would want a return to the basket weaving past of blind workshops but if there are to be any lessons of history for the Social Policy support of the entry of visually impaired people into employment, the historic success of blind collectivism cannot be ignored. How this collectivism could be applied in the modern age is a question I shall address over the next three chapters.

Chapter 12

Jack of all Trades?

Reasonable Adjustment, Assessment and the Myth of Disability

In the previous Chapter we reviewed historical evidence for the benefits of collectivism for visually impaired people. We saw that this offered opportunities for self-reliance and reduced dependence on sighted support. Strategies for adjustment could be generated and shared. In the case of the Blind Guilds, these shared learning strategies drew on the experience of generations. Self -reliance resulted in neither segregation nor isolation, but commercial integration. Over the next three Chapters I will examine whether any of these historical lessons can be usefully applied in our modern context.

I do this by using case examples to analyse principles which underlie assessment of reasonable adjustment in the workplace. First I will return to a historic blind icon: Helen Keller, whose experiences demonstrate difficulties when sighted people exercise inappropriate control. The second, more recent landmark case; Latif v Project Management Software, demonstrates Keller's difficulties are not confined to history but are relatively perennial. To investigate why this problem persists we will review a research project which attempted to provide insight into the expert 'disability' advice required to support Reasonable Adjustment in the workplace. This review will lead to a further, this time controversial, organising question. Why is the categorical concept of disability, in both legal and social policy, more myth than reality?

Reasonable Adjustment for visually impaired people has typically involved work related travel, personal support and technological equipment (RNIB 2005). Since 1994, for employees, and 1993 for students, a large component of access materials and equipment for visually impaired people has been provided by Access to Work and Disabled Students' Allowance (RNIB 2005 p 2) (BBC 1999). The recent implementation of these services suggests Reasonable Adjustment is a modern concept. Yet, Helen Keller's 'Reasonable Adjustment' arrangements appear surprisingly modern. Despite the historical distance, there is contemporary merit in their review. The detail she provides is a rich description of the barriers visually impaired people encounter when they attempt to integrate into mainstream education and work. A century later, research, and case study research in particular, remains scarce.

Anne Sutherland's support is famous, but there are other essential elements in Keller's adjustment. Unlike Fawcett, Keller's training alongside other visually impaired students at the Perkins School provided skills in Braille. This meant that despite her deafness, she achieved greater self- reliance in reading and writing. As well as using Braille books, she used a Braille Writer and a specialist typewriter for sighted readers of her work.

The Braille Writer proved crucial for Keller. In 1892 the Perkins School developed this revolutionary device which has continued, largely unchanged, to provide access to employment and study throughout the last century (Perkins 2012). We can, then, at the outset of our inquiry, discern one of the advantages of specialist collectivism. The congregation of visually impaired students and professionals at Perkins allowed a shared effort at problem solving, providing a fertile environment for technological breakthroughs.

A key element, in Keller's Reasonable Adjustment was the development of her own expert skills in mastering this challenging medium. It is unlikely that, without attending a Perkins style school, she could have developed independence in written media. The combination of technology and training enabled Keller to conceive a strategy to support entry into mainstream education. However, in practice the implementation of this strategy proved difficult and her difficulties have a haunting resonance for many today.

Keller shares an experience of serious delays in the organisation of access material and equipment, with modern users. The continuing problems for users of both Access to Work and Disabled Students' Allowance is well documented (RNIB 2004 P 33) (Sellgren 2010). Keller explains;

> **'But during the first few weeks I was confronted with unforeseen difficulties....Unfortunately, many of the books I needed had not been embossed in time. Miss Sullivan was obliged to read all the books to me, and interpret for the instructors and, for the first time in eleven years, it seemed as if her dear hand would not be equal to the task.'**

Complaints about lack of accessible reading material have been around for as long as the alternative formats have been available. This remains a modern complaint. It would be considered unacceptable for sighted students to wait weeks, even months before they could read materials for their course.

Unfortunately this problem of access was not, and continues to be, just an issue of delay. Keller reflected on the difficulty of access to reading materials throughout her studies;

> **'Very few of the books required in the various courses are printed for the blind, and I am obliged to have them spelled into my hand. Consequently I need more time to prepare my lessons than other girls. The manual part takes longer, and I have perplexities which they have not. There are days when the close attention I must give to details chafes my spirit, and the thought that I must spend hours reading a few chapters, while in the world without other girls are laughing and singing and dancing, makes me rebellious.'** (Keller 1905 p 35)

Keller's complaint requires clarification for context. To read a book with the manual alphabet requires that every single letter and punctuation mark be drawn on her hand. She has then to mentally assemble these letters into words and then sentences. It is not surprising she feels rebellious at undergoing hours of this tedium.

These difficulties with reading material were compounded by delays for writing equipment.

> **'...I lacked important apparatus for some of my studies. The classes I was in were very large, and it was impossible for the teachers to give me special instruction... It was necessary for me to write algebra and geometry in class and solve problems in physics, and this I could not do until we bought a Braille writer, by means of which I could put down the steps and processes of my work'** (Keller 1905 p32).

Again to appreciate Keller's difficulty requires some knowledge of how you must write Braille without the assistance of a machine. It is unintuitive and slow. A frame and stylus is used to punch indentations into paper which can be felt on the opposite side. Everything must, therefore, be executed in reverse, writing from right to left, creating Braille characters, mirror inverted, along their vertical axis. The result of this laborious process is that when you turn the paper over you will be able to read the resulting Braille left to right, with the characters in proper alignment.

An equivalent difficulty for a sighted student would be to deny pen and paper for week, instead requiring students to take notes by shaping letters in reverse, on plastic film. Such a requirement would cause an outcry, yet such difficulties are accepted for visually impaired employees and students.

Problems persisted for Keller in her college. Her teachers and college administrators attempted to exert inappropriate control over her arrangements for study, whilst lacking insight into her needs. Eventually Keller's unhappiness prompted her to withdraw from class based teaching to home based tuition. Here she could control access to both material and curriculum and her work thrived.

Problems loomed for Keller though, when in June 1899 she needed to return to College to take her entrance examinations for Radcliffe. Like many visually impaired people Keller discovered that it was she, rather than the College or the teachers, who has to make major adjustments. Keller's natural reading and writing medium was Braille. However, as her teachers could not read Braille she had to use a typewriter. Of course Helen received no feedback from the typewriter, so Sutherland provided screen reader-like feedback to review or amend what she had typed. Although this was not ideal, it did nevertheless enable rapid production of material which her teachers could read.

Keller described her specialist typewriter;

> **'I use the Hammond typewriter. I have tried many machines, and I find the Hammond is the best adapted to the peculiar needs of my work. With this machine movable type shuttles can be used, and one can have several shuttles, each with a different set of characters– Greek, French, or mathematical, according to the kind of writing one wishes to do on the typewriter. Without it, I doubt if I could go to College'** (Keller 1905 p35).

Visually impaired students and workers today share similar reliance on technology. Whilst Keller's early examination arrangements were supportive, with feedback provided on what she was typing, at Radcliffe this abruptly changed. No support was allowed in the exam room;

> **'I could not see what I wrote on my typewriter... I had always done my work in Braille or in my head..., Mr Gilman sat beside me and read the paper through first, then sentence by sentence, while I repeated the words aloud, to make sure that I understood him perfectly. The papers were difficult, and I felt very anxious as I wrote my answers on the typewriter. Mr Gilman spelled to me what I had written, and I made such changes as I thought necessary, and he inserted them. I wish to say here, that I have not had this advantage since in any of**

> **my examinations. At no one reads the papers to me after they are written, and I have no opportunity to correct errors unless I finish before the time is up. In that, case I correct only such mistakes as I can recall in the few minutes allowed, and make notes of these corrections at the end of my paper'** (Keller 1905 p 34).

And again;

> **'The administrative Board of Radcliffe did not realize how difficult they were making my examinations, nor did they understand the peculiar difficulties I had to surmount'** (Keller 1905 p 34).

Radcliffe were concerned that Keller would gain an unfair advantage but probably only sighted administrators could consider blind typing without an ability to review what was typed was fair.

This was only the start of Keller's exam problems. As Radcliffe had prohibited exam support, they instead commissioned Braille examination papers, without first assessing Keller's needs. Keller had learnt English Braille, and not the developing American alternative. Keller describes the ensuing stress and chaos.

> **'... When it came to geometry and algebra, difficulties arose.* I was sorely perplexed, and felt discouraged wasting much precious time, especially in algebra. It is true that I was familiar with all literary Braille in common use in this country–English, American, and New York Point; but the various signs and symbols in geometry and algebra in the three systems are very different, and I had used only the English Braille in my algebra. Two days before the examinations, Mr Vining sent me a Braille copy of one of the old Harvard papers in algebra. To my dismay I found that it was in the American notation. I sat down immediately and wrote to Mr Vining, asking him to explain the signs. I received another paper and a table of signs by return mail, and I set to work to learn the notation. But on the night before the algebra examination, while I was struggling over some very complicated examples, I could not tell the combinations of bracket, brace and radical. I was distressed and full of forebodings for the morrow'.** (Keller 1905 p 33).

Keller has to learn not just the material for her exam, but also a new language two days before. It is a testament to Keller's determination that she overcame these barriers to pass.

We would be all happy if we could consign Keller's difficulties to a less sensitive age but unfortunately difficulties persist. What sighted people consider is

Reasonable Adjustment for exams lays at the heart of the landmark Project Management Institute v. Latif [2007] UKEAT 0028_07_1005. Ironically the difficulty here was an inverse barrier to that created for Keller. Keller's problem was due to the educational authority's inflexibility in disallowing personal support and insisted on relying on technological aids. For Ms Latif the opposite inflexibility was at the heart of the dispute. In her case the education authority compelled her to rely on personal support and disallowed any use of her technological aids.

Ms Latif was a Blind Project Manager who applied to undertake an online Project Management Professional (PMP) exam. She asked if she could take this exam using her laptop, or alternatively allow her Jaws screen reader to be installed on a PMP's computer.

PMP refused, offering instead adjustment based exclusively on personal support. They had no experience of students using a screen reader and felt that their existing arrangements were satisfactory. They argued that a screen reader was unnecessary, unduly costly, posed a potential security risk and gave rise to a risk of cheating (BAILII Undated).

They offered a standard adjustment for visually impaired students, an amanuensis to read questions and transcribe verbal answers. Extra time was given to complete her exam.

The Employment Appeal Tribunal found for Ms Latif and against the inflexibility of the exam authority. The case is cited, as we saw in Chapter 9, mainly for what it established in relation to the burden of proof in Reasonable Adjustment cases (BAILII Undated). Here I want to focus not just on the legal rationale of the case but the tension in Reasonable Adjustment which underlay the claim.

In his judgement, the Honourable Mr Justice Elias focussed on the low cost of the adjustment for Ms Latif. In particular, that the transfer of her Jaws Software Licence would not have cost for Project Management Software anything. (BAILII Undated). However, what was not revealed in the judgement was the underlying difficulties which compelled Ms Latif to bring her claim in the first place. Ms Latif's complaint was represented simply as one of personal preference and appears an issue of marginal convenience. There was no discussion or understanding of why these amanuensis arrangements may have been unreasonable.

I can offer some insight as to why Ms Latif may have been unhappy with her arrangement. Using amanuensis support is an awkward and stressful experience. In general, any extra time allocated for the amanuensis is swallowed up by the time consuming nature of the interaction. First the amanuensis must read all the exam paper so that you can choose your questions and start to plan your answers. Reading aloud is slow, much slower than sighted reading with magnification, or with accelerated synthesised computer speech. Next your amanuensis has to re-read the first question again, at least once, so that you can consider your answer. After you start, the dictating process is far from smooth. Your amanuensis will pause to read back every sentence, in an effort to ensure they have accurately transcribed. Progress remains slow and disjointed. It is very difficult to establish any argument or train of thought. At the end of each question the amanuensis support then reads back the entire answer to ensure you are happy with it as a whole before moving onto the next question. By this time you are likely to be checking the time with increasing panic. Your effort to speed up the amanuensis support is likely to meet resistance and will probably be counter-productive. They will resist pressure which may force them into errors. They know that the biggest complaint is inaccurate transcription, resulting in lost marks for the student. Speed has to be sacrificed to ensure accuracy. The result is that you sit in the exam with a sense of loss of control due to your inability to respond to the exam pressures

These insights are not obvious to sighted people. They were not even obvious to me before I underwent the trials of amanuensis support.

This lack of insight into our needs can create chaos. A colleague recalled to me how he succeeded in getting a screen reader on a computer for his exam, only to find neither speakers nor headphones for him to hear the program's speech output. It never occurred to the sighted IT technician that this would be a problem.

What unites the experiences over a century of Keller, Ms Latif and thousands of other visually impaired students and workers is the struggle against inappropriate sighted assumptions in the assessment of adjustment requirements. We operate as isolated, relatively powerless, individuals within a discriminatory communication infrastructure. The specialist needs of visually impaired people need to be introduced into the assessment of Reasonable Adjustment with more expert control for the representation of the interests.

What should be the source of this expert advice and regulated control over Reasonable Adjustment arrangements? The Social Policy response has been provided by the institution of various Government funded bodies, including

Access to Work, Disabled Student's Allowance, and Disability Employment Advisors. In the legal arena advice was available from the Disability Rights Commission and now the Equality and Human Rights Commission. There is no doubt that these organisations have, through a specialist focus on disability, contributed by improving insight into the needs of visually impaired people. Yet in a very important way this focus on disability has limitations and can result in a social policy deficit. To demonstrate how even disability specialism may be insufficient for the issues raised by the Keller and Latif cases we need to consider the insights from a final case example. Here we will not examine Reasonable Adjustment arrangements for a person, but the conclusions of a specialist disability research project into support arrangements at work.

In 2001 Professor Rawlstone undertook a research project which delivered its findings in '*Thriving and Surviving at Work*' (2003). This remains the most recent and important qualitative study into disability employment in the UK. The lack of prior studies is striking, with only Thomas (1992) as a precedent.

Thriving and Surviving was an important opportunity. Whilst some may question the value of qualitative research, as it does not deliver the certainty of quantitative data (Ritchie 2003 P 23-28), this study could have provided important evidence to support social and legal policy decisions. Qualitative research of this kind offers opportunities not available in quantitative studies. For example, in Chapter 9 we referenced several quantitative studies which revealed low rate of success for disabled applicants at Tribunals, Yet these studies are relatively shallow and do not reveal causation. Thriving and Surviving could have added contextual dimensions to our understanding of employment exclusion. It could have explored causal links, and revealed how attitudes, belief and ultimately actions were formulated. The research could have investigated in depth 'how' and 'why' questions. For example, qualitative research into employment for disabled workers could look at a number of 'how' questions analyzed against complex systemic pressures. How Reasonable Adjustment arrangements are created, how effective they are, do they last, how are they enforced? These 'how' questions could be followed by 'why' questions (Yin 2003 p 14). So the project could have identified why some factors help deliver the enforcement of legal rights, and why some factors inhibited legal entitlement to Reasonable Adjustment.

The research was commissioned against the background of impending legal reform stipulated by the 2000 EU Framework for Equal Treatment in Employment and Occupation. The prospects to impact positively on legislation and Social policy appeared good. The research was well resourced with a full team. The leader, Professor Rawlstone was an influential academic whose advice was eventually sought to help inform the 2005 Disability Discrimination Act (DMU 2009).

Despite these auspicious circumstances research missed an opportunity to provide useful insight. The team set up a number of challenges which inhibited any clear findings. Poor methodological planning and over reliance on a diverse, heterogeneous case study sample lay at the heart of these difficulties. To understand this we must review some principles of research design, including a brief review of qualitative research methods.

The remit of the research was unnecessarily broad, setting out wide terms of reference rather than drilling down to an analysis of Reasonable Adjustment. It broadly divides attention between 'strategies' and 'support'. Strategies are defined as the actions which emanate from disabled people. It describes the measures taken to plan, identify resources, make choices and, as the report describes **'working out the best ways to get by'**. (Rawlstone et al 2003, 2) Support in contrast is those factors external to the disabled employee. These include not just Reasonable Adjustment but resources from a colleague, a scheme, financial allowances or benefits, or changes to the workplace (Rawlstone et al 2003 P 2). In another sense the research is puzzlingly narrow, with no attempt to examine systemic barriers to employment.

Effective research design needs questions with methodology (Yin 2003 p 27). Design has to address at least four problems. The first is the questions themselves, the second is in the light of the questions what data is relevant, the third is how the data can be obtained, and finally how the data is analysed (Yin 2003 p 28).

Applying this to Thriving and Surviving at Work we get the following design. The question is how can disabled people thrive and survive at work. The data to be collected are experiences of strategies and support from the widest diversity of disabled people. The data collection is through one on one and group interviews with as many different impairment groups as possible, and finally the data is analysed in an attempt to pattern match descriptive accounts in strategies and support that disabled people deploy.

On the face of it the design appears reasonable and robust, but those designing the research were unaware of the traps they were building. The first trap was a flawed sampling strategy, in itself structured by an over reliance on the politicised concept of disability. Qualitative research is always underpinned by a decision on what sampling methodology to undertake. Distinctions have to be drawn between probability and non-probability based sampling. Probability sampling relies on the random selection of respondents from lists of one kind or another. These could be Census Information, GP Patient Lists or other data sets. The most important factor in this process is representativeness. So if the random selection does not achieve this aim of representativeness there may have to be some re-weighting at the stage of analysis. The aim of this sampling approach is to produce a 'small-scale' model of the wider sampled population. This approach is undertaken to ensure statistical legitimacy for information generated from the study (Ritchie and Lewis 2003 P 77-78).

Qualitative research is generally more suited to non-probability sampling. With this approach cases are selected to ensure that desired features of the population are available for in depth study. This approach is described as criterion based or purposive sampling (Richie and Lewis 2003 P 78). This methodology is used to ensure that all the key constituencies of the subject matter are included for analysis. The second major reason for this approach is to ensure that, within each criterion, sufficient diversity is included to ensure that the characteristics of each feature can be fully explored (Ritchie and Lewis 2003 P 79). Within this criterion based sampling framework, a further four approaches to the composition of samples can be deployed. These are summarised by Ritchie and Lewis as Homogenous, Heterogeneous, and Extreme /Deviant or Critical approaches (Ritchie and Lewis 2003 P 79). Homogenous composition refers to samples composed with respondents sharing the same subculture or characteristics. The composing of a heterogeneous sample, in contrast, attempts to include a wide variety of phenomena within a given spectrum. The extreme, deviant or critical approach deliberately looks for the unusual or critical factors for examination. Each approach has different strengths. The homogenous approach helps detailed investigation of social processes in specified context. The heterogeneous approach aims at identifying central themes which cut across a variety of cases, and deviant or critical cases enhance learning through the extreme or critical highlighting of issues (Ritchie and Lewis 2003 79). In this review I will concentrate on the decision of the project to focus exclusively on heterogeneous rather than homogenous sampling.

Rawlstone and his team opted for heterogeneous sampling without discussing, in the report at least, any benefits over a homogenous approach. This decision was driven by the understanding they applied to 'disability', which gave little room for manoeuvre. The research was commissioned just four years after the implementation of the Disability Discrimination Act, which was forced through by the political collaboration of a wide range of impairment groups uniting for a shared political purpose. The research project, therefore, adopted this diverse, wide ranging conception of disabled people. A core value of the project was the recognition of the diversity in disability.

The research relied on advertising in disability press and circulation lists to ensure the involvement of a wide range of impairment groups. Extra initiatives were made to ensure that people with learning difficulties and deaf BSL users were included. If a particular group were not represented then steps were made to attend a specialist conference to recruit members of that impairment group (Rawlstone et al 2003 P 41).

Diversity was further driven by concerns that there was representation from as wide a range as possible of ethnic, gender and sexual orientation categories. The team received 156 validly completed questionnaires but their sampling approach disallowed the use of some of these. Instead a 'representative' sample of 47 potential case studies was drawn up. The sampling criteria used were again driven by their motivation to ensure that there was the widest diversity of characteristics available for study (Rawlstone et al 2003 p 42). After drop outs, 33 interviews were completed. There was then a Focus Group exercise where all 33 respondents in Phase Two were invited to one of two regional venues in London and Manchester. Although the report defends these Focus Group initiatives the outcome is embarrassing for such a majorly resourced project. Eight disabled people attended an event in London but only three attended in Manchester, where disabled participants were outnumbered by the research team. So out of 156 respondents the research team conspired to arrange a Focus Group of only three. The group was perfectly weighted and representative but the research has not achieved value from its respondent base. Out of 156 volunteers only 33 interviews and 11 focus group members were delivered. The Manchester event threw into relief the methodological crisis. Their over reliance and over emphasis on the representativeness and diversity of their disability sampling caught them in a cleft stick from which they were unable to escape.

To demonstrate the dead end for the project we need only reflect on their findings. The yardstick by which we need to judge research design is the usefulness of knowledge it produces. This design and the heterogeneous case sample in particular, did not work well. Findings are not compelling or insightful.

They tend to the nebulous and offer limited guidance. The key finding reported was:

> **'There was no universal strategy. What might work for one disabled worker may be unhelpful or risky for another, given the employment context, length of time in a given employment, the human resources and financial environment'**. (Rawlstone et al 2003, 2)

Suggestions for ways forward are typically countervailed by caution. So when reporting upon informal support the report states;

> **'The advent of the 1995 Disability Discrimination Act had mixed implications here: while some employers wanted to formalise these practices to avoid any uncertainties, there may have been a tendency to undermine the trust on which these arrangements were founded'** (Rawlstone 2003 p 3).

The report seems to recite continually **'on the one hand but then on the other'** as a sub text. For example the research describes disabled employees reporting benefits from assertiveness and being upfront about their need for adjustment. Yet the report immediately hedges this by reporting some disabled people avoid assertiveness as they do not want to antagonise colleagues and managers. These respondents report success by making colleagues feel sorry for them, by struggling and getting sympathetic help over time (Rawlstone et al 2003 p 11).

After a hedged recommendation on assertiveness only two more **'lessons'** are provided for disabled workers in the report's summary. These are;

> **'Be aware of sources of aid and support. Be informed about rights at work'** (Rawlstone et al 2003 p 3).

Could the team seriously believe that any disabled worker would consider ignorance of rights, sources of aid and support as a useful strategy?

Rather than illuminating issues, the report draws vague conclusions reflecting the complexity of workplace arrangements. It repeatedly stresses the need for Government agencies to be aware of and respond to these complexities. In short the main finding of the report is that the world of disability in employment is so complex that no single conclusion or strategy to guide action for disabled people in the workplace can be formed.

All research needs a methodology. The analytical method used in Thriving and Surviving is pattern recognition and matching. Whilst this is possibly the most important of analytical tools, it is not the sole method (Yin 2003 p 31). The project strives to identify patterns but their focus on diversity diluted their chances of success. Yin suggests other models of case study analysis including explanation building, time series analysis, and replication logic. (Yin 2003 P 37) None of these analysis methods are used by the research team. There is no attempt to test the findings over time; rather the research is a snapshot into the experiences of disabled workers. The commitment to encompassing the most extreme range of impairments also inhibits attempts to perform an analysis based on replication logic within the data group.

The research team had an opportunity for explanation building. Not to use this approach is another disappointing aspect. Despite receiving more resources than any other qualitative research study there is no advance in theory or explanation of the situation of disabled workers in the UK. The team seem timid as to the degree with which they can declare new insight into their field of study. Instead the report is founded upon partial descriptive narrative. Rather than theory or explanations, there is just a set of individual listing of factors. Each is listed with accompanying verbatim quotes from case study respondents to support the authenticity of the factor identified. What is missing is a description of systems, and their interaction. The report appears to shy away from system analysis because of the difficulty in drawing general conclusions from their data.

The problem with this individual description of factors is that the impact is relatively insipid. Wherever a pattern has emerged the knowledge gained is relatively obvious and intuitive. For example, that we should know the accessible sources of support and entitlements. The difficulty in identifying patterns across the diverse data group overwhelmed the team. The result is mundane descriptive research findings, which are safe from narrow methodological challenge of unrepresentativeness. This initiative would have been useful if, at the outset, the team had addressed the requirement to identify crucial systems and how they interacted. There should have been an explicit commitment to generate explanation and theory. This would open the findings to alternative critiques. The chance of identifying non-intuitive useful knowledge would have increased.

The report fails then in its objective of identifying consistent and helpful findings which could have informed policies for either strategies or support. A recommended toolkit of strategies and support for disabled employees, managers and agencies is as elusive after the research as before it.

Rawlstone and his team could protest that the social reality they investigated was complex and that life cannot be packaged into neat segments with clear guidance. This defence ignores a fundamental flaw in the design of this study. These nebulous findings were related to poor research design. They would have achieved more useful findings by adopting a homogenous case sampling approach.

The problem with this research was the relevance of data collected. The Trojan horse was the high commitment to heterogeneous diverse sampling. A criticism of diversity seems counter intuitive as in most circumstances a valuing of inclusion is socially positive. In addition diversity is an acknowledged methodological objective (Ritchie and Lewis 2003 p 78). They thought the wider the representation the better. Ironically their success meant difficulty in generating insightful findings.

In the end it is unsurprising that research which focuses on creating the most diverse possible sample group would struggle to identify patterns to inform general conclusions. Underpinning this sampling approach is the problematic assumption that there is a single category of people who can be described as disabled.

Disability as a legal and social category was first developed in the 1944 Disabled Persons (Employment) Act where the provisions of the 1938 Blind Persons' Act were expanded to include the ranks of servicemen physically impaired by the Second World War. The label gained even wider connotation in the struggle for the Disability Discrimination Act where as we saw in Chapter Four, organisations of people with mental health and learning difficulties joined the campaign.

Any label should convey an understanding of shared characteristic. It is extremely difficult to research all the characteristics of impairments groupings under the label of disability and emerge with a single recommended strategy. How does the experience of someone with bi-polar disease relate to someone with dyslexia? How does someone with the problem of back pain management connect to the experience of visual impairment? What is the shared experience between someone with hearing impairment, chronic fatigue syndrome and dexterity issues? How does the impact of spine deformity in a university academician engender insight into the experience of a gardener with Down's syndrome? The alleged single world of disability needs more complex policy responses. This is well known to those who work in the area of disability. There is no such thing as a disability expert. We all specialise in impairment groups.

Consider the vexed issue of assertiveness where the report found it difficult to make unqualified recommendations. Would it be any surprise that the experiences of a graduate office manager with visual impairment would vary significantly from an agricultural worker with autism? To what extent can their strategies apply to shared opportunities? It is far more likely that a visually impaired lawyer or even factory worker could connect with the experience of the visually impaired office manager. Despite radically different jobs there would be congruence on more areas of experience and opportunity to gain insight.

The research set out to investigate a mythical category, that of the 'disabled worker'. The search, obscured by the fog of complexity, proved too elusive for any meaningful categorization. In contrast, in this Chapter, through a study of just two cases, Keller and Latif, we can develop useful insights. This research project, despite having 33 cases, becomes lost in its inability to reflect on shared experiences. By attempting to become a 'Jack of All Disabled People Trades', the research is unable to deliver expert advice relevant to any impairment category.

Without re-running the project, we cannot be certain that there would have been more useful findings with a more homogenous approach. It does seem likely that combining people on the basis of shared experience of either impairment or assistive strategies would have delivered more coherent findings. This could have been respondents with shared experience of, for example, assistive support and technology. So people with a wide range of impairments could group discuss shared experience of working with a support worker. People with dexterity and/or visual impairments could combine with people with general print disabilities to discuss computer based solutions. In the end it is almost certain that for insight into useful support and strategies a homogenous sample of visually impaired people would have produced more useful insight than a very diverse heterogeneous group of 'disabled' 'people.

The research faces criticism also for failure to address the problem of barrier creation and discrimination. To investigate strategies and support without the context of the problem of discrimination is bound to produce less relevant findings. It was also a major missed opportunity given the interest in such research in a period of significant legal reform.

Does the descriptor of a disabled person have any useful meaning? In certain circumstances the answer is clearly yes. However disability is most useful in constructing a political coalition against the shared experience of discrimination rather than any attempt to attribute a shared congruence in the impacts of our respective impairments. All share experience of avoidable discrimination through the erection of social, attitudinal and infrastructural barriers. Yet this shared experience of avoidable barrier creation is precisely the area that Rawlstone and his team decided not to address.

I believe that the difficulties experienced by Rawlstone's team are replicated in many other 'disability' based initiatives. Often there is no need for this difficulty as long as we can break from obsession with the diversity of disability as a category. Pattern identification would be much more fruitful by concentrating within a single impairment category. Keller waited for weeks for her equipment and materials to arrive. When Ms Williams joined JWT it took five months before her equipment was in place. When I joined the NHS it took six months for equipment to arrive. We know that the experience of delay is common. From the limited examples on which we have reflected it is already easy to identify shared experiences of barriers and difficulties. Constrained by reliance on the mythical category of the 'disabled person', Thriving and Surviving struggles to find anything useful to say. Value as the source of expert opinion disappears. In contrast a collective visual impairment resource can become expert in expertise and advice.

In chapters 1 and 11 we introduced the case for the specialist Visual Impairment Employment Centre. These would provide a route to answering the conundrum of who controls Reasonable Adjustment assessment for visually impaired people. Complete individual control of resources for arrangements is neither practical nor necessarily desirable.

There is already a wealth of experience and coping strategies which are available in each area. The problem is that these resources remain atomised and unorganised. One area may have a Low Vision forum, another may have an Action for blind People Resource team, but they will rarely encounter each other. In some areas blindness organisations operate in the same geographical patch, disparately without communication or strategisation. A Braille class in Waltham Forest will not share learning experiences with Braille classes in even neighbouring boroughs like Haringey.

A Visual Impairment Employment and Education Centre could consciously draw upon these disparate resources. They could organise and share expertise to produce a vast resource to help deliver expert assessment.

For example, there are a number of pre-defined strategies which may be applied when considering the adjustment regimes for visually impaired students and workers. These include Braille, screen reading and magnification technologies of various kinds. Yet thousands of visually impaired students and workers are individually assessed and resourced for their adjustment arrangements. There are no Government sponsored initiatives whereby any individual student or worker with visual impairment can share successful strategies. In workplaces and colleges Reasonable Adjustment wheels are constantly re-invented.

Visually impaired people will not necessarily want to return to the collective workshop for their employment. Yet what a specialist Regional Employment Collective could offer is a positive initiative fulfilling a number of functions beyond traditional sheltered employment. We saw earlier how an important element of Keller's Reasonable Adjustment package was her training. Her skills allowed her more self-reliance in the mainstream than Fawcett. The Braille learning curve is recognised. The same is not true of screen reading or computerised magnification.

The comparatively easier access to screen reading and magnification support is the technology breakthrough which has, on the face of it, allowed the dominant individualistic approach to Reasonable Adjustment to flourish. It allows a visually impaired person the luxury of access without encountering significant skill deficits. It is possible for a visually impaired person to be a relatively passive recipient of support. Typically training will involve only 2-3 half day sessions delivering only limited functionality in the college or workplace. If we are to enable visually impaired people to achieve competitive value in the labour market they need effective, comprehensive skills that will allow efficient use of the technology.

Whilst the hurdles for screen reading and magnification are lower than for Braille, they remain significant if effective productivity commensurate with sighted colleagues is to be achieved. First you need to learn to touch type without sight, second you need to learn different keystroke routines to control disparate programs and operating systems. Personally I required six months of concentrated effort to use a screen reader efficiently.

The relative, low level, ease of screen reading and magnification compared to Braille disguises another problem. Braille is a challenging skill but is reasonably predictable and stable. The situation for users of assistive technology is never stable. Keystroke strategies may require complete overhaul when either software or operating systems are upgraded. A famous example of this is the difficulties Microsoft caused for thousands of screen reader users by abandoning their traditional menu interface in favour of ribbons. A further challenge is looming with the decision of Microsoft to abandon the Start Menu in Windows 8. We cannot rely on the sighted intuitive mouse click in these new interfaces and we are all forced to learn anew control of computers we had believed we had mastered. The pace of these changes force screen reader suppliers to release new versions of their products every year. Jaws 13 will not work with Windows 8. For a visually impaired person the unfamiliarity of Windows 8 will be exacerbated by their need to learn how to use Jaws 14. Training, for visually impaired people, is never completed.

This learning curve is also about to get steeper. The price for the mainstreaming of accessible speech into devices like Apple computers or Windows 8 is that this interface is becoming ever more complex for a visually impaired person. Unlike bespoke adaptive technology which attempts to modify and simplify interfaces, mainstream adaptation tends to simply replicate the sighted interface. What is simple with a touch screen or mouse is difficult with a keyboard. There is a training deficit, with insufficient assistance to meet the challenge of changing technologies.

A collective Specialist Employment Centre, congregating expertise in adaptation for visual impairment, could offer expert assessment, structured training of skills, and most importantly a support network of visually impaired people who could all share strategies and skills. Such centres would be powerful, ongoing sources of support in mainstream employment and education.

There is a final nettle to be grasped. If the problem of employment exclusion is to be addressed within our lifetime it is unlikely that an individualised strategy will be sufficient. Access to Work offers relatively passive intervention. It operates only after a visually impaired person has broken down barriers to employment. Relying on the efforts of visually impaired people to enter mainstream employment is an experiment which has failed over the last 50 years of running down sheltered employment provision. The sheer scale of employment exclusion for visually impaired people, in some cases for all their lives, suggests that part of the solution will almost certainly involve specific sheltered employment initiatives.

The economics of such an initiative and its place within the efforts of visually impaired people to succeed in the mainstream will be the subject of the next Chapter.

Chapter 13

The Business versus the Economic Case

Over the next two Chapters we will examine the case for investment which can help move visually impaired people from welfare into employment. In the next Chapter I will address the scale of the investment required to tackle the generational problem of employment exclusion for visually impaired people. Before this exercise though, we need to clarify the financial modelling. Our analysis of this concept will be around an organising question. What distinction can we draw between the economic and business cases for disability employment?

In practice, the concepts of the business and the economic cases for employing disabled people are often regarded as equivalent. I will attempt to demonstrate that, whilst related, they are actually distinct. We need a working definition for our analysis. In brief the business case is that the employment of disabled people is profitable despite the context of labour market competition. It suggests that a process of enlightenment is all that is required to move disabled people into employment. The economic case is, in contrast, supported by a conviction that there are wider financial benefits. The beneficiaries of this are not necessarily the employer, but can accrue to the disabled person and society at large. This Chapter should help clarify this distinction.

The economics of not just Reasonable Adjustment but Employment Support services are the test by which visually impaired people will face economic inclusion or exclusion. In the UK, support is organised into 'disability' rather than 'visual impairment' specialism. There are now three main sources of support to assist disabled people to get and retain work. In the mainstream, Access to Work provides practical assistance with the purchase of specialist equipment and personal support (Access to Work 2012). Work Choice provides advice and support in finding and retaining work (Work Choice 2012). Remploy has provided Employment Support, recruitment and sheltered workshop services (Remploy 2012). Economic factors are driving each of these into crisis in attempts to resolve the problem of employment exclusion. One particular crisis will be our starting point.

On the 20 September 2011, staff at the disability Charity, RADAR, witnessed disabled workers protesting outside their offices against proposals, formulated by their Chief Executive, Liz Sayce, to close Remploy factories (Guardian 2011).

The demonstrators' fears were well founded. On the 11 July 2012, Remploy announced that 27 of its 36 factories were to close with the remaining nine sold off to the private sector (Remploy 2012). How could it be that RADAR, which has a long history of campaigning for the employment rights of disabled people, be involved in such devastating cuts? How could they change from supportive campaigners to become the target of anger from the disabled workers they claimed to represent?

To explain this extraordinary spectacle we must address the notion of the 'business case' for the employment of disabled workers. That there can be either a business or economic case for disability employment is a relatively modern idea. It departs radically from earlier ways of looking at welfare, Employment Support and Discrimination Law. We must start then by considering two conflicting economic paradigms which have shaped policy towards the employment of disabled people since 1998.

The dominant paradigm of the 1990s was represented by Scott and Maitland's resistance to Disability Discrimination reform described in Chapter five. This opposition was informed by a paradigm that state organised initiatives to prevent discrimination of disabled people is a form of state organised charity, forcing businesses to accept 'dead weight' overhead costs. In this view the requirement to provide employment access to disabled people was akin to a business tax. This view, as we saw in Chapter 10, survives today in the Coalition's reaction to their inheritance of the Equality Act and the 'Red Tape Challenge'. Whilst these objections are reminiscent of the 1990s, this paradigm had faced a challenge in the last decade. The passage of 1990's neo- liberalism into the 'Social Liberalism' (Buckler & Dolowitz 2006) of New Labour brought an important new rationale for the employment of disabled people. Whilst this new paradigm arose out of New Labour, it persevered and continued to exert influence on policy. Both the new and old paradigms are, though contradictory, represented in Coalition policy.

Like much of the policy formulation in this inquiry, we can trace the seeds of this new paradigm to the USA. The Temporary Assistance for Needy Families (TANF), more commonly known as Workfare, actively sought to increase employment amongst groups, such as lone parents, with high reliance on benefits. A similar programme was adopted by Major's Conservatives in their campaign to reduce benefit dependency of lone parents (Stafford 2003). In 1998 New Labour extended this model into their 'New Deal' to include young and disabled people. Young people who failed to co-operate faced benefit withdrawal, a sanction not, for the time being, extended to Disabled people. This was the first systematic Government initiative which sought to move people from incapacity benefit to paid employment. Disabled people who entered the voluntary scheme were offered a four month program, including a personal advisor, who assisted with intensive job searches. If this initial effort failed then subsidised work, voluntary work, or full-time education or training was offered (Stafford 2003).

By 2000 the New Deal was creating new thinking in New Labour. David Blunkett set out how such schemes changed the dynamic of support away from 'dead weight' costs to instead provide a path for profit. He described a vision of a **'new welfare state as the engine of prosperity'** (Blunkett 2000).This thinking, a developing paradigm of the 'business case', moved the justification for the employment of disabled people from a moral to the economic sphere. The new paradigm represented an 'everybody wins' formula whereby disabled people achieve employment inclusion not at the expense of profit, but to increase it. Disability employment is transformed from welfare costs into a strategy for renewal. Not just disabled people, but all groups who had traditionally faced unemployment, women, different races, sexual orientation and religion needed to be brought into the tent of the 'business case for diversity.'

The extension of this paradigm from state welfare to Discrimination Law was made explicit in 2003. The Women's and Equality Unit in partnership with the DTI issued a clarion call:

> **'For business, the lesson is clear. The failure to use human potential to the full will become more damaging as labour markets become more competitive and mobile. The imperative for employers to treat and reward all their staff fairly will become more and more difficult to resist. Businesses with a diverse workforce are likely to attract a wider customer base, have the ability to recognise new potential markets and to provide a better, more tailored service to meet individual needs.'** (WEU 2003 p1).

The conviction that this business model should underpin Discrimination Law was reinforced by Ruth Kelly in the 2007 review:

> **'We now recognise not just that it is right to treat people fairly, how discrimination creates personal misery and undermines cohesion within and between our communities. We know that it makes sound economic and business sense to draw on the talents of all people to fulfil their potential'** (DfCLG 2007 p 6).

Again, Harriet Harman in her introduction to the 2008 Equalities Bill reaffirmed these new guiding principles:

> **'Our commitment is based on the belief that equality is..... necessary for our economy; a modern economy thrives in a culture of equality which brings employers the widest labour pool, which sees all participate in the labour market rather than some being marginalised and excluded and recognises that diversity makes us outward facing and helps us compete in a global economy.**'
> (OPSI 2008 p 5) (1)

The ideas behind the business case were important in both Discrimination Law and Disability Employment Support for two reasons. First, if true, it removed any rational basis for an employer to resist the employment of a disabled person. Discrimination Law and Employment Support should both be pushing against an open door. Enforcement of Discrimination Law and Disability Employment Support should, consequently be straightforward. Indeed, we have seen in Chapter 10 how the Coalition Government used this logic to justify the imposition of employment tribunal fees (MoJ 2012 p 24). Secondly the business model is an important driver shaping Positive Duties established after the 2005 Disability Discrimination Act. The business justification for the economic inclusion of disabled people became particularly influential in the Regional Development Agencies. For example, the London Development Agency established an arm called 'Diversity Works for London'. This organisation continues to organise a project called 'Ability - Disability Works for Business' (WFL 2012). The South-East Development Agency invested £400,000 in a project called 'Diversity Means Business' (SEDA 2008). The North-West Development Agency argued that there was not just a business case for diversity but, indeed, for equality (NWDA 2008).

It was not just the Regional Development Agencies which invested in the model. In the voluntary sector, Leonard Cheshire hosted the national funding of the 'Realising Potential' project to deliver a network of services for disabled entrepreneurs (RP 2008). Amongst some private sector employers the notion that the employment of disabled people could be profitable was voiced, if not necessarily acted upon. The clearest expression of the acceptance of the model within business was provided by the privately funded 'Employers Forum on Disability'. It claimed over 400 private and public sector members representing 20% of the UK employment base. By 2006 Susan Parker, Chief Executive of the Forum, attested to their growing influence and paid tribute to higher profile founding members who had been:

> **'.. With us from the very beginning, who have invested so much in establishing a radically new business model for approaching disability: Barclays, BBC, B&Q, BT, British Gas, Burger King, Coverdale, Esso, Grand Metropolitan (Diageo), Midland Bank (HSBC), Prudential Assurance and Shell UK.'**
> (EFD2006).

These ideas have not disappeared with the coming of the Coalition Government. In June 2011 Liz Sayce produced her report '*Getting in, staying in and getting on -Disability Employment Support fit for the future'.* The report is the most complete argument for the business case for the employment of disabled people. The model drives both the analysis and conclusions of the report. The second sentence of the report declares that disabled people can deliver growth in the UK economy (Sayce 2011 p 12). Sayce goes on to state:

> **'Enlightened employers argue that there should be no need to pressure employers to employ disabled people on corporate social responsibility grounds, but to simply spell out the business case for employing disabled people and dispel myths about the costs and difficulty involved.'**

And again:

> **'The business case is simple: employing disabled people can lead to better business performance through accessing untapped reserves of talent, new sources of ideas, creativity and problem-solving, and new business from disabled customers, their families and friends from opening up new markets and enhanced reputation and loyalty'**
> (Sayce 2011 p 55)

As the Coalition had had an agenda to cut welfare and public sector costs, it may seem surprising that they turned to Liz Sayce to lead this review. Sayce was a disability insider, steeped in New Labour discourse. She was a member of the Government's Disability Rights Task Force between 1997 and 1999. Between 2000 and 2007 she was Director of Policy and Communications for the Disability Rights Commission. By 2007 the imminent abolition of the DRC prompted Sayce to take up her current post as Chief Executive of RADAR. However, the choice may have been inspired for the Coalition. Sayce's record in the disability movement made her an ideal spokesperson for any difficult message of cuts. Specifically the Remploy cuts could be defended on grounds of disability reform. She brought the credibility of her record, reducing charges of in expertise or inexperience that could have been levelled at a disability outsider. The use of

Sayce by the Coalition succeeded in splitting the Disability Movement by lining up RADAR behind her cuts programme.

Sayce's report is, in many parts, well argued. Her analysis of the erstwhile failure of the market to deliver employment for disabled people is compelling. She points to the problem of previous recessions expelling thousands of disabled people from employment, and the fact that these disabled people do not manage to get back in, instead spending lives in long term poverty and economic exclusion (Sayce 2011 p 8). She argues persuasively that a situation where the Government spends 20 times as much on out of work benefits compared to its entire Disability Employment Support budget does not deliver value for money (Sayce 2011 p 8).

However, in the main report Sayce offers little that is novel. Nearly all the ground covered and most of her conclusions are in the 2005 National Audit Office report for the DWP on *Getting and Retaining a Job* (NAO 2005). In common with other studies, Sayce celebrates the economic success of Access to Work. Its value is not controversial. All evidence points in the same direction. Despite the relatively modest sums invested, Access to Work shows startling economic effectiveness. It is a 'value for money' social investment

For every £1 spent on Access to Work the Exchequer recoups £1.48 (Thornton and Corden 2002). This evidence is substantiated by more recent reports for the DWP (Dewson et al 2009). Analysis of Access to work investments are self-financing with disabled people more than returning the support cost in taxes paid (Disability Employment Coalition 2004).

The 2005 National Audit office report also concluded Access to Work was a rational social investment providing value for money (NAO 2005 p 8). The employment for disabled people delivered additional benefits, though these are less easy to quantify (NAO 2005 p 16 p 50). Some society benefits are obvious. Disabled people in work reduce expenditure on welfare benefits, pay income tax, national insurance, council tax and VAT. Other benefits are harder to quantify. They are more likely to be contributing to a pension fund providing greater wealth and consumer demand over a lifetime. There is less reliance on social housing and economic spending power benefits the wider economy. They are healthier and less likely to use resources from the NHS and other areas of the Welfare State. All of these benefits are multiplied when we consider the impact of support worker costs for disabled workers, these workers also pay tax, claim fewer benefits, whilst helping their disabled clients produce value in employment (Hillage et al 1998).

Few could disagree with her finding of the positive economic impact of disabled people in employment. Where Sayce becomes controversial, and where her logical rigour dissipates, is in her analysis of the Remploy sheltered workshops. The 2005 National audit report had already expressed dissatisfaction with the factories and the subsidies that they received (NAO 2005 p4 p 51). Sayce now took a step further. She extended the logic of the business case for disability employment to its conclusion. Subsidies for an unwanted and outdated model of Disability Employment Support had to end. If the Remploy factories could not deliver a profit they had to close. At a stroke, thousands of disabled workers, some of who had spent most of their lives working in Remploy factories, were facing the scrapheap. It was these workers who turned out to demonstrate their anger against Sayce. RADAR, an organisation whose message is 'our strength is you' came under fire from the workers they claimed to represent. Their anger was entirely appropriate, as RADAR supported the findings of the Sayce report, including the proposal to close Remploy factories (RADAR 2011).

This spectacle revealed the weakness at the heart of the paradigm of the business case for disability employment. The voluntary, supportive 'New Deal' mechanism for employment is now a vehicle to deliver redundancy and employment exclusion. Both the National Audit Report and Sayce's characterised the sheltered workshop as a welfare innovation for war impaired servicemen. However, this neglects the far longer history of unsubsidised sheltered workshops, specifically the charity workshops of blind workers. The social experiment of sheltered workshops has always experienced difficulty in applying the business model. The inability of the Blind Charities to make a profit was precisely why there were blind workers protesting against their conditions of work. The subsidies applied to the post-war workshops were, at least in part, an expression of the victory achieved by the National League of the Blind in 1920 and 1938. Sayce's report over a half a century later represents the final reversal of that victory. It is not only in the UK that problems arise from a business model for workshops. In Chapter Three we saw how, in the free market USA, a similar experiment also resulted in high profile conflict between charity managers and their blind workers. Market forces pressured Workers into working for wages at a level less than the minimum wage. They consequently had to endure victimisation from their Charity managers when they attempted to organised protest against these conditions of employment. These conflicts from the 1940 to

1970s arose from competitive business pressures, which forced restrictions in pay and harder conditions of work.

There is relatively little evidence then, from either the UK or the USA, that the congregation of blind or disabled workers into productive units which have to complete directly, on equal terms, with sighted and non- disabled workers has ever provided long term viability. Sayce has, by applying the logic of the business case, signalled the end for Remploy workshops.

So the business case is, in Sayce's hand, a double edged sword. It provides the rationale for support, but also cuts in disabled people's employment. This damaging double edge was forged from Sayce's acceptance of the terms of reference set out by Secretary of State for Work and Pensions, Ian Duncan-Smith. The review could not recommend any expansion in the resources invested in disability support, but instead had to identify savings. Sayce was in a cleft stick, as her preferred model, Access to Work was also in crisis and needed investment. This drove her need to produce savings and ensured that Remploy became vulnerable.

To justify the attack on Remploy, Sayce delivers a headline figure that each Remploy worker receives a subsidy of £22,706 a year which she expects to rise to £25,000 a year (Sayce 2011 p 15). There are many reasons why Sayce's analysis of the economics of Remploy factories is unfair. There is a further compelling reason why her analysis is illogical. I will deal with aspects of unfairness first.

The headline figure of the £22,706 lays the responsibility for all the inefficiencies in the Remploy factories at the door of Remploy. An impression is created that each worker is getting this as a direct subsidy for their wages. Yet, when a worker produces products in any factory their selling price must recoup not just wages but wider costs. These include in plant and machinery, heating, rent, power, advertising, marketing and last but not least the failed management structure of Remploy Factories.

Sayce describes Remploy use of capacity at 50% and in some cases as low as 25%. (Sayce 2011 p 95). To describe the £25,000 so called subsidy as if it was direct support to disabled workers is simplistic and misleading. In reality this might be all or in part due to under use of factory capacity and an under recovery of overheads. It is better described as a Trading Loss.

As we have seen from historical evidence, it is no surprise that disabled workers struggle to compete on equal terms with non-disabled workers. There is little chance of Remploy achieving business viability if their factories do not work at or near full capacity with an appropriate level of overhead. This is a straightforward business problem. Can Remploy sell more products? Can they reduce overheads? Can they increase selling prices? In the next chapter we will also assess the cost of subsidising factories against the consequences of closure on welfare spend.

A further unfair representation is that of the scale of subsidy when compared to potential need. By coincidence the total budget spend for Access to Work and Remploy was pretty much identical in 2009-10 at £98 million. Access to Work supported more workers than Remploy, 37,000 as opposed to 13,600. Within the Remploy budget £63 million is directed towards the minority working factories as opposed to the majority Remploy has succeeded in supporting into mainstream employment (Sayce 2011 p 76). Sayce is particularly critical of the subsidy the Remploy factories receive stating that each factory receives between £0.5 million and £9.4 million. On closer examination we find that this relates to a two year period, 2009-2011 (Sayce 2011 p 94). Quite why Sayce uses a two year calculation where everywhere else she quotes one year figures it not made clear, though of course, it does double the headline subsidy figure.

It should be no surprise that the subsidy for Remploy workers is higher than that for Access to Work. Remploy is not the first stop for any disabled worker seeking Employment Support, and will not be relevant at all to those who are already in employment. Access to Work will be the first port of call for the vast majority and will logically include those with lower as well higher levels of impairments. Whilst Sayce provides a detailed breakdown of the impairment groups supported by Access to Work (Sayce 2011 p 80) the breakdown provided for Remploy is more broad brush. Yet we know Remploy's remit is targeted at those who find mainstream employment more challenging, or to use the DWP buzz words 'are further from the labour market.' A major tenet of Sayce's rejection of the Remploy model is that there is 'no evidence' that Remploy services address the needs of those further from the market. Since Sayce's report evidence has emerged that this is precisely the group Remploy targeted, 6 months on, only 35 of the 1,000 workers sacked have found employment (Ramesh (A) 2012). Sayce also unwittingly provides evidence within her own report. Ironically this emerges from her criticism of Remploy. Sayce's personal and professional background is in Mental Health. She is aware that Mental Health attracts the most negative attitude from employers and creates 'distance from the labour market'. It is the only group which has a greater negativity rating than visual impairment (Stevens 2007). On page 66 Sayce criticises Remploy for having only 6% of its Factory employees with mental health impairments. Yet on page 80, buried amongst the list of impairments groups supported by Access to Work, she records 400 out of 37,000 people with mental health impairments receiving support. This represents a support rate for mental health of only 1.08%. In other words the Remploy factories are almost six times more successful than Sayce's preferred model of Access to Work in supporting people with mental health conditions.

In this and other ways there is evidence that Remploy supports people distant from the labour market. Sayce reports disapprovingly that the Remploy Factories employ people for years, even decades (Sayce 2011 p 93). Yet this is only a problem if you support Sayce's un-evidenced assertion that this group can be straightforwardly and successfully assimilated into mainstream employment. Another way of interpreting the longevity of employment in Remploy is precisely that it is targeted at people **'distant from the labour market.'** It is just as reasonable, from the evidence Sayce accumulates, that if Access to Work and Work Choice were to assimilate the 'challenged' Remploy Group, their apparent effectiveness may well be affected. Sayce does not provide any evidence to support successful assimilation instead relying on un-evidenced faith in the capacity of the market to recognise the rational 'business case' for disability employment.

This belief in the positive influence of the market, bolstered by the business model is puzzling. In reality the evidence is that the client group currently supported by Remploy will find themselves unemployed and outside the system all together. This is certainly the view expressed by Remploy workers themselves (Guardian 2011), and, as we shall see, there is actually a great deal of evidence that Access to Work is relatively ineffective against negative labour market pressures.

The greatest problem though, in Sayce's critique of the Remploy factories, is her logical incoherence. This is in the assertion that there is a business case for the individualised recruitment of disabled workers using a combination of Work Choice and Access to Work which is not available to the model of Remploy. At no stage does she substantiate this assertion. Sayce is able to apply a business test to the Remploy factories, as figures are available. She is able easily to demonstrate that the factories do not meet the test of the business case because they are not profitable. Yet the same test of business efficiency is never applied to the individualised model of support in mainstream employment. In this sense

Sayce is not just comparing apples and oranges. She is also judging them by different standards.

This incoherence by Sayce continues by confusing and conflating two very different concepts, the economic and business cases for supporting disabled people into employment. The conflation of the economic with the business into equivalence is familiar. This is a view promoted by Blunkett, Kelly and Harman from the New Labour creation of this concept. It takes only moment to consider that the terms are related, but completely distinct. The key concept in business is the ability to make a profit. This is a distinct concept from that of economic interest. To demonstrate this, let us return to the research that for every £1 invested by the Government in Access to Work, the Government receives £1.48 returns in gross taxes. There is a clear economic interest for the Government in having this disabled person in work. They are not claiming benefits and they are paying more in taxes than they receive in Access to Work payments. However, this says nothing about the business efficiency of that disabled worker. We can hope that this worker is making a profit for their employer, but this is not necessarily so. From the Government standpoint, all that matters is not whether that worker makes a profit, but simply that that worker receives payment and pays taxes. As an extreme example, the Government benefits, from an economic standpoint, even if the disabled worker is on long term sick pay. The economic benefits for the Government will continue to accrue even with the disabled worker at home, as long as taxes are paid, and benefit is not claimed, the economic test is met. Demonstrably in such an example the business case is not fulfilled.

It is far easier to demonstrate the economic benefits of disability employment, rather than their business benefits. Yet this is the illogical and unfair comparison that Sayce undertakes. Individualised Access to Work arrangements are assessed against the economic test, whilst the Remploy factories are subjected to the more severe test of the business model. Sayce is unable to make a genuine business case evaluation of the individualised productivity and profitability of disabled workers, because no such data exists. Collecting such data would be likely to be controversial and threatening to the employment interests of disabled people in mainstream employment. The last thing Sayce would want to do is stir up a potential hornets nests by commissioning research which could indentify problems with profitability and productivity of disabled workers in the mainstream. This does not, however, prevent an analysis of Remploy in these harsh terms.

The reality is that the business case for disability employment in the mainstream is more often asserted rather than evidenced. One of the few comprehensive studies was conducted by the DTI looking at the employment of women in the IT Industry. Even here it was not straightforward to identify a business case. Previous assertions of the 'simple' or 'stands to reason', aspects of the business Case were abandoned. The muted report entitled '*Towards a Business Case for Diversity*' concluded:

> **'The consensus is that diversity can represent a strategic lever to improve business performance and increase competitive advantage but there are some negative aspects too. The effects on business depend upon many factors including whether diversity is valued within the workplace, whether diverse employees have the chance to work together successfully and the type of work they undertake. There is evidence, both tangible and intangible, to convince companies to consider investments in diversity based on examining the costs and benefits. The business case for investment in diversity is complex, fragmented and tends to be qualitative in nature...'** (DTI 2005 p30)

If the case for the employment of women in IT is difficult to prove, then finding evidence for the efficiency of employing disabled workers is likely to be harder still. The business case for diversity is indeed, academically, very controversial and, although supported by authors such as Kandola and Fullerton (Kandola and Fullerton 2003 P 19)), it is disputed by authors such as Wrench (Wrench 2005).

There is evidence that Access to Work is also failing the business test. Sayce's own organisation, RADAR, which using Government figures, has highlighted the difficulties Access to Work has faced of negative recruitment decisions by employers. In the face of recession, numbers of those receiving support from Access to Work is plummeting. In 2009-10 16,220 people received support for the first time. By 2010-11 this had fallen to 13,010. This figure falls even further in 2011-12 where 9,660 people are expected to receive support for the first time (RADAR 2011).

This outcome is only surprising if you are looking through the distorting spectacles of the business case for the employment of disabled people. The peculiar contradiction in the Sayce report is that the market is presented as both the problem and the solution. Recessionary pressures force thousands of people out of the labour market, yet it is to this same market that Sayce looks for a solution. We should not be surprised that recession makes disabled people vulnerable to redundancy. In fact if anything is 'obvious' and 'simple' about the business case it is this unfortunate reality. Disabled people may be able to deliver profit, but the market appears to believe that non-disabled people are more reliable vehicles of profit. If Sayce is correct that the business case for the advantages of employing disabled people is generally self evident, it is difficult to understand why employers, rather than laying off disabled workers, are not recruiting them in droves to release the profit potential laying untapped.

None of this means that disabled people should not be employed and economically included in society at large. There is an indisputable economic rationale for this. For the UK PLC, if not necessarily every single workplace, the employment of disabled people makes business sense by increasing economic competitiveness. What is illogical is to base such an economic strategy, inevitably relying on a degree of subsidy, on an unqualified business model requiring profit.

A more coherent and logical starting point is to recognise the social and economic benefits of subsidising disability employment whether it is in the collective or individualise setting. The question then becomes in what form this support should be delivered.

Sayce advocates a strategy based on the expansion of Access to Work and the Work Choice program. Work Choice established to replace a hotchpotch of other disability employment initiatives, including the New Deal established by New Labour. The unusual experience for a researcher attempting to discern the key principles of the program is how difficult it is to establish how it is to operate in practice. This is because rather than relying on a national strategy and guidance the program instead adheres to principles of localism and market accountability. The resources are allocated, after a bidding process, to a variety of provider groups with backgrounds in the private and voluntary sector. The Work Choice website contains no guidance or strategies but a long list of successful bidders to provide the service. The programme unashamedly acknowledges that different providers will use different strategies in different localities. Indeed this is presented as a virtue. The determination of the quality of the programme will be established by the market. Most detail on the Work Choice site describes the method by which providers will receive payment for placement of disabled people in employment. The starter fee is relatively low for those remaining in employment for five, and potentially seven years. This is to promote genuine long term careers for people in employment (Work Choice 2012).

What guarantee then can visually impaired people have that the support they receive is both expert and cost effective? The lead agency for Employment Support in the voluntary sector is Action for Blind People, who are part of the RNIB group. Action for Blind People has succeeded in winning 18 contracts to deliver work choice support in localities across England.

The credibility and expertise of RNIB and Action for Blind People in the Work Choice Programme would be greater if they demonstrated more confidence in the recruitment of visually impaired people in their own organisations. Actions speak louder than words. The ONS LOS survey estimated that 26% of the working age population would be defined as disabled (ONS 2011). In their 2010-2011 Annual Report the RNIB recorded that only 10.7% of its staff were disabled as defined by the DDA (RNIB 2011). Remarkably the RNIB did not declare how many of these people had a visual impairment. The strong likelihood then, is that the leading organisation for visual impairment in the UK employs less than 1 in 10 of it workforce with a visual impairment. The situation for Action for Blind people compares favourably against the RNIB but still below the average population distribution identified by the ONS. At Action for Blind People 21% of its staff are disabled as defined by the DDA and 19% have a visual impairment. This still means that the leading charity supporting the business model and work choice programme employs less than 1 in 5 of all its staff with a visual impairment. Given the employment exclusion identified for visually impaired people by both these organisation their own reluctance to recruit visually impaired people is particularly damning.

The Action for Blind People Work Choice Projects are in their infancy, but Action for Blind People do have a declared interest and specialism in the promotion of the employment of visually impaired people. Unlike the RNIB, Action for Blind People have a national network of local action centres from which they attempt to provide practical advice and assistance to visually impaired people.

In their Annual Review for 2010-2011 Action for Blind People reported they had supported 201 people to find employment and a further 642 to keep their jobs despite sight loss (AFBP 2011).

These figures are not broken down by location or time span so in order to assess the track record of Action in this area more closely I visited every single Local Action Centre website and collated data presented on these pages relating to their activities over 2010 2011.

In common with the national annual Review, each area acknowledges Employment Support as one of their support areas and provides data for people attending these offices. From each area I recorded the total of people presenting for help for the first time, the numbers who received help with benefit applications and the numbers who received support with employment.

The result appears in the table below.

Action for Blind People reported help in getting and retaining work 2010-2011 by Local Action Centre.

Region	Total	Benefits	Employment
Birmingham	933	202	0
Bristol	1056	86	0
Exeter	884	233	0
Leeds	2966	627	0
Liverpool	1263	276	0
Loughborough	858	100	0
Manchester	1853	189	0
Middleborough	2445	202	38
North London	2084	252	38
Norwich	1446	193	0
Preston	912	148	0
Salisbury	610	166	0
South London.	1717	92	0
Stafford	726	65	0
Stoke	789	116	0
Totals	22395	3136	76

So out of the 16 Local Action Centres reporting activity only two, Middlesbrough and North London, reported any activity at all in helping visually impaired helping people gain or retain work. Across the country, 76 cases of employment help are recorded, out of a total of 22,395, representing 0.35% of total activity. In contrast 3,136 people are helped with their benefits, nearly 14% of all people approaching Action for help.

As I do not suspect Action of inventing activity in their national report, we must conclude that the local offices do not record employment activity. It appears only 76 out of a total 843 employment cases are recorded as activity. The alleged enthusiasm for Action to support the passage of visually impaired people into employment seems insufficiently driven at the sharp end of the local Action Centres. Although we live in difficult times the current profile of Employment Support driven by Action is too low.

More worryingly, for Action to access the funds available for the Work Choice programmes they have to an extent 'buy in' to the model propagated by Sayce in her report. This has caused Action sufficient embarrassment for them to issue a statement distancing themselves from any programmes which may result in sanctions or compulsion arising out the reforms (AFBP 2012). Nevertheless the Sayce report has created the environment that only the hyper-individualistic is acceptable as a solution for Employment Support. She presents a vision where visually impaired people, alongside other disabled people, will each receive a 'personalised' budget whereby they can purchase their Employment Support. The fetishism for market solutions to ensure the quality of service delivery is expressed in its essence here. In Sayce's future world of Employment Support, visually impaired people will be creating individual solutions to access in their thousands across the country. This is abandonment of shared learning and good practice formulation in favour of market liberalism. This is a social experiment for which there is little evidence to expect success. The falling numbers of Access to Work new starts in the face of the recession amply demonstrates the difficulties in relying on such a strategy.

What does the evidence really show us? It is that most disability employment has to be relatively subsidised in order to compete effectively with non-disabled workers in the labour market. The fears that Scott and Maitland represented in their 1994 struggle against a disability discrimination Act the may not be irrational with regard to the deadweight costs of protecting the rights of disabled people in employment, but they are certainly misplaced. The deadweight paradigm has a rational basis in so far that it is probably true that disabled people struggle, in the main, to deliver productivity at equivalent levels to non-disabled people without the subsidy of Reasonable Adjustment costs. These deadweight costs can be minimised though by non-discriminatory inclusive design of workplaces and workplace tools. As we have seen, in Discrimination Law the most significant protection against inappropriate costs of Reasonable Adjustment costs is the enforcement of new Indirect Discrimination powers. This is why the increasing mainstreaming of accessibility into modern tools of work is so important for visually impaired people. It cost nothing to add a screen reader to an iPhone, Mac or iPad, as Apple has already included one in Voiceover.

So the deadweight costs of Reasonable Adjustment support can be minimised by rational social investment and planning. Why is this model rational if market evidence is that visually impaired people in general cannot deliver rates of profit at equivalent levels to sighted people?

This approach is indeed rational as, whilst there may be reduced productivity compared to sighted people, visually impaired people can help contribute more than they currently do. It is entirely possible that a properly resourced and trained visually impaired person can generate profit. The Realising Potential project provided evidence of this where they successfully supported disabled entrepreneurs (RP 2008). Even where the naked test of business profit is not met the employment of visually impaired people will reduce and possibly eliminate deadweight costs across the economy as a whole.

It is likely then that we need a range of support structures to address a spectrum of need in the visual impairment community. Access to Work and possibly Work Choice will certainly be part of this answer but is unlikely to be sufficient. What is needed, and what Sayce does not provide, is a needs analysis which will indicate appropriate investment. The case for the meeting of these needs against wider economic cost benefit criteria can then be judged. Such an analysis would be a far sounder basis for social policy decisions. It is this needs analysis, and the cost benefit justification for the meeting of these needs that I will turn to in the next Chapter.

Chapter 14

Counting the Cost

The Economics of Employment Exclusion and Inclusion

Throughout this inquiry I have referenced the employment exclusion of visually impaired people, first as the rationale for this investigation and, second as the driver for legislative and policy reform. In the previous chapter we distinguished between the related, but different, business and economic cases for the inclusion of disabled people into employment. I tried to show that whilst evidence for a business model is uncertain, the economic case for employment inclusion is easier to support. Benefits accrue from wealth production to direct and indirect taxation receipts. There is also a likely reduction in the need for welfare support. In this chapter, I will scope the economic viability of investing in employment inclusion for visually impaired people. My point of reference will be the reduced 'dead weight' cost of Social Security. This is a relatively straightforward calculation, comparing two streams of Government funding. The first, employment support, assists visually impaired people to generate their own wealth, the second, Social Security, allows opting out of wealth production and provides subsistence outside the labour market. The state simultaneously invests in projects to support both employment inclusion and exclusion. These contradictory investments do not even emanate from different arms of the state, but from the same Department of Work and Pensions.

There is some rationale for these contradictory investments but there is also an inverse relationship. Resources allocated to one sector will potentially impact on the other. Consequentially decisions on the balance of DWP investments will have a significant impact on both Employment and Social Security Support. The economic value of each sector is surprisingly amenable to comparison. Later in this chapter we will consider how the new models of investment into Social Security also act as a disincentive to the employability, and therefore employment support programs for visually impaired people. First though we will assess the impact of investment in Employment Support on Social Security spends.

In the previous chapter, I reviewed Liz Sayce's 2011 report into Disability Employment Support and concluded that the lack of a demographic needs analysis was a striking omission. We must now provide this to assess the scale of the policy response required. For clarity I have assembled calculations into sections.

Indicative Population - Seeking Work.

There are 298,000 people Registered Blind or Partially Sighted in England (NHS 2011). From a variety of sources we can extrapolate this to a UK figure of 360,000 (AFBP 2012). It is likely that there are a further 1.5 million people who could be Registered Blind or Partially Sighted but, for a variety of reasons, are not. This gives a likely visual impairment population of 1.8 million (Access Economics 2009 p 30). We know that 25,000 registered are children (Morris and Smith 2008) equating to approximately 7% of the total registered population. In addition 65% are over 65, and despite increasing longevity in working lives, will also be disregarded. So 72% of the registered population are not available for work because of age. There are, therefore, an estimated 101,000 people Registered Blind or Partially Sighted who are of working age.

This calculation is summarised in Table 1 below.

Registered Blind or Partially Sighted UK	360000
Aged 65+	234000
Aged 0-17	25000
Aged 18-64	101000

Note that if we extend this to the wider numbers identified in the Access Economics group there is a potential visual impairment group of over 500,000 people of working age. We will, however, confine ourselves to the registered group for this analysis.

Survey data indicates that there is an employment rate of only 27% amongst people of working age Registered Blind or Partially Sighted (Bruce 2004). Extending this to the narrower registered group, we can reasonably assume that about 27,000 people Registered Blind or Partially Sighted are in employment. Approximately 74,000 will be outside the labour market.

Amongst the wider population the numbers out of work are normally divided into 'unable to work' and 'able to work'. This is not an appropriate division for our population as the vast majority will seek 'unable to work' status due to the enhanced benefit income available. Yet we know that demonstrably people in this group are able to work with support. We need to divide our group outside the labour force into those who want to work and those who do not.

There is a hidden tragedy when we consider motivation for work amongst this group. We sadly cannot assume that all of the remaining 74,000 people are looking for or even desire work. Survey data of 1,000 registered visually impaired people revealed that of those who were unemployed only 3% were actively seeking work. (Bruce and Baker 2004 p 7). We have a generation of visually impaired people who are currently resigned to a life of welfare. There is a rational basis for this pessimism. DWP research has shown that nine out of ten employers believe that employing a person with impaired vision would be either 'difficult' or 'impossible' (Roberts et al2004). Yet the Bruce and Baker survey also identified that if 'given a magic wand' to produce an offer of work, 60%, and not 3% of visually impaired people would like to take it up. (Bruce and Baker 2004 p7).

This is the best evidence of the proportion of visually impaired people who would want to work. It seems reasonable then to apply this ratio of 60% to our out of work numbers to reveal the likely size of a group who desire employment rather than subsisting on welfare. This reveals a population of approximately 44,000 people who desire employment. Of course if we were to take account of the much larger estimate of the unregistered visual impairment population this number could, at the very least, be doubled. However, as no research exists on employment and unemployment amongst this group, this must remain speculative. For the purposes of this chapter I will from now on focus solely on data from those Registered Blind or Partially Sighted.

Table 2 below summarises our calculation so far in detail.

Total Working age.	101,000
27% employed	27,270
Unemployed	73,730
seeking work at 60%	44,238
Total Employment Pool employed and seeking work	71,508

These groups of 27,270, employed and 44,238 desiring employment give a potential employment pool of 71,508 visually impaired people who may require employment support. We need to apply the scale of these demographics to the proposals in the Sayce report, but first we must establish the indicative Social Security drain associated with these figures.

Indicative Social Security Spending

Below are some readily available, statistics on the cost of employment exclusion. This is not the total welfare drain but just the major component of Social Security living allowances.

The benefits system is, historically, notoriously complicated. However, welfare reform simplified benefit structures. Whilst these reforms may be undesirable, for reasons we will discuss later, this simplified structure aids our analysis. The reforms have virtually eliminated all long term non-means tested 'cost of living' allowances. Entitlement to these benefits will expire after a year. This means that a visually impaired person facing long term employment exclusion will have the option of subsisting on private resources or Employment and Support Allowance. The poverty associated with employment exclusion makes its unlikely that significant private resources are available to that many visually impaired people. A small group will prove the exception. These are visually impaired people who, typically at the end of a career, have accrued sufficient private pension to retire early, often on health grounds. This group will not concern us as, in this schematic analysis; I have assumed that they will be amongst the 40% of unemployed visually impaired people who do not wish to work.

A further two assumptions must be made. In the following calculation I will assume each claimant is single, rather than married or co-habiting. This will create a slight inflation of the indicative cost of personal allowances. This arises because this subset of people receiving benefits jointly will receive payment at slightly reduced rates compared to two single people. This assumption is necessary as I cannot source relevant data on marriage or cohabitation. The second assumption is that adults are living apart from their parents and responsible for housing costs. Again a lack of research prevents an estimate of visually impaired adults living with parents. However we do know that visual impairment is a condition which increases with age. This works against the likelihood of significant numbers of older adults continuing to live with their parents. Nevertheless the existence of people with visual impairment without housing costs will again cause a slight overestimation in the Social Security spend allocated.

To compensate for this, and provide a counter weighting, I have underestimated the likely housing and Council Tax benefit entitlement. In the calculations below I assume only average costs for each of these benefits. Both Housing Benefit and

Council Tax are paid on a sliding scale according to income. A disabled claimant on long term benefits will not normally invoke payments on this sliding scale. They will instead, typically receive 100% payment. An average cost based on all the various payments along the sliding scale will underestimate the benefit paid to a visually impaired person. These two groups of 'hard to measure' variables of underestimated housing and Council Tax benefit, and over-estimated housing costs and personal allowance will counteract and provide a correcting element. We can now proceed with an indicative calculation.

As visual impairment is a long term condition the benefit will be Employment and Support Allowance. In 2012 this was paid at a rate of £105.05. In addition, Housing Benefit at 100% will be payable. The DWP calculate that in 2012 the average Housing Benefit per person was £89.46. Similarly the average Council Tax Benefit was £15.48. There will also be entitlement to a range of free health services including prescriptions, dental care and so on. To represent this I have assumed a single free prescription subsidy at £7.65 a week. This is reasonable, given the co-morbidity impacts of impairments on health. This equates to a weekly benefit income of £217 or £11,333 a year.

This is summarised in the table below.

Indicative Benefit Spend - Visually Impaired person. 2012.

Benefit	Amount
Employment and Support Allowance	£105
Housing Benefit	£89
Council Tax Benefit	£16
Health	£8
Total	£218
Year total	£11,333

We can now establish the global Social Security cost figure for those who are registered visually impaired who would wish to work but cannot currently do so.

Wishing to work 18-65	44,238
X £11,333 (yearly cost per person.)	£501m

Therefore the state is investing over £500 million a year in the employment exclusion of visually impaired people, or over the projected five year life of the Coalition Government £2.5 billion.

Investing in employment exclusion is neither cost free nor economically rational. We can, therefore, establish at least in part the economic case for the subsidisation of employment for visually impaired people by off-setting the cost against the Social Security cost which would otherwise occur.

We are now in a position to assess again the Employment Support Programmes reviewed by Sayce.

Access to Work

Sayce believes that the main vehicle for increased rates of disability employment is Access to Work. In 2009-2010 it supported 37,000 people with an annual cost of £98 million.

Within these figures Access to Work report that only 5,290 people received support because they had 'difficulty with seeing' (Sayce 2011 p 80). Note that this category is again potentially wider than the group registered with sight impairment, but for our purposes I will nevertheless assume that all these people are registered sight impaired.

This generous assumption means that only a minority of registered sight impaired people in employment receive support. This 5,290 set against our 27,270 estimate of the total registered visual impairment population in work means that only 1 in 5 who have succeeded in getting a job are currently receiving support from Access to Work.

There is no breakdown of funds allocated across impairments groups in Access to Work. The 5,290 represents 14.3% of the 37,000 reported by Sayce. If we apply this percentage to the Access to Work budget that is a pro rata spend in Access to Work support of approximately £14 million. Access to Work investment is already looking good when compared to the Social Security drain. If all of these 5,290 people were reliant on Social Security the indicative yearly cost would be approximately £60 million. For this group Access to Work investment is four times as effective as Social Security.
These calculations are summarised below.

Pro Rata Visual Impairment Composition of Access to Work.

All ATW	Visual Impairment	Percentage
37,000	5,290	14.3%

Pro-Rata Budget Calculation Access to Work.

Total ATW Budget	Percentage VIP	Indicative VIP Budget
£98,000,000	14%	£13,720,000

Comparative Analysis ATW vs. Social Security Investment

ATW VIP	Social Security
£13,720,000	£59,946,280

However, providing support to only 1 in 5 of the visually impaired people employed seems low. We need to ascertain if this is a reasonable ratio.

Not every visually impaired person is in need of employment support. There is limited research to explain how people with visual impairment can work without support but we can draw some tentative conclusions. Not every job has insurmountable barriers as a result of losing sight. In Hanks nineteenth century review of blindness, he reports the success of blind people in a variety of manufacturing jobs and working successfully in the agricultural sector (Hanks 1872).

Yet this 1 in 5 figure of current support seems far too low. In the UK today manufacturing and agriculture are far less prominent. The decline in manufacturing is one rationale Sayce uses for the closure of Remploy (Sayce 2011 p 46). Manufacturing now employs only 25% of the UK labour force whilst Agriculture is tiny at 1%. The bulk of employment is in the service sector with 74% of available labour (Economy Watch 2012). Typical tasks in the service sector are transport, warehousing, security, IT, quality control, administration and financial accounting. All are likely to require either useful sight or the use of adaptive employment support.

It is likely that a cause of the low take up of Access to Work amongst visually impaired employees is unmet need. Sayce draws this conclusion describing Access to Work as **'the best kept secret in Government'** (Sayce 2011 p18).

In this respect, at least, Sayce is probably correct. RNIB research revealed that awareness amongst employers of Access to Work as an option was low. This also concluded that if visually Impaired employees did not receive support they would have tried to utilise old, less appropriate, equipment which they had relied on in the past or simply pay the adaptation cost themselves (RNIB 2004 p 94).

The RNIB concluded that whilst 1 in 3 visually impaired employees would have to give up work entirely if access to Work Support was withdrawn, 2 in 3 would struggle on in some way (RNIB 2004 P 94). This research supports the possibility that there are significant numbers of people working without appropriate access to Reasonable Adjustment support.

Strategies to continue in work without support include purchasing magnifiers to use on paperwork and computer screens, utilising existing flexibility in computer font sizes, colours and magnification tools or simply peering at paperwork or monitors at close range. These access solutions may not be ideal for all workers and are likely to reduce potential productivity. Often specialist equipment is needed for optimum productivity. Formal specialist assistive technology is expensive. Whilst cost effective in employment economics, it is less so for an individual. A Braille Note Taker or Display will cost between £2,000 and £4,000. A Braille Embosser will cost around £3,000. A specialist scanner and software can cost over £2,000. The Jaws Screenreader costs over £1,000. Many visually impaired people will not have recourse to these funds.

Interestingly the RNIB report also focussed on the importance Fares to Work offered, in some circumstances, by Access to Work. This enabled many people, who would have found public transport impossible, to use taxis to get to and from work (RNIB 2004 P93). Theoretically, visually impaired people could hire taxis without Access to Work, but this would normally involve great expense increasing not just the stress associated with employment but potentially shifting the calculation towards subsistence on benefits rather than working with these transport costs.

Whilst Sayce does not focus on a potential visual impairment group in this structured way, her acknowledgement of unmet need allows us to proceed with some further calculations. Sayce recommends, that for all impairment categories, there should be a doubling of those receiving Access to Work support, in part at least, for unmet need (Sayce 2011 p18). We have to decide what proportion of this growth we should reasonably apply to first the employed and second the unemployed groups.

In the context of the identified low take up of Access to Work, it seems very likely that all the growth Sayce favours could easily come from meeting need within the current employed pool. It seems likely that even increasing support to 2 in 5 people will result in an under-estimation of the need. This may apply especially to the visually impaired people who are unemployed, and by definition 'further from the labour market'. However, it does provide a provisional point from which we can proceed with our analysis.

For all future calculations, we will assume that the need will be met if 2 in 5 visually impaired people in our employment pool receive Access to Work Support.

This will increase Access to Work support amongst our visually impaired employed community from about 5,000 to 10,000. This would mean increasing the budget from £14 million to £28 million and there will be no direct, immediate economic benefit. However, there are probable longer term benefits arising from investing in reducing the stress of employment for visually impaired people. It is likely this would enhance the prospect of career longevity and reduce the chance of lapsing into the unemployed pool. Nevertheless, for the purposes of our calculation we will accept the entire 'negative hit' of a further £14 million drain arising out of resolving unmet need amongst the currently employed group.

The negative impact is dwarfed though by investing employment support into our wider pool of 44,238 people visually impaired people. Supporting, for example, just 5,000 of these people into employment would deliver welfare savings of £60 million in return for an investment of just £14 million. This would more than cover the cost of meeting unmet need within the current employed group.

We have to design a plan for the needs of these 44,238 people who would wish to work but currently are unable to do so. In an ideal world all of these would be offered employment and there would be a compelling economic case for this. In reality there are other factors which will constrain the opportunity to work despite economic benefits. Not least of the problems would be historic employer resistance and general recessionary pressure amongst private firms. Public works and state funded employment are probably the most realistic options for increased employment opportunities in the immediate future.

If a realistic but ambitious programme would offer support to 2 in 5 already employed, it seems reasonable to extend this ratio to the 44,238 in our unemployed pool. This would create an initial target group of approximately

18,000 people who could be assisted into employment. Working from existing expenditure we can again infer a cost benefit analysis. First we must calculate an average budget for Access to Work expenditure by determining the extra cost of 18,000 compared with the existing 37,000 support offered by Access to Work.

The result appears in the table below.

All ATW	Extra VIP	percentage
37000	18000	48.7%

We must apply this 48.7% to the existing ATW budget to derive an estimated increase in ATW spend from supporting this extra 18,000 visually impaired people.

The result appears in the table below.

All ATW	Expanded VIP Group
£98m	£48m

We will, therefore, have to increase the ATW budget by £48m for employment support to an extra 18,000 visually impaired people. We need to add to this our £14 million 'dead weight' cost of meeting unmet need in the current ATW programme. This is a total bill of £62m, in return for which Access to Work Support would be extended from 5,000 to 28,000 people with visual impairment.

Increased employment opportunities for 28,000 of the 71,000 that are visually impaired and want to work, would still leave an employment exclusion rate of over 50% but would at least reverse the historic trend. To place the 28,000 in context, Sayce's proposals would only cover 10,000 people.

To assess finally the savings from this investment we need to calculate the effect of 18,000 visually impaired people moving off benefits.

The result is in the table below.

Claimants removed from Social Security	Total Yearly Savings
18,000	£204m

So a DWP investment of £62 million a year in employment support for 18,000 additional visually impaired people would create DWP savings of approximately £204 million a year, a net gain of over £142 million.

To support the entire 28,000 people with visual impairment in employment would cost £74 million a year. This would imply total savings of £317m in Social Security costs.

However we look at it, the economic case is indisputable. Access to Work could reasonably invest the equivalent of its entire 2010 budget at £98 million into the employment of just 28,000 visually impaired people and this would still make economic sense. It would be outstanding value for money. Doubled or even trebled it would still make economic sense.

These figures are estimates but are based, for the large part on DWP or NHS data. The main conclusion is that for every £1 the DWP invests in Employment support they are likely to receive between £3 and £4 in lower Social Security costs. My conclusions are consistent with other studies using different methodology (Thornton and Corden 2002) (Hillage et al 1998).

Before we consider the DWP strategy towards Access to Work against this economic context, we must first review the other main arm of employment support in the UK.

Remploy

Remploy is traditionally targeted at the needs of people 'further from the labour market'. It has two arms: employment support and sheltered factories. Coincidentally in 2009-10 Remploy had an identical budget to Access to Work of £98 million. With this Remploy supported 13,600 people in employment. Using our indicative calculation of Social Security spend we find that the state saves £154 million in benefits. Remploy also meets the economic test with a net efficiency gain of £56 million.

Sayce does not provide figures for support by Impairment. If we applied the 14% rate that we identified in Access to Work, this would provide a possible Remploy visual impairment group of 1,904. There is probably little value here, however, in separating out visual impairment in Remploy as it stands. The indications are that we need a different, expanded collective solution other than the current Remploy structure to address the needs of unemployment amongst visually impaired people. Before considering proposals for a new plan, we should see what general lessons we can draw from the Remploy investment.

The position for Remploy factories is more complicated than for the Remploy group. This narrow sector of employment support is a rare example of failing the economic test. The factories account for the bulk of Remploy funding at £65 million to support about 2,500 people in employment. Our indicative Social Security saving from the employment of Remploy factories would approximate to just £31 million. Investment in Remploy factories rather than employment exclusion results in drain of £34 million on the public purse. It is easy to see why Sayce targets Remploy for savings.

Before writing off Remploy there are other factors to consider. As we saw in the previous chapter, running the factories below capacity exacerbates problems. Additionally the subsidy only appears as a problem if considered in isolation from other investment in disability employment support. Combining Employment Support and the factories meets the economic test. The subsidy becomes relatively insignificant against savings from Access to Work expenditure.

This principle is important for the design of realistic employment support for visually impaired people. Sayce puts all her eggs in her flagship Access to Work basket, supported by the Work Choice programme. However, as we have seen, Access to Work and Work Choice struggle to meet recessionary pressures with new starts falling for three successive years. This has reduced the influence of Access to Work on the labour market. Since Sayce produced her report, global numbers of people receiving Access to Work have fallen by 15% from 37,000 to 30,690 (DWP 2012). There is no market evidence that Access to Work and Work Choice alone can overturn employer resistance.

There are other reasons why a simple reliance on Work Choice and Access to Work may not be appropriate for visually impaired people but before reviewing this we need to review DWP investment strategy.

DWP Strategy

Access to Work is a successful tool which is suitable for many visually impaired people. We have demonstrated that the rational Government response is to invest in Access to Work rather than Social Security. It is ironic, despite Sayce's championing, that Access to Work has also come under pressure. In 2006, Access to Work support was withdrawn, without consultation, from all central Government departments (Parliament 2009). In 2007 a controversial consultation suggested that this principle should be extended across the entire public sector (DWP 2007). The rationale was that public sector employers should not need support from central resources to fund Reasonable Adjustment (Parliament 2009). These plans caused dismay and protest from disabled people (TUDA 2006-2012). There was particular concern that public sector managers will find at least unconscious pressure to avoid hiring disabled employees to protect their budgets.

There is evidence that, not only are disabled people more reliant on the public sector with 1 in 3 of employed disabled people working in this sector, they are also facing the brunt of public service job cuts rather than experiencing protection (Leonard Cheshire 2009). There is no evidence that public sector employers are relaxed about exceeding budgets to meet Reasonable Adjustment needs. In contrast, disabled people tending to be the first victims of a downturn, confirms the experience of those of us who know that managers can faced disciplinary action or even dismissal if they exceed budgets.

So far the Coalition Government has not followed through on New Labour plans to withdraw Access to Work across the public sector. Yet the mood music of the 2007-2008 review of has continued. A cost cutting agenda was set which, rather than encouraging investment, presented spending as a problem needing control (DWP 2010). After the 2007-2008 review, employers were asked to contribute more. Previously the amount was calculated according to a sliding scale determined by their size. Those employing less than 10 people contributed nothing to the cost of equipment and adjustment. This rose to 20% for those employing over 250 people for costs up to £10,000. Now in addition employers had to pay the first £1,000 of adjustment costs. Further restrictions meant that from October 2010, the DWP reduced or eliminated funding previously provided for a large range of equipment, again on the grounds that it is the responsibility of employers to comply with Reasonable Adjustments duties under the Equality Act (DWP 2010). These new rules argued for example, that mainstream computer equipment should no longer be available from Access to Work. These rules present new challenges for visually impaired people at work. We are reliant on comparatively expensive productivity options, now classified as mainstream, such as netbooks, PDAs, or laptops. These expensive options may only match what a sighted colleague can achieve with a pen, notepad and diary, costing less than £10. This is difficult, especially for an employer in a smaller enterprise, teetering on the small margins of profit and employment. The temptation to offer, for example, a short six month contract to somebody without expensive requirements would be real.

This drive to produce savings has other effects. Many receiving Access to Work experience it as a 'hostile' and 'threatening' service. In October 2011 every person receiving Access to Work was told in writing that they had 10 days to respond to a review to prevent cessation of support. These letters horrified disabled claimants, many of whom relied on the scheme for years to stay in work. These reviews have upset disabled workers with aggressive attempts to uncover what is regarded as fraud (SPA 2011). Recipients are asked whether the assistance provided by support workers or personal assistants could instead be carried out by 'family and friends'. Access to Work staff are also reported as demanding Support Workers' telephone numbers to inquire into the appropriateness of support. General investigations, including anti-fraud spot checks extend to secret contacting of managers and work colleagues to check on the validity of assessments. (Disabled Go 2011). The creation of this hostile ATW climate and the announcement of support cutbacks have not helped the plummeting numbers of those receiving Access to Work. This seems particularly perverse as the recessionary period is precisely when the DWP ought to be prioritising this investment. The fall in Access to Work numbers suggest that these drives for savings are having a relatively large effect on DWP spending. It seems likely that the fall is because people are falling out of employment rather than magically having their impairments disappear. If this is true then the benefit implications we established earlier mean that the DWP has helped to create an additional Social Security drain of £79 million per year. In other words the loss of just 7,000 people from Access to work has created a Social Security bill which approaches the entire £98 million budget for Access to Work. In the light of our evidence it is irrational for the Government to undermine Access to Work. Yet this is the path which both New Labour and the Coalition have followed.

The DWP's investment decisions in relation to Work Choice are even more out of kilter with our needs analysis. Sayce reports that in 2010-11 some 680 people with visual impairments received support with Work Choice (Sayce 2011 p71). These 680 have to be set alongside the 44,000 people registered who would want to work but currently do not do so. Assuming a 100% success rate in securing long term employment, and that no further redundancies occur, it would take about 60 years for the current Work Choice programme to deliver full employment. In reality comparison between Access to Work new start figures and long term support figures seem to indicate that there is a turnover of about 30% with an average job lasting between two and three years. We might expect that the number of work choice individual programmes will struggle to keep pace with this turnover and prevent further deterioration. The programme has no realistic prospect of making inroads into the vast bulk of visually impaired people 'distant from the labour market'.

DWP investment decisions in Social Security are also creating problems. The Government has announced intention to 'control' expenditure on disability related benefits. Essentially these reforms have amended the assessment criteria for a range of benefits. A full review of these controversial changes is not appropriate here. I can add little to the excellent briefings provided by the RNIB (RNIB (A) 2012) (RNIB (B) 2012). However it is relevant to cover the impact of these assessment changes on preparation for work. Benefits should be allocated in a way that rewards attempts to enter the labour market, reward rehabilitation and provide incentives for self- reliance. Unfortunately current assessment proposals undermine this principle.

New assessment proposals are designed to reduce eligibility for benefits. The Institute for Fiscal Studies concluded that the Coalition Government policy on tax and welfare was regressive. They report that the Government intend to reduce the numbers claiming Personal Independence Payment by 20% when compared to Disability Living Allowance (Browne and Levell 2012). For the many visually impaired people currently receiving Disability Living Allowance this remains worrying.

New assessment rules for Benefits are placing visually impaired people under pressure by potentially penalising attempts to rehabilitate and increase independence. The relevant issue is the shift in attitude towards the use of aids and adaptations.

Whilst the Government has amended some aspects of guidelines which had potentially precluded visually impaired people who used specialist equipment, the general attitude to self help and rehabilitation has worsened. A visually impaired person who uses adaptive technology to increase their independence will continue to have anxiety that demonstrating capability in these areas may jeopardise entitlement. This creates an atmosphere that under new benefit rules that not only are benefits harder to claim, they also provide a disincentive to maximise independence and rehabilitation. However these are precisely the skills that a visually impaired person has to develop if they have any chance of competing successfully within the labour market.

Given the high rates of employment exclusion there is a danger that a rational financial approach for most visually impaired people would be to maximise their prospects of enhanced benefits by rejecting attempts at rehabilitation through the use of aids and adaptations. The problem is that the previous guidelines assume a degree of equivalence between for example, wearing spectacle, and using a Braille Note Taker or a Screenreader. In reality they are chalk and cheese. To use a pair of spectacles all you need to do is place them on your nose. To use either Braille or a Screenreader requires an enormous investment in learning skills. It may take months, even years to learn to use adaptive technology efficiently. It is by no means clear that DWP Assessors will be sensitive to these requirements. The danger is that the mood music of the DWP has reduced motivation for a rehabilitation effort by visually impaired claimants, anxious not to jeopardise their qualification for support.

DWP expenditure across its range of responsibilities is perverse. In Employment Support it is attacking investment in Disability Employment Support, creating budget pressures in its Social Security arm. In Social Security, it is creating disincentives to develop employability skills which would in turn allow people to leave Social Security funding. The DWP is structuring its investment, probably unwittingly, in an effective strategy to consolidate historic employment exclusion for visually impaired people.

What would an investment strategy to tackle employment exclusion for visually impaired people look like? As there are a range of impairments and a range of disabling barriers it is unlikely that a 'one size fits all' solution will deliver the employment inclusion needed. Whilst it is possible to identify general support patterns, visual impairment can also be complicated by other impairment characteristics. We know that the numbers of people with learning disabilities and visual impairment is high at 96,000 in the UK. This means that people with learning disabilities are 10 times more likely to have serious sight problems than other people (Emerson and Robertson 2011). Research for Sense estimated that there are 56,000 people between the ages of 19 and 60 who are deaf/ blind (Robinson and Emerson 2010). A review of research into visual impairment found consistent evidence for increased rates of depression and mental health issues amongst people with Low Vision (Binns et al 2009). People with visual impairments will be as susceptible to other physical impairments as the rest of the population.

There is evidence that there is a subset of visually impaired people who will have relatively complicated barriers to employment. They may well need extensive support. They may need a similar level of support to that provided by Remploy. For these people there may be not just a lack of a business case, but limited evidence for an economic case for supported employment. The conclusion is not that these people should be condemned to a life of employment exclusion, but instead we must challenge the hyper-individualism of Sayce's model for employment support.

Throughout this inquiry we have collected evidence where visually impaired people have gained strength through association and shared learning. This strength appeared in the experience of the National League of the Blind and the National Federation of the Blind in their historic political struggles. It has appeared in the more ancient history of the Blind Guilds of Japan and China, where visually impaired people improved their quality of life for through commercial organisation. For those of us involved in Low Vision Forums and other collective meeting places the dynamic capacity of visually impaired people to share solutions to problems is a compelling experience.

A collective response to the problems experienced by visually impaired people is the only rational approach in some circumstances. We have already discussed how access to computer technology is an important conduit to employment. Yet this environment is constantly shifting and changing, throwing up new challenges. Not just an individual with visual impairment but all will have to eventually learn how to move onto new systems using new access strategies. In Sayce's individualistic world the only collective learning point is a central web site 'portal' where people can share experience online.

We need an employment support service for those able to succeed not just in mainstream employment but also that offers opportunities outside the mainstream. Regional employment support centres could be the locus of this initiative.

A rational response to the scale of the problem is to have a network of specialist employment support centres, perhaps from the skeleton of existing Action for Blind People Action Centres, but better planned and resourced. These centres would provide a source of specialist support, visiting visually impaired people in their workplaces, but also providing classes for collective skills enhancement. In each area the extent of employment exclusion is likely to reveal a group of visually impaired people who have never worked and have little prospect of work. Rather than abandoning these people to the dictates of the market it is entirely right that we should consider these employment tainting rehabilitation centres as venues to provide meaningful subsidised work. It is absolutely clear that there will never be a business justification for such projects; however the wider economic test could be met. Such an investment would be another social experiment. Evaluated Research is required to fine tune the support provided by the specialist employment and support centres. In addressing the structural problem of employment exclusion, the project has more evidence to justify the experiment than Sayce's 'blind faith' in the market to find a solution.

We can, though, agree with Sayce that fully resourced Access to Work, without punitive conditions for either employees or employers is a rational social investment. What is not supportable is a strategic approach which relies exclusively on market forces for Work Choice and Access to Work as the sole solution to employment exclusion. An over reliance on the transformative potential of Access to Work is not rational. It assumes individual visually impaired people have already succeeded in achieving employment. It is a scheme to support and reward the minority high achievers of the visual impairment community. It is a scheme well suited to those who are already in mainstream employment when they lose their sight. It may not be so effective for those who have spent all their lives outside the labour market. Especially among the 97% of those currently unemployed who now do not even look for work.

Throughout the analysis in this chapter we see that the state has actually invested vast sums in employment exclusion. Calling for a step change in the attitude to investment ceases to be fanciful but instead becomes part of a rational economic investment. Yet Sayce is prevented from proceeding on this desirable path by her acceptance of the Coalition Terms of Reference. She is specifically prevented from arguing for the extension of employment support, even though it is the only rational path for social investment into visual impairment.

For Sayce to report activity figures across the employment support sector without reference to a needs analysis of the kind we have conducted detracts seriously from the authority of her report. Without a reflective summary of the actual scale of employment exclusion for visually impaired people, her review remains, at best, a super structural survey of current service provision. This lack of even a superficial context is demonstrated in her lack of insight into the scale of response needed to tackle employment exclusion.

So the business case is not a solid ground on which to develop legal and social policy. If we cannot rely on market forces and enlightened self- interest to drive the recruitment of visually impaired people into employment, what theoretical strategy can we turn to?

The weakness with the economic case for disability employment is that major cost advantages accrue to the state rather than employers. Surprisingly though, the economic model may also generate support amongst employers, provided social intervention is fairly structured.

Surprisingly employers who submitted evidence to the 2000 Hepple Review (see chapter 9-10) did not support a voluntary system of anti-discrimination. Instead they recognised the need for law to support enforcement. Specifically in relation to disability, employers praised the Disability Rights Commission guidance on employer practices, as these were backed with statutory force. Specifically Hepple comments;

> **'Those who advocate entirely voluntary and "best practice" methods, such as the Better Regulation Task Force in relation to company equality policies seem to ignore the evidence from regulatory research that voluntarism can work only if it is complemented with other methods such as enforced self-regulation. A comparison can be drawn between Age Discrimination, where the Government has promulgated a non-statutory code of practice, and Disability Discrimination, where there are statutory codes of practice which can be used in proceedings under the DDA, as well as being benchmarks for action plans imposed with non-discrimination notices by the DRC. All the employers in our case studies (Appendix 1) said that the voluntary code would be ineffective, and none of them had taken measures to combat age discrimination, although they conceded that it was widespread. On the other hand, they praised the codes on disability because of their practical recommendations, which were backed by the force of law.'** (Hepple 2000 Paragraph 3.3).

Hepple supports the Business Case (Paragraph 1.3), and argues that regulation should build on the self-interest of business (Paragraph 3.5).
However he fails to discuss why in that case employers should need regulation. If the business case was a genuine motivator this would indeed support self rather than external regulation.

The fact that employers themselves support legal regulation implies recognition that the business case is insufficient. Instead it seems more likely that disability employment needs both state support and equitable enforcement. Fair competition in the market needs fair enforcement of regulation. An employer may incur extra costs by employing disabled people, but what is important is that their market competitors also share these cost. Legal duties enforce a fair distribution of these extra costs. The enlightened employer is then protected from the ruthless bottom line operator without similar social commitment. Support for the enforcement of Discrimination Law and supported employment then becomes a cost, borne across the market, in the same way as National Insurance is levied as a tax. The international nature of competition implies also that a trans-national approach to law is required. As our major trading partners and competitors are in the EU, this stresses the importance of a level 'playing field' of employment regulation across Europe.

Market regulation can then replace market self interest as the paradigmatical underpinning of the economic case for ending employment exclusion. This may be less inspirational than a business case paradigm, which challenges pre-conceptions of employability and profitability, but the economic case does offer sober design principles for both employment support and regulation.

Social Security policy needs rational integration with employment support policy, rather than fuel punitive attempts at cost cutting. Perverse disincentives to self-reliance and independence need to be removed. In its place an integrated welfare policy which encourages visually impaired people to work may finally realise a potential to change them from historic wealth takers to wealth makers.

Part 4

Making the Social Model Capable

Chapter 15

From Subversion to Perversion

The Social and the Biopsychosocial Models of Disability

We have demonstrated how theoretical understandings of disability have underpinned campaigns to achieve fairness in employment. Key ideas have, through political articulation, found eventual expression in Law. In Chapters One and Three we discussed how blind workers in both the UK and USA rejected depictions of blindness which stressed dependence on charity. Instead they fought to attain self-determined, valued lives, freed from poverty, pity and paternalism. In the UK, these ideas found expression in the 1920 and 1936 Blind Persons Acts, which in turn formed a template for the coming of the Welfare State. In the USA these ideas were within the Civil Rights tradition, and led to landmark Disability Discrimination reform.

In Chapter 4 we examined how Welfarism in the UK inhibited an understanding of disability as discrimination and delayed reform. A new theory, the Social Model of Disability, was required to break a mould of welfarism and paternalism. Only then could a new generation of disabled people break from expectations of gratitude for welfare, to voice confident opposition to discrimination. Goffman's sociological theory of stigma, which focussed on spoilt identity and the organised social discreditation of status, welded with the politics of discrimination, in the struggle of the Anti-Apartheid movement, to form an unlikely theoretical marriage. The child of this marriage was a new Social Model, a fusion of ideas which sparked a catalyst for protest. In Chapter Five we saw how, over time, a mass protest movement coalesced under the British Council of Disabled People to advance the case for the Social Model of Disability. This eventually exerted irresistible political pressure for change which found expression in the Disability Discrimination Acts of 1995 and 2005.

The Social Model challenges perspective by distinguishing between disability and impairment. Impairment is described as a special form of limiting difference. In contrast, disability originates, not so much from our impairments, but the discriminatory, attitudinal and infrastructural barriers created in wider society. Rather than relying on medical explanations of our individual limitations, the Social Model reveals how society organises its resources to create avoidable, discriminatory barriers. Disability is the condition which arises as a result of oppressive and discriminatory social organisation. Classically it is the barrier made by steps which disable wheelchair users, not their impairment (Oliver 1990). In our context it is the failure to make a web site accessible to a screen reader which disables blind workers, not their visual impairment.

Between 1990 and 2006, the Social Model was transformed from a manifesto for change into formal orthodoxy within some elements of UK Government. Today it forms the bedrock of Disability Studies courses at UK Universities, including Leeds, Liverpool, Manchester, Northumbria, Sheffield Hallam, and Wolverhampton (BBC out (A) 2012). It is taught in the Seminar rooms of Public Authorities across the country to help discharge positive public sector duties (Birmingham Council Undated) (Waltham Forest Council 2011). Yet despite this remarkable and transformative success, the Social Model of Disability is today in crisis.

In this final Part of this inquiry we examine this crisis from three standpoints. In the next Chapter we will discuss what positive support the Social Model could receive from an old friend, Human Rights, and its modern antecedent the Capabilities Approach. In the final Chapter, we will suggest that we need to locate the Social Model of Disability within a new politics of disablement if it is to operate consistently in the interests of disabled people.

First, in this chapter, we will examine two key theoretical challenges to the Social Model of Disability. The first challenge comes from the subversion of the Social Model from alleged supporters. The second arises from an allegedly sophisticated development of the Social Model, which actually perverts its original intent. First we will describe briefly how some have subverted the Social Model of Disability, whilst claiming its authority. This is achieved through a broad brush implementation which subverts the model's original positive intent and motivation. Second we will consider, in some detail, critiques of the Social Model which have helped provide credibility for an allegedly more ‘complete’ and sophisticated model of disability; the ‘Biopyschosocial Model of Disability’. We shall see how the dangers inherent in this new model provide perverse pressures. Rather than liberating disabled people it has become an instrument of harm. This is of particular concern, as it has officially supplanted the Social Model of Disability within key structures of the UK State. First though, we must examine the internal subversion which has helped push the Social Model into crisis.

The credibility of the Social Model of Disability is today under threat from those who claim to support it. This subversion threatens to undermine the positive reforming intent of the model by transforming it into a vehicle to support cuts in the benefits and services for disabled people. In 2011 in her important paper entitled *Rethinking Disability*, a veteran of the 1990s campaigns, Jenny Morris, complained that the Social Model of Disability she had helped to develop had been 'corrupted' to justify attacks on Disabled People, and in particular their entitlement to welfare benefits (Morris 2011 p 4). Whilst Morris highlights cuts in benefits, we saw, In Chapter 13 and 14, how Liz Sayce could stretch the logic of the Social Model to also justify cuts to employment support services. This is by exploiting the contradiction between understanding disability as discrimination and historic perspectives on welfarism. Uncurtailed by any political or ethical context, it is entirely possible to utilise the Social Model to mount an attack on welfare. Sayce can attack the Remploy factories because they represent a post war, 'welfare' model of social investment, rather than 'real' free market employment. Remploy are characterised as 'old fashioned' welfare enterprises. Here Sayce unveils the capacity of the Social Model to operate as a two edged sword to harm disabled workers. She deploys the historic critique of welfarism to defend decisions to reduce collectivised disability employment support. Using this technique, it is then possible, as in the USA, to focus attention on individualised discrimination rights, rather than State compensation. In this way, a campaigning tool developed to promote the best interests of disabled people, is transmogrified into a rationale to support the closure of workplaces, thereby threatening both income and support for disabled people.

The Social Model should not be elevated into a broad, over-arching ideology to illuminate all issues. It is not a creed or faith. It is a narrow analytical instrument which can reveal avoidable discrimination. However, as with most tools, context is everything. Who is holding the tool and what is their motivation? It can help build a supportive architecture of social inclusion, or alternatively act as a rationale for cutting support.

If the Social Model were to operate as a neutral tool where such context was genuinely irrelevant, it would require a pre-existing set of social relations with guaranteed, existing, fair access. Most disabled people would welcome such a society, in which equality of access allowed us to work and share equally in wealth generated. However, this is not the world we inhabit. Most visually impaired people are structurally excluded from employment and consequently access to wealth. There are no current legal or social policy initiatives which indicate even marginal inroads into this problem. As we have seen in Chapter 14, recent evidence indicates increasing rates of exclusion, with inevitable reliance on benefits for most visually impaired people. Currently the most rational, and important, social policy guarantees of the well being of visually impaired people is to maximise their benefit entitlement. The unfortunate reality is that extra costs of living with visual impairment and employment exclusion, place many visually impaired people in poverty. Any theory which supports even marginal inroads into social income is likely to have serious consequences. It is also the surest way to both confuse and undermine support for the Social Model amongst disabled people. The Social Model is then a selective tool, usefully applied where there is political and ethical context, to evaluate the conclusions derived from its intervention. The principles which could guide the application of these ethical and political interventions are the subject for the final two Chapters of this enquiry.

Yet the subversion of the Social Model is not the only problem. It has come under sustained critiques which have weakened its erstwhile influence on Government, and over time, helped generate a crisis in theoretical modelling. These critiques have provided credibility for an alternative approach which has also proved harmful to the interests of disabled people. They rely on a return, at least in part, to a biological definition of disability. Starting from the margins of academic debate this retrenchment into individualised, medicalised disability modelling, has steadily advanced until it has officially supplanted the Social Model of Disability as official UK State policy. Much of this process has occurred through the intervention by USA corporate big business. They offered an alternative technology of 'Biopyschosocial Modelling' as a method of controlling expenditure on disability claims. This technology grew increasingly attractive to successive UK Governments, anxious to reduce disability related spending. By 2012 the victories in perspective won by the Social Model of Disability in the 1990s are now largely overturned in favour of this allegedly more sophisticated model. This has created a disability management policy which is inimical to the interests of disabled people, particularly in relation to welfare assessment. Given the advance of the Biopyschosocial Model and the relative retreat of the Social Model we must then address in detail these critiques.

The first signs of problems arose, ironically, out of the theoretical dominance and relative orthodoxy of the Social Model as we entered the new millennium. This orthodoxy inevitably provoked criticism from academics, including erstwhile supporters (Shakespeare 2002) (Hughes & Paterson 1997) (Terzi 2004). These reviews based their critique on the relatively narrow focus of the Social Model of Disability, and in particular its relative lack of attention to issues of impairment, including experience of illness and pain. At first glance these critiques are curious, given that the aim of the Social Model is precisely to distinguish disability from impairment. It is not, then, at all surprising that it is vulnerable to such critiques. In this sense the array of academics complaining against the narrowness of the Social Model could be described as creating an artificial enemy, reminiscent of Don Quixote tilting at windmills. The Social Model is set up as an Aunt Sally by attributing a sphere of analytical competence to which it was never intended to apply. It is very easy, if not very useful, to criticise the Social Model by addressing issues outside its competence.

Nevertheless, much of the early criticism of the Social Model related to its relative lack of attention to issues of bodily impairment. These critiques were influenced by feminist corporeal theories. The central idea in this theory is to extend the politics of feminism beyond wider social structures of inequality, such as inequality in pay and employment opportunities, to "embodiment" critique. These include criticism of depictions of the body, the politics of appearance, constructions of normalcy and the medicalisation of the body. These critiques include a focus on external interventions and control of the female body, particularly with regards to the medical profession. The personal in these critiques was revealed as the political. (Thomas 1999) (Thomas 2007 p 151-171).

It is easy to see how there is potential crossover between feminists critiques and theories resisting disabilism. The extension of control by the medical professions by interventions into women's health resonates with protests against medical interventionism by disabled people (Garland-Thomson 2002) (Hall 2002).

It was true that, with its focus on discrimination, the Social Model did not share the feminist focus on 'embodiment'. This created vulnerability to a charge that the Social Model not only failed to encompass the bodily implications of impairment but also that the body was 'completely absent' (Turner 2001) (Thomas 2 007 p 71-75). This complaint of 'disappeared' in Disability Social Model theory was generally marginal within national discourse. There was one notable exception. Tom Shakespeare's critique moved from the obscurity of academic writing to mainstream media. Shakespeare was, and continues to be, a dominant, frequent commentator for the *BBC Ouch* website (BBC Ouch (B) 2012). He was an early champion for the Biopsychosocial Model against what he considered the outmoded ideology of the Social Model. On 2 March 2009 he advanced his arguments against the Social Model on Radio 4 *You and Yours.*

Shakespeare's intervention was important as he was not a paid advocate of the American insurance industry. He is a disability insider, with a record of campaigning. He is acknowledged to be influential in the disability movement and Mary Wilkinson has nominated him as one of nine key figures in her book on the history of disability leadership (Wilkinson 2009). He provided credibility for the Biopsychosocial Model from within the heart of Disability Studies scholarship.

Shakespeare had first contended that the Social Model was both 'outdated' and a 'new orthodoxy' in 2002 (Shakespeare 2002). In his 2007 book Disability Rights and Wrongs, he developed this theme to argue that there are 'several reasons' why the Social Model is not just wrong but an obstacle to disabled people (Shakespeare 2007 p33). He challenges the impairment / disability distinction at the heart of the Social Model and in particular, the notion that visual impairment can be distinguished from disability. For Shakespeare there is an ineluctable 'reality' to visual impairment which prevents resolution by manipulation of social resources. He argues that this contradiction was evident in the birth of Social Model theory. He references Sally French's description of visual impairment in her classic 1993 work, *Disabling Barriers, Enabling Environments* (Swain et al 1993);

> **'she gave the example of being unable to recognise people, and failure to read non-verbal cues in interaction, explaining how these aspects of being a visually impaired person caused problems interacting with neighbours and with her students. According to French, no amount of barrier removal or social change could entirely remedy or remove the problem of visual impairment'** (Shakespeare 2007 p39).

For Shakespeare this 'reality' of our impairments inhibits a social causation of discrimination. He advances this concept to argue that it is logically incoherent to describe disability as oppression, as the 'reality' of impairment is inextricably intertwined with disability. He criticises those who attempt to 'ignore impairment' in an attempt to focus on oppression (Shakespeare 2007 p 37). Specifically he argues that it is impossible to equate disabilism with the oppression in racism or sexism. He states;

> **'Comparatively few restrictions experienced by people with impairment are 'wholly social in origin'. If someone discriminated against disabled people purely because they had impairment, and imposed exclusions which were solely on this basis and nothing to do with their abilities, then this would be a wholly social restriction..... Here, Disability Discrimination parallels racism, sexism and other social exclusions exactly. But in most cases, disabled people are experiencing both the intrinsic limitation of impairment, and the externally imposed social discrimination. When disabled people are equated with other historically oppressed groups in a simplistic way, it leads to unwarranted conclusions'** (Shakespeare

2007 p 41).

Shakespeare's assertion that Disabilism is fundamentally isolated from other discrimination categories, such as Sexism, is perplexing. He argues that there is an 'intrinsic reality' to impairment, especially visual impairment, which distinguishes it from the 'social' origins of other discrimination categories. However, let us compare visual impairment with pregnancy and maternity. Few would now seriously suggest that discrimination against pregnant mothers in respect of their loss of productive functioning is 'warranted'. Yet this loss of productivity is entirely due to the 'intrinsic reality' of their maternity. In both the case of visual impairment and maternity there is an 'intrinsic reality' of potential adverse impacts on productivity. In the case of pregnancy we organise social solidarity through entitlement to the 'Reasonable Adjustment' of maternity leave. Yet Shakespeare insists that the intrinsic reality, of visual impairment, unlike the intrinsic reality of pregnancy, disqualifies our entitlement to equivalent social solidarity. Our entitlement for social solidarity relies not on an 'unwarranted' claim of discrimination but must necessarily rely on principles of welfare. It is therefore logically incoherent to regard visually impaired people in this sense as enduring oppression.

For Shakespeare, the reality of visual impairment inhibits a complaint of the social origins of their discrimination. This marks us out from other discriminated groups such as women and black people, who have an objectively social basis for their complaints. Shakespeare tends to reduce discrimination to the organisation of social attitudes. However applying Shakespeare's logic to maternity we could similarly argue that pregnant women have a 'real condition' which inhibits any complaint of the social origins of their discrimination. Yet whilst the institution of rights for non-productive maternity leave was once controversial and problematised, its abolition is no longer on any serious political agenda. There is no logical reason why the impaired productivity of visually impaired workers could not be similarly guaranteed.

Shakespeare's insistence that identifying the social origins of discrimination is an attempt to deny the reality of impairment is an equally odd idea. If we again apply this logic to the impaired functionality contained within pregnancy and maternity we arrive at some strange conclusions. We would conclude that pregnant women who are focussing on the social roots of their discrimination are in fact denying the reality of their pregnancy.

This theme of alleged denial of impairment is one of the most unpleasant aspects of Shakespeare's work when he makes sneering reference to disability campaigners;

> **'many disability rights campaigners concede that behind closed doors they talk about aches and pains and urinary tract infections, even while they deny any relevance of the body while they are out campaigning'** (Shakespeare 2007 p51).

For Shakespeare pain inhibits complaints of discrimination. For example he argues;

> **'Sensory impairments can be remedied by social arrangements such as sign language interpreters, or information in alternative formats. Yet looking closer, the distinction between biological/individual impairment and social/structural disability is conceptually and empirically very difficult to sustain. Impairments, even sensory impairments, can cause discomfort'** (Shakespeare 2007 p 34)

He attempts to recruit not just Sally French, but Jenny Morris in "Pride against Prejudice" to support his argument for the unavoidable centrality of pain;

> **' While environmental barriers and social attitudes are a crucial part of our experience of disability - and do indeed disable us - to suggest that this is all there is to it is to deny the personal experiences of physical and intellectual restrictions, of illness, of the fear of dying'** (Morris, 1991 p 10).

Shakespeare cannot cite Morris in support of his arguments. Unlike him, she is a consistent supporter of the Social Model of Disability. She makes this clear not only in Pride against Prejudice but in all her subsequent writings. For example in 2001 she states;

> **'The Social Model of Disability gives us the tools not only to challenge the discrimination and prejudice we face, but also to articulate the personal experience of impairment'** (Morris 2001 p1).

In addition, Morris is consistently clear that she regards disability as a socially constructed oppression;

> **'Like women, disabled people's politicisation has its roots in the assertion that "the personal is political", that our personal experiences of being denied opportunities are not to be explained by our bodily limitations (our impairments) but by the disabling social,**

> **environmental and attitudinal barriers which are a daily part of our lives. The Social Model of Disability has given us the language to describe our experiences of discrimination and prejudice and has been as liberating for disabled people as feminism has been for women.'** (Morris 2001 p5).

Specifically Morris has distanced herself from any support for Shakespeare's favoured Biopsychosocial Model. In 2011 she wrote;

> **'There has been much criticism of the new Work Capability Assessment (WCA), but the main problem is in the application of the behavioural model on which it is based. This is the Biopsychomedical Model, an approach recommended by large insurance companies, such as UnumProvident'** (Morris 2011 p13).

Morris, unlike Shakespeare, has never argued that there is a logical incoherence in understanding the social origins of disability as discrimination.

What about Shakespeare's odd suggestion that a propensity to suffer urinary infections invalidates a complaint of discrimination? He argues that his complaint is about an imbalance. His contention is that Disability Discrimination campaigners only make visible their experiences of discrimination whilst rendering invisible the experience of their impairment. For Shakespeare it is difficult to attribute pain, and other predicaments arising from impairment to oppressive social relations. Issues such as incontinence are intensely personal.

In fact, contrary to Shakespeare's depiction, social responses to the management of toileting and incontinence form material for discussion of oppression in Human Rights Law. The MacDonald case will be discussed in the following chapter.

So Shakespeare's objection results in a curious, alleged, equivalence between impairment denial and complaints of discrimination. Yet blindness is an incontrovertible reality we encounter daily. Why does Shakespeare want to remind us of the obvious?

He argues that a serious problem arises from the denial of impairment. It creates a misguided delusion that impairments are amenable to amelioration through social adjustment. He argues that this is demonstrated by 'contradictory' needs of visually impaired and other disabled groups which directly challenge the coherence of the Social Model.

He references supposed contradictory requirements between wheelchair users and visually impaired people;

> **'Blind people may find that kerb cuts which liberate wheelchair users make it difficult for them to differentiate pavement from road, and leave them vulnerable to walking into the path of a vehicle. Wheelchair users may have problems with tactile paving which gives locational cues to visually impaired people'** (Shakespeare 2007 p46)

If it was true that we had contradictory requirements, it would indeed be impossible to identify discrimination in street architecture. However, whilst dropped kerbs without any tactile differentiation are indeed dangerous for a long cane user, this is not a matter of conflict. Wheelchair users run over a tactile area every time they use a Zebra crossing. The complaint of the visually impaired person is not against the wheelchair user but against planners who build dropped kerbs without suitable tactile surfaces. The disability movement is not in civil war but unity. Over 20 national disability organisations, including Leonard Cheshire Disability, Arthritis Care, MENCAP, as well as Visual Impairment charities such as Guide Dogs and RNIB have united to oppose 'shared surfaces' and call for inclusive streetscapes (Guide dogs 2011).

Shakespeare references further alleged contradictions between the visual impairment and other impairment groups. He claims that it is a problem that:

> **'Partially sighted people may request large text on white background: people with dyslexia may prefer black print on yellow paper'** (Shakespeare 2007 p46).

He claims that this is a problem not just between impairment groups, but within the Visual Impairment community itself;

> **'Some people with visual impairment prefer to access information in large print, others use Braille, and some prefer to access information on audio tape or on computer disc. In other words, fully accessible information would come in a range of different formats, suitable for different users'** (Shakespeare 2007 p47)

If these diverse requirements were contradictory then Shakespeare could indeed undermined the case for discrimination. However, whilst different eye conditions may require diverse font, magnification and colour schemes, this is not a matter of conflict. Standard web infrastructure can provide a flexible variety of interfaces, including colour, font and magnification options. The Equality and Human Rights

Commission provide a good example. Users can select Small, Medium, or Large test, as well as different colour schemes. Inbuilt Windows or Mac colour schemes provide further flexibility. All these web interfaces can deliver printed material on inexpensive colour printers, or Braille Embossers. These access filters are technically available on every web page. If this ductile web interface is not sufficient, specialist software such as Magic and ZoomText enable a vast array of customisable colour and magnification filters.

What about the worry about whether to use audio cassettes or computer CDs? Whilst it is increasingly rare to find even visually impaired people using cassettes, it is true that many people prefer to have material read to them. The same web interface can deliver spoken material. Nowadays, human sounding synthetic voices, of ever increasing quality, can easily relay this material. It is now difficult to tell the difference between synthetic and human speech. Free 'non-robotic' comprehensible voices have been available on both Windows and Mac computers for many years. The highest quality software will not break the bank at about £25 for three voices (RNIB 2012). Both Windows and the Mac will read these pages in a human sounding voice with freely available software.

If people cannot or do not want to use a computer, this material can still be provided with minimal adjustment. Free software tools (DSpeech 2013) make the conversion of text into a human voice straightforward. The result is text converted into human sounding audio which can be burnt onto a CD or if necessary recorded onto a cassette.

Contrary to Shakespeare's warnings of our mutual incompatibility, providing a flexible response to our diverse requirements is relatively unproblematic. We have used these techniques in our Low Vision Forum for years.

The Critical Realism of Simon Williams is the philosophical bedrock upon which Shakespeare derives inspiration for his critique;

> **'As Simon Williams has argued, 'endorsement of disability solely as social oppression is really only an option, and an erroneous one at that, for those spared the ravages of chronic illness** (Shakespeare 2007 P43)

Williams is a Medical Sociologist and unlike Shakespeare, not part of the Disability Movement. In 1999 he produced a seminal paper *entitled 'Is anybody there?'*, in which he launched a sustained critique of the Social Model of

Disability. He quarrelled with the 'simplistic' conception of disability as oppression which, he argues, obscured an understanding of the underlying reality of impairment. He argued that Medical Sociology and Critical Realism provided the clearest and most useful framework for the understanding of impairment and disability. He insists that there is a certainty; a 'fact' of impairment which belies attempts to represent disability as expressions of social relations. He calls for commitments to real bodies and real worlds. He characterises the Social Model as a theory of knowledge which has made the impaired body disappear (Williams 1999 p 798).

For Williams, Critical Realism delivers insight into the limits of our real "being". And selfhood is a crucial idea for Williams. He is interested in the interaction of the self with wider structures such as the medical profession. He rejects disability as oppression and instead argues that selfhood arises out of negotiation between the disabled person and representatives of the medical profession.

Williams insists on the primacy of an external physical reality of impairment and disability. Crucially, pain is a key area which cannot be understood by Social Modelling. He claimed that the Social Constructionists have conspired to make the external reality of the body disappear. He argued for the return of medicine as a valid interpreter of disability and defends the historical insights of medical sociology. He criticises both Deviance Theories and Social Modelling for attributing excessive passivity to patients, as they do not passively accept stigmatised roles or succumb to medical power. For Williams, both diagnoses and therapy were negotiated between medical practitioner and patient. He refers to the positive actions patients can take in the face of physical adversity. He calls for the return of bodily dimensions in considerations of selfhood and social identity. For Williams this approach is essential to understand the issue of disabled identity. Biological issues of the body cannot be disregarded as factual influences on the self construction of identity (Williams 1999 p 800-802)

So Williams was instinctively hostile to any analysis which relied on social structures. What was far more important was the focus on the individual. He summarised;

> **'Important concepts and insights have been advanced, including the biographically disruptive nature of chronic illness, the importance of narrative reconstruction, the negotiation of selfhood and identity, as well as the positive actions which people take in the face of their adversity'** (Williams 1999 p 801).

Critical Realism does provide some convincing insight. Arguably both Realism and Materialism provide a coherent approach to understanding the position of people with visual impairment. The difficulty I have with Williams', and by extension Shakespeare's approach, is their narrow application of Critical Realism to assert that impairment is the defining characteristic of our 'being and selfhood'. Shakespeare and Williams are typical of those who criticise the Social Model as narrow, incomplete and misguided. Yet there is an equally incomplete, narrow, one sidedness to their quests for the 'real' self. They investigate selfhood through narrative of 'bodily realities' of pain, illness and impairment. In this narrow analysis they elevate the bodily characteristics of impairment to such an inappropriate degree it assumes the nature of a fetish. It is true that the Social Model is guilty of an incomplete analysis of the narratives of illness, pain and impairment. We can agree that it does not provide complete insight into both the 'self' and the totality of experience for a disabled person. However their fetishistic implementation of Critical Realism does not provide an account that is any more complete. Why simply focus on narratives of pain and illness in the exploration of our 'being' and 'selfhood'? The disabled person will have many more narratives of the self to offer. We have narratives of addiction, relationships, romance, sexual preference, sexual orientation, love, grief, personal exploitation, crime, humour, food preference, dieting, football fandom, pet ownership or even what constitutes a good read. It is difficult to understand why a fetishistic and obsessive focus on narratives of impairment are anymore real than the Social Model.

The efficacy of The Social Model is that whilst narrow and incomplete, it can nevertheless provide utility in many areas by revealing underlying discrimination. The Social Model will not illuminate the poignancy of romance in Chekov's short stories, or even why somebody would find them hauntingly reminiscent of the travails of visual impairment. Yet it would provide a compelling rationale for why the local library should provide these stories in a format that we can access. The Social Model will be silent on the issue of whether a favourite football team plays 4-4-2 or 4-5-1 formation, yet will provide support for the blind football supporter to receive an accessible in -stadium commentary. The Social Model has little in general to say about pet care and management but will have a considerable amount to say about the legal right of blind guide dog owners to take their dogs into restaurants. The efficacy and utility of the Social Model lays not in its completeness and generality but in this narrowness.

We can agree that the Social Model of Disability is not a 'theory of being'. However, we cannot support William's characterisation of the Social Model as an attempt at a unifying theory of knowledge. This description is too elaborate. The Social Model is, rather, a thought experiment, a methodological instrument through which discriminatory infrastructural and attitudinal barriers can be revealed and challenged. It acts as a prism which exposes the prejudicial assumption of a dominant ideology. The Social Model of Disability does not, and probably never will, provide an overarching epistemology. The narrow instrumental character of the model is a key reason for its success. It allows ownership from a wide variety of opinions. The model is supported enthusiastically by economic, market orientated rationalists such as Sayce as well as members of the revolutionary left. It attracts support across the political spectrum, from the Coalition Government to the Socialist Workers Party.

So the Social Model is unashamedly narrow, but remains useful in spite of this. On the other hand, to what extent is Shakespeare's and William's equally narrow interest in a 'theory of being' obsessed with impairment useful for disabled people? The answer for Williams and Shakespeare is in the rejection the Social Model in favour of the more 'complete' Biopyschosocial Model.

The Biopyschosocial Model is explicitly supported by Shakespeare in Chapter 4 of his *Disability Rights and Wrongs*. He states;

> **'there are no contradictions between my own understanding and that of Williams or Bury, or indeed of the WHO'S International Classification of Functioning, Disability and Health (ICF). The Medico-psychosocial Model which lies at the heart of the ICF does seem to me a sensible and practical way of understanding the complexity of disability'** (Shakespeare 2007 p 59).

The World Health Organisation definition of the Biopsychosocial Model that Shakespeare supports is described below;

> **'some aspects of disability are almost entirely internal to the person, while another aspect is almost entirely external. In other words, both medical and social responses are appropriate to the problems associated with disability; we cannot wholly reject either kind of intervention. A better model of disability, in short, is one that synthesizes what is true in the Medical and Social Models, without making the mistake each makes in reducing the whole, complex notion of disability to one of its aspects.**
> **This more useful model of disability might be called the Biopsychosocial Model. ICF is based on this model.'** (WHO 2002 p 9).

It was at least possible that a Government reaction to the re-focus on the biological basis of disability, as favoured by Shakespeare and Williams, could have been sympathetic. It is certainly more congruent with an approach which organises legal and social policy along principles of charity and welfare. However a positive reaction to the Shakespearian/ Williams critique is not what has transpired. Instead we have witnessed a resurgence of ideas around 'disability' which are unhelpful to the interests of disabled people. We have a Government response which not only, primarily, sees disability originating in biological impairment but has attempted to play down any discriminatory aspects of social responses to this impairment. In place of discrimination we have a renewed interest in the psychological. The responsibility for overcoming the limitation of impairment has shifted away from the management and adjustment of social inclusivity to the management and adjustment of the individual, psychological attitudes of the disabled person.

This new focus on the individual and psychological was succinctly summarised by Lord Freud, spokesperson for the Department for Work and Pensions, when he announced in January 2012, that the Government had adopted the Biopsychosocial Model in preference to the Social Model of Disability. He criticised the Social Model of Disability as it involved an 'intrusive and costly assessment', putting significant cost burdens on taxpayers;

> **'This is about doing the right thing for people and focusing money on them; it is not about playing silly games-by which I mean that we are not playing silly games here and we are determined to get this right. We are consulting widely and know that we have the right approach with the model that we are using.... but we do not think that the Bill should specify that the assessment should consider social and environmental factors. That approach would be inappropriate and unworkable, because we need the assessment to be straightforward, objective and consistent. We would lose £1.4 billion of savings'** (Hansard 2012).

Despite it propensity for subversion by erstwhile supporters, the Social Model of Disability, with its unambiguous focus on discrimination, is revealed here by Lord Freud as not a suitable tool for a cost cutting Government. It needed a new theoretical model facilitate the agenda to reduce disability spending.

Nevertheless, Lord Freud's estimated savings of £1.4 billion, by not implementing the Social Model, should be considered against the economic benefits of positive employment support identified in the previous Chapter. Here we identified potential savings of about £0.5 billion through the positive supported employment of just a percentage of the visual impairment population. There is no reason to suppose that similar savings could not be achieved through the positive employment support of other impairment groups. In total the savings produced likely to dwarf the £1.4 billion targeted by Lord Freud. However the Coalition Government is currently pursuing the track of developing a technical methodology to facilitate the withdrawal of benefits from disabled people. They are also pursuing cut backs in disability employment support programs. Such a social policy not only offends against principles of social solidarity, but also makes little economic sense.

Shakespeare is not responsible for introducing the Biopyschosocial Model to the UK but has supported an academic model which was fostered by the American Insurance Industry since the early 1990s. The roots of the use of the Biopyschosocial Model on UK Disability policy originated not with the Coalition, nor New Labour Governments, but with the influence of USA insurance giants Unum on Major's Conservative Government.

Unum Provident first intervened in the UK State Welfare system in the consultation around the 1994 Social Security (Incapacity for Work) Act. This Act replaced Invalidity Benefit with Incapacity Benefit. This legislation was designed to reduce benefit spending by introducing stricter assessment of incapacity through 'claims management'. Peter Lilley, Secretary of State for Social Security recruited John LoCascio to advise on 'claims management'. LoCascio was vice president of Unum, the leading US Disability Insurance Company. He helped design the stricter assessment on the 'Medical Evaluation Group' (Rutherford 2012 p49). A further key figure in the group was Mansel Aylward, Chief Medical Officer at the Department of Work and Pensions, who was to have increasing influence over the next 15 years.

In 1997 a new 'all work' assessment was introduced in an effort to move disabled people off benefits into work. With these new stricter rules in place, Unum ran 'unlucky for some' adverts suggesting that these new rules meant that UK citizens could no longer rely on state benefits to protect them from the risk of sickness or disability. The advert suggested taking out private benefit insurance with Unum to protect against the risk of benefit refusal. LoCascio denied that there was a conflict of interest in helping to design a stricter form of assessment which offered potential commercial benefit for his insurance company (Rutherford 2012 p49).

Unum, increasingly, began to offer not just private benefit protection but also expert Disability Assessment to the DWP. The Biopsychosocial Model was a key theoretical tool in this new technology. From 2001 Unum began to hold annual symposiums at Woodstock to promote and develop this model. The first conference, facilitated by Mansel Aylward, was entitled *Malingering and Illness Perception* (Halligan et al 2001). These symposiums received interests not just from academics but, crucially, Government Ministers. In July 2004, the £1.6m Unum Provident Centre for Psychosocial and Disability Research was opened at Cardiff University. Mansel Aylward left the DWP to become Director (Rutherford 2012 p53).

In the same year that Shakespeare produced his Disability Rights and Wrongs, Peter Hain, in his brief sojourn as Secretary of State for Work and Pensions, introduced a further sweep of reforms to toughen up entitlement to disability benefits. He announced the end of Incapacity Benefit and its replacement by Employment and Support Allowance (BBC 2007). He also formally committed the DWP to the Biopsychosocial Model of Disability for the first time (Rutherford 2012 p 11). However it was James Purnell who drove the campaign against so called 'disability fraud' with the claim that people were claiming benefits to which they were not entitled (Hansard 2008). Purnell faced anger from disability activists, and personal embarrassment, when he was forced to resign after fraudulently claiming food expenses at a rate higher than unemployment benefit (Rutherford 2012 p 11).

In practice the 'psycho' in the Biopsychosocial Model has proved the most controversial aspect of the theory. McLaren argued that the model was simply a reframing of psychosomatic illness (McLaren 2004). The 'psycho' element of the model has enabled scope for the notion of people with impairments becoming responsible for the extent of their disability through their psychological attitude. For Unum though this approach could reduce the number of successful claims for which it had to pay. Rutherford claimed that its Independent Medical Examination (IME) was biased against disabled people. Illnesses were characterised as 'self-reported' and therefore questioned. Some disabling conditions were labelled as 'psychological', which made them ineligible for insurance cover beyond 24 months. Doctors were pressured to deny claims which would result in payouts (Rutherford 2012 p 49).

In the USA Unum has attracted wide criticism as a 'disability denial service', providing cash incentives for medical professionals who deny disability claims (Biomedical Me 2011). It was also rated the second worst Insurance Company in terms of satisfaction in the USA, attracting high profile litigation over its policy of denying claims on psychological grounds (Consumer Affairs 2003). Unum has even unwittingly spawned an industry of specialist lawyers set up to fight their attempts to deny disability (Cavey 2012).

Whilst the main beneficiary of the Biopsychosocial Model appears to be Unum's increased profits (Rutherford 2012 p 50), it has attracted complaints from disability activists that it is designed to force disabled people off benefits (Jolly2012). Given the Government interest in reducing welfare spending, the attractiveness of the model is understandable. Visually impaired people are not immune from the impact of these new assessments. The unpredictability and subjective psychological nature of these new assessments risk visually impaired people, who may experience similar levels of sight loss, being awarded different levels of benefits. In addition visually impaired people who demonstrate individual abilities to accept rehabilitation support could have their entitlement jeopardised.

The Biopsychosocial Model of Disability is now the dominant theoretical model adopted by the DWP. Mansel Aylward leads the academic defence of the model, but his lectures are now the focus of protest by Disability Activists.

In September 2012 Disability Activists from Black Triangle demonstrated outside his lecture at Imperial College. They gave out the following letter;

> **'This week sees the 6th International Forum on Disability Management 'IFDM 2012' take place at Imperial College, London. It is sponsored by some of the world's largest medical insurance companies, Unum among them, and keynote speakers include DWP Chief Medical Adviser Dr. Bill Gunyeon and Professor Sir Mansel Aylward formerly DWP Chief Medical Adviser and Director of The Centre for Psychosocial and Disability Research at Cardiff University which was sponsored by Unum from its inception in 2003 until 2009.**
>
> **Unum's website states that during this sponsorship period 'a series of papers was published, identifying the range of factors that determine why some people become long term absentees.' The Cardiff papers advocated a 'Biopsychosocial (BPS) Model' of disability which Unum says 'informed its approach to medical underwriting'. It is the same approach upon which the current Atos Work Capability Assessment (WCA) is based. Concomitantly, the company were advising the UK Government on welfare reform.**
>
> **On 4th September 2012, during an emergency debate on ATOS and the WCA held in Parliament, Kevin Brennan (Lab Cardiff West) demanded to know if DWP Minister Chris Grayling was as concerned as he was ' that ATOS's Chief Medical Officer is Professor Michael**

> **O'Donnell, who was previously employed as Chief Medical Officer by the American insurance company, Unum, which was described by the Insurance Commissioner for California, John Garamendi, as an "outlaw company" that has operated in an unlawful fashion for many years, running (disability) claims denial factories.' Mike O'Donnell was Unum's CMO for 10 years before he joined Atos in 2010.**
>
> **We strongly condemn the Royal Society of Medicine's decision to host 'IFDM 2012'. By so doing they have lent an aura of legitimacy to a pseudo-scientific approach to disability that is as far from evidence-based medicine as it is possible to imagine. It is an approach that continues to devastate the lives of patients, scores of whom are tragically no longer with us as a direct result.**
>
> **These for-profit corporations should never have been permitted to sequester such power and influence over public health and social policy. We submit that there may be clear conflicts of interest at stake and that the public interest now demands that an urgent and thorough independent public inquiry into the relationships between, and roles played by, senior Unum, Atos and DWP staff in the creation of the current government disability assessment regime be instituted without further delay"** (Black triangle 2012).

So, at the time of writing, the Social Model of Disability has lost it hard won place in legal and social policy. It has again become a manifesto for change rather than a tool for policy implementation. Both New Labour and the Coalition have grasped at the Biopsychosocial Model of Disability as an alternative, less expensive model to guide their policy. The Biopyschosocial Model has provided the theoretical tool by which Government can advance an individualised model of disability which focuses on aptitude and attitude to work, rather than addressing disabling barriers. It has allowed a return to the medical classification technology against which Social Model theorists protested in the 1980s and 1990s. It has provided a technology which is focussed on individual assessment of what is or is not a 'disability'. This is far more suited to 'austerity' initiatives to reduce spending on disability. Individuals with impairments can be categorised as capable of work with the right psychological outlook. This retrenchment into a tough position where individuals with disability are offered the carrot of disability employment support and the stick of benefit withdrawal is a technology which can drive down state spending. The internationalised medical and insurance industry, for reasons of institutional self interest, ideology and now profit, have demonstrated how eager they are to respond to the need to provide this technology of 'assessment' to facilitate welfare cuts.

If the Biopyschosocial Model is not suitable to advance the interests of disabled people, how can the Social Model of Disability recover credibility? The answer to this lays not just in defending the historic principle of the Social Model but also in the theoretical reformulation of the Social Model in the face of modern critiques. Partly this involves the defence of the Social Model as an unashamedly narrow instrumental tool with which discrimination can be revealed. Partly this involves a resistance to seeking an overarching 'complete' theory of disability which confuses issues of disability and impairment. However there is also a need to develop a broader context against which the Social Model of Disability can be positively positioned.

There appears a need for three strategies. First disabled people need to reclaim ownership and authorship of the Social Model of Disability. This would involve an explicit rejection of the 'corrupted' and 'subverted' Government versions of the Social Model which use it to close down welfare provision. Policy developments targeted in the name of the Social Model need validation from the disabled people who are the stakeholders in the relevant policy area. Secondly there is a need to position the Social Model of Disability within a wider moral, philosophical and jurisprudential framework. Such a wider framework could contextualise the Social Model and prevent, in future, both its subversion and perversion into an instrument of harm to the interests of disabled people and visually impaired people in particular. Finally we need to re-introduce the notion of the Politics of Disablement. Too often there is a tendency to equate it with the Social Model of Disability. It is more accurate to understand the Social Model of Disability as one component of a wider political theory of disablement. If we are to structure a new legal and social policy to resolve the generational exclusion of visually impaired people we do need to reference a clear theoretical conception of disability, which can describe not just how society organises discrimination but provides a guide to the principles which underpin a valued and positive life for a disabled person. Such a value framework could counteract the potential subversion and perversion of the Social Model away from its original positive intent.

We will, in the next chapter, start the search for a guiding value framework for the Social Model by appraising the potential to locate it within a Human Rights paradigm.

Chapter 16

Human Rights, Capabilities and the Social Model

Whilst the application of Human Rights Law to disability issues is comparatively recent, the campaign for the extension of Human Rights to disabled people has a longer lineage. In the UK, the Disability Income Group (DIG) initiated these calls when they organised a Trafalgar Square rally to coincide with the 1968 UN Year for Human Rights (RADAR 2008p 8). Until recently Human Rights was often cited in disability literature without specific convention reference, tending to describe a general conviction that disabled people should be treated more fairly or protected from assumptions of bio-ethics (ASCH 2001).

This concern, whilst legally vague, was understandable. A database created by Disability Awareness in Action (DAA) recorded potential Human Rights violations affecting over two million disabled people worldwide between 1999 and 2003. 12% of press reports on this database apply to visually impaired people (DAIA 2003). In 2003 Disabled People International expressed concern about institutional abuse of disabled people in care arrangements across Europe (DPI 2003). Awareness of the reluctance to confront disability hate crime also increased. In 2008 Action for Blind People reported that despite 20,000 visually impaired people suffering physical assault, at a rate four times higher than sighted people, police referral was only 50% of sighted complaints (Jarrett 2008). Police were reluctant to pursue investigations without certain visual identification of assailants (CRAM 2007 P 66). Equality and Human Rights Commission research indicates problem with higher rates of violence to disabled people generally (Singh et al 2009).

Although Disability is the largest minority group (Mercer and Macdonald 2012), until 2006, there were no explicit Human Rights protections. Disability is invisible in the 1948 Universal Declaration, the 1952 European Convention and the 1976 UN International Covenant on Civil and Political Rights (Stein 2007). (In contrast there is an exhaustive listing of other groups OHCHR1976). In 1994 the UN issued a *General Note* in an attempt to rectify the increasing embarrassment of disability exclusion;

> **‘5. The Covenant does not refer explicitly to persons with disabilities. Nevertheless, the Universal Declaration of Human Rights recognizes that all human beings are born free and equal in dignity and rights and, since the Covenant's provisions apply fully to all members of**

> **society, persons with disabilities are clearly entitled to the full range of rights recognized in the Covenant'** (UN 1994).

Rights were therefore implicit rather than explicit. Whilst it was comforting that the UN formally acknowledged our humanity, no such reassurance was required for any of the other, smaller, discriminated groups.

The UN faced International pressure to rectify this exclusion (Bickenbach 2001). In 2001, a Committee to: **'consider proposals for a comprehensive and integral convention on the rights and dignity of persons with disabilities'** was established (NCD 2003). Explicit rights were finally drafted in the 2006 convention on the Rights of People with Disabilities. The UK signed in March 2007, but ratification was delayed and enthusiasm muted. In 2008, Anne McGuire, Minister for Disabled People, suggested reservations were possibly required, as UK law may not be Convention compliant (Parliament 2008 p5). After facing criticism for this prevarication (Shakespeare 2009), the UK finally ratified without reservation in July 2009 (ODI 2012)

The Convention has Articles of interest to visually impaired people. Under Article 5 Equality and Non-Discrimination there is a reference not just to provide protection but also emphasises the positive duties to promote Reasonable Accommodation. In paragraph 3 of Article 5 it states;

> **'3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.'**

The World Blind Union (WBU) argues that under Article 5, Governments have an obligation to protect the autonomy of visually impaired people to achieve their **'full economic, social, cultural, civil and political potential'** (Hunt 2012 p 51). They also suggested Article 6 and 7 concerning women and children were particularly relevant. Two thirds of the world's blind population are female and are more vulnerable to abuse, including more likely infection from HIV/Aids. Globally, 60% of blind children die before reaching adult hood and, in developing countries, less than 10% attend school. (Hunt 2012 p52).

Article 9 on Right to Accessibility is relevant for employment. Compliance is required not only in relation to structural, physical, barriers, but also in accessible Information. The Convention also places a positive duty. Specifically in paragraphs f and g state that Governments have responsibility;

> **‘f) To promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;**
>
> **g) To promote access for persons with disabilities to new information and communications technologies and systems, including the Internet’**

The World Blind Union argues that Article 9 requires wide interpretation;

> **‘Governments should ensure that manufacturers of mainstream equipment intended for use by the public be designed incorporating universal design concepts’**. (Hunt 2012 P 54).

However these Article Rights have, in most cases, provided only mood music. Since ratification, no UK challenges to inaccessibility based on Convention Rights have emerged. However, interest has grown in the possibility of using Human Rights to protect standards of care services.

This legal strategy has relied on widening the judicial interpretation of ‘dignity’ by extending remit beyond passive protection from the State. In some situations, disabled people must be positively enabled to live a full and meaningful life. Ironically the clearest judicial support for this arose out of a case of potential assisted suicide in Purdy, R (on the application of) v Director of Public Prosecutions [2009] UKHL 45 (30 July 2009). Mrs Purdy, who had Multiple Sclerosis, argued successfully in 2009, that the Government was in breach of Article 8 of the European Convention. The Supreme Court supported her claim that her right to a dignified private and family life, was breached by Government failure to clarify whether her husband would face prosecution if he accompanied her to a Swiss Dignitas Clinic (Hirsch 2009), (BAILI (A) Undated).

Despite the curious mechanism of an extension in the right to die, Cragg argues that Purdy also extended the scope of dignity in Article 8 in the quality of life for disabled people (Cragg 2009). After Purdy, interest grew in applying dignity as a criterion for health and social care services. However, this optimistic interpretation of Article 8 was not supported in McDonald, R (on the application of) v Royal Borough of Kensington and Chelsea [2011] UKSC 33. Mrs McDonald had suffered a stroke. She was told by Kensington and Chelsea Social Services that it was necessary for her to manage overnight urination through the use of incontinence pads, rather than with the support of a carer. The Supreme Court held with a majority decision that this requirement did not breach her Human Rights (BAILII (B) Undated. McDonald's right to dignity was interpreted narrowly and the counter arguments advanced by the Council of the cost required to provide this Care determined the outcome (K&CC 2011). This judgement is congruent with the determinant aspect of costs in adjudicating the reasonableness of disability adjustment in Equality Law also, for example see Cordell v Foreign And Commonwealth Office (Disability Discrimination: Reasonable Adjustments) [2011] UKEAT 0016_11_0510, (BAILII (C) Undated).

Whilst further constraints on care budgets may create future Human Rights cases, there is no evidence that the duty to facilitate dignity has increase the welfare of disabled people. *The Law Commission Report into Adult Social Care* concluded;

> **'We remain concerned that concepts such as dignity and independent living are too imprecise to be expressed as statutory principles. The notion of dignity has been used by the courts in judgments which are addressing texts which do not use the word dignity. This suggests that while a legal structure can be constructed in a way that is conducive to dignity – or even in a way which undermines it – it is difficult to build a legal structure on the imprecise notion of dignity.'** (Law Commission 2011 Sec '4.35).

The appearance of Dignity in both the preamble and Article 1 of the 1948 Universal Declaration was a response to the unprecedented horrors of the Second World War. Similarly the scars of Nazism created a determination that individual dignity would form a core theme in the post-war German constitution. A corresponding determination shaped the Constitution in post-apartheid South Africa (Grant 2007 p 303).

Whilst Fredman argues that dignity provides a value benchmark to counteract perverse applications of negative equality, measures providing a safeguard against judicial decisions that treat everybody equally badly (Fredman2001 p12), McDonald appears to counteract this optimism. It is difficult to imagine that, in any other discrimination category, it is acceptable to enforce a social arrangement of avoidable night time soiling. It seems likely that, for example, if able bodied prisoners were compelled to use incontinence pads rather than receive access to a toilet, an outcry would ensue. Dignity for an able bodied person appears to have a different quality to that available for a disabled person.

Even where rights of dignity for disabled people are explicitly enshrine, as for example, in the South African Constitution, these are rarely honoured in practice (Heap et al 2009).

To understand the roots of conceptual tension in dignity requires an analysis of some jurisprudential values underpinning this right. Traditional liberal theories of justice have relied upon Contractarian justification for rights. These social contracts allowed society to rise from a ‘state of nature’. Hobbes argues this necessity as the state of nature was ‘selfish’ and ‘brutish’. An agreement to abide under a ‘Leviathan’ state enabled basic security, including the provision of a safe environment to sleep (Hobbes 1651 p 64, 148). For Locke (Locke 1768 p3, 26-28) we achieve these rights as a result of our status as free, independent, rational human beings. The Social Contract was driven by individual, vested self interest to agree a rational reciprocal system of rights. These ideas were developed, in a more modern context, by John Rawls in his classic work *A Theory of Justice* (1971). Contractarian theories dominated jurisprudential thinking in the later stages of the twentieth century. In the new millennium important theoretical critiques of Contractarianism, specifically in relation to disability, have been contributed by Alasdair Macintyre and Martha Nussbaum. Macintyre in *Dependent Rational Animals* (Macintyre 2001) and Nussbaum in *Frontiers of Justice* (Nussbaum 2006) provide insights into the positioning of disabled people in society. They shed light on the normative frameworks disabled people endure. I will return to Macintyre in the final chapter but we must focus initially on Nussbaum's criticism of Contractarianism in the context of Human Rights.

Nussbaum attempts to demonstrate the incompatibility of Liberal Contractarian philosophies with animal rights, support for developing nations, and equality for disabled people. She embarks on a debate with the ghosts of Locke, Kant, and in particular, John Rawls.

Rawls attempted to define principles of Justice which do not rely upon intuition. Instead he discerned rational agreements based on objective principles of reciprocity, which were themselves underpinned by mutual self interest. To support this endeavour he created a famous thought experiment in the notion of an ‘Original Position’. This position was a hypothetical set of social relations where an original contract of laws is negotiated. The point of the experiment was to assume that none of the parties to this contract knew their actual wealth, status or access to power and resources. Under this “veil of ignorance” (Rawls 1971 p 11 -17) the individuals had an interest in allocating fair access to primary good and rights (Rawls 1971 p 54-55). This experiment was invoked to provide a testing apparatus against which elements of justice could be applied to law. Rights were agreed where the mutual advantage of parties are satisfied. Self-interest restricted rules and ensured fairness. When the ‘veil of ignorance’ was lifted, the least advantaged in society had a basic set of protection, agreed by all when they risked finding themselves in this position. The second key element of Rawl's theory was the difference principle (Rawls 1971 p 65-68). This principle argued that inequality in wealth was justified, if the result of the unequal distribution to the rich also engendered corresponding benefits for the lowest paid. In this view Inequality actually benefitted the poorest through the cascading down of income. Rights developed which satisfied the 'Original Position' and the Difference Principle helped provide a system of justice which delivered dignity.

Naussbaum, in contrast, turns Rawl's model on its head. She criticises his reliance on singular measurement of social outcomes by wealth, claiming it disallows the possibility of a plurality of ends. Instead Dignity is her starting point, a discussion, through practical reason, of what is needed in life. To assist, she devises a list of essential Capabilities which enable truly human functioning. Unlike Rawls she does not regard dignity as the abstract fruit of a metaphysical experiment. We recognise dignity and a dignified life intuitively. She criticises Rawls's reliance on reciprocal self interest as the bedrock for dignity. Specifically, she identifies that disabled people are excluded in the contractual negotiations of the 'Original Position'. This is a contract restricted to free, rational, independent equals, whose abilities lay within a 'normal range' (Rawls 1971 P 83-84). Disabled people are not involved in the contract as the theoretical clarity Rawls requires is disrupted if there is any attempt to introduce asymmetric relations. The principle of rational mutual advantage collapses where there are unequal parties. The principle advantage of mutuality and rationality based on selfish interest disappears if the parties are productive and non-productive. No advantage is revealed with contracting with impaired parties. Rawls is, therefore, forced to deny even mild benevolence as a motivating component in the 'Original Position' (Nussbaum 2006, 156).

Rawls did not deny that more positive social motivations for relationships existed. Benevolence towards disabled people was appropriately dispensed either in the private realm of the family or in the public realm through the provision of agreed charity at the later legislative stage of his model (Rawls 1971 p 1974, 176). Disabled people, by definition, cannot be central to the fundamental contract of agreements in Society (Rawls 1971 p 128-129). This is an inevitable consequence of Rawl's view of selfish humanity in a state of nature. Humans are in nature, apolitical. Politics arises only in the artificial public realm of social relations. Selfish motivations are the only concrete basis for ascribing jurisprudential validity to these relations.

Rawls appeared to support Hume's bleak view of an apolitical and selfish human nature (Rawls 19771 p 8, 20, 109). Rawls' contractual bleakness also appeared congruent with ideas of both market liberalism and possessive individualism. Nussbaum comes from a different tradition. She supports the Aristotelian-Marxian view of humans as 'political animals by nature'. She defends core motivations for human relationships beyond selfish notions of financial advantage. She supports the possibilities of not just benevolence but altruism.

Nussbaum refutes Rawls charge of intuitionism by arguing that his 'Original Position' is no less intuinistic (Nussbaum 2006 p162). She dismisses his reliance on Kantian notions of dignity. The delivery of dignity through a contract implies only those who are independent and rational are deserving. For Kant, it is rationality which differentiates humanity from the animal. For Nussbaum, this is a gross oversimplification which distorts and disguises our true human nature. For people, with mental and learning impairments in particular, the Kantian insistence on the linkage of rationality to dignity is potentially sinister. Nussbaum points to some of the myriad examples of people who have committed, positive relationships with people with whom they could have no mutual economic exchange. People with learning difficulties have loving relationships with friends and family but would have their dignity denied in the Rawlsian scheme. Rawls suggests a society of independent, free, rational beings. Nussbaum describes a different reality, a society where we are all dependent when we are babies, when we suffer illness, experience disability, or when we reach old age. Rationality may be depleted in many of these conditions but we do not forfeit our right to dignity (Nussbaum 2006 p 162-170).

Withholding explicit Human Rights to disabled people was logically consistent with Rawlsian Contractarianism. The theory only permitted positive incorporation of incapacity through the vehicle of charity. It reinforced rather than weakened pressures for exclusion.

Nussbaum argues that the problems invoked by the Rawlsian contract are resolved by an approach which stresses our dependent, political animality. Instead of developing a system to define dignity Nussbaum is unashamedly reliant on discursive intuition. We recognise dignity in the lives of ourselves and others. The starting point should therefore be what capacities are required to provide a dignified life. This analytical process is termed the 'Capabilities Approach'. This allows the unification of rationality and animality. Rationality is an important aspect of our human Capabilities but is only one part of our animality. Social ability is another pervasive characteristic as is the capacity to care. Rather than possessors of an illusory "independence", we are all dependent and needy human beings from cradle to grave, from babies to old age.

The 'Capabilities Approach' is founded upon the Aristotelian idea of the need to identify those activities which are essential if we are to lead a life which is characteristically human. These include length of life, bodily health, and bodily integrity, the capacity for a satisfactory sexual and emotional life. Nussbaum shows how a 'Capabilities Approach' to Human Rights, in contrast to Rawlsian construction of social contracts, allows a valid positivity to asymmetrical human relationship. We can find joy in acts of altruism without scrambling for some deferred self advantage. It is inescapably human and entirely socially valid to give care to the baby, the grandparent or the sick or disabled. Caring is a dignified activity, and the dignity extends not only to the carer but the cared for. (Nussbaum 162)

Nussbaum acknowledges her debt to Amartya Sen in constructing her 'Capabilities Approach'. There are however, important differences in their models. Sen shares a critique of Rawls, and indeed first establishes the 'Capabilities Approach' as an alternative to the Rawlsian model of contracted primary goods in an 'Original Position'. Sen argues that his 'Capabilities Approach' provides fairer principles of income distribution for disabled people. Income in the final analysis is a mechanism for achieving various ends. Sen argues for a refocus on the ends that are achieved through income. Sen is opposed to notions of distribution of income simply based on equality as some, including some disabled people, will require more income to achieve capability. Capability rather than income is the measure for deprivation. Through this measure some in the West may fare less well than those in the developing world (Sen 2009, 226) Sen instead looks for an approach to ends which can justify inequality of income. He finds a solution on the linkage of ends with Capabilities. He suggests that, for example if we consider the mobility needs of someone who is a wheelchair user, that mobility is likely to be a more difficult and expensive capability to achieve. Sen's solution is arranged for an unequal distribution of income to reflect the different costs of achieving this outcome.

Nussbaum's critique of Sen draws her surprisingly near to the Social Model of Disability. Whilst she does not formally discuss the Model, her adapted formulation of a 'Capabilities Approach' nevertheless has implicit resonance. This is especially demonstrated in her discussion of why enhanced Income may not resolve exclusionary Structural Barriers. Predictably, like many non- disabled commentators she uses the familiar example of physical infrastructural obstacles faced by wheelchair users (Nussbaum 168). We can though extend her principle to many other examples which reflect problems which are not resolvable by enhanced income. These include the difficulties visually impaired people may face in accessing structurally inaccessible data, difficulties a deaf person will encounter when confronting a door intercom, or a poorly designed tap in a public toilet where no amount of disability benefits will allow someone with arthritic hands to achieve hygiene. Nussbaum is clear that extra income here will provide a certain level of compensation but, in contrast, provide very uncertain capability. Legal and Social policies based on compensation rather than capability will tend to preserve exclusion. Nussbaum ideas appear, then, surprisingly congruent with the Social Model. They offer a conceptualisation of Human Rights which embraces disability, reinforces dignity in inclusion and protests against exclusion.

We can conclude that the 'Capabilities Approach' is a genuinely useful mechanism to place alongside the Social Model of Disability. It presents a set of standards against which the Social Model can be contextualised. They present a framework which goes some way to prevent those who would wish to subvert and pervert the Social Model into an instrument of harm to disabled people.

For example, consider the issue of poverty and unemployment. Both are possible outcomes of the perverse use of the Social Model to justify both the closure of specialised disability employment services and the withdrawal of benefits. Within a Capabilities Framework policies which had the outcome of poverty and unemployment could not enjoy support in the effort to provide a "dignified" life. The 'Capabilities Approach' therefore provides a "safety net" of a minimum quality of life needed to preserve dignity for disabled people.

This strength in Nussbaum's 'Capabilities Approach' is at the same time though, its weakness. It sets out a system of guarantees for an agreed social minimum. The advantage of this approach is its potential universalism, especially in a developing world context. It can be draped, like a cloak, over virtually any society. Nussbaum believes that it offers the potentially great prize of international consensus. It is an approach applicable across all religions and ethical systems (Nussbaum 160).

There are, however, drawbacks associated with the concept of a social minimum for disabled people. Positive intentions around the negotiation of any particular social minimum engender a danger that this lower level is transformed into a standard which constrains disabled people to a lesser status. For example the development of a national minimum wage is positive, yet in many low paid sectors of the economy, including catering, hotels and agriculture, the minimum wage is often a standard wage (LPC 2012). Disabled people face not just unemployment, but inequality. They are over-represented in low paid jobs (Parckar 2008). Under Nussbaum's 'Capabilities Approach' dignity is preserved and the basic social minimum is protected. Yet can we really claim that it would be dignified if all, or even most, disabled people in employment only receive the minimum wage? The intuition of fairness which Nussbaum relies upon would protest at such an unfair distribution with disabled people trapped forever on low pay at or near the minimum. Yet Nussbaum's 'Capabilities Approach' permits this by allowing a low level of satisfaction. Dignity here becomes not a safety net but a glass ceiling. The historic problem of inequality for disabled people; relative economic exclusion, receives an indifferent response from the 'Capabilities Approach'. As long the requirement for a minimum wage and other minimum Capabilities is met, the approach would find no grounds for complaint.

Working through the full list of Nussbaum's Capabilities it is possible to see, in each case, how the minimum could be manipulated into a de facto standard, especially for those, such as disabled people, who are confronted with structural inequality.

Nussbaum, despite her critique of Rawls, is similarly trapped by a minimalist conception of dignity. Rawls attempted to discern dignity through a metaphysical process which cannot allow full participation by disabled people. Rawls theory of justice is entirely represented in the Macdonald judgement, where the Supreme Court ruled that dignity for a disabled person was preserved, even if they had to endure toileting needs through the use of incontinence pad. Such a view is only comprehensible if the Judges consider disabled people to be in another category to 'normal people'. For Rawls dignity was only truly available for those in the normal range, the rest of us are reliant on charity.

Yet Nussbaum does not take us much further. The problem with identifying discursive intuition as the source of dignity is that it fails to take account of ideology. We can be sure that the Supreme Court followed its collective intuition in McDonald. The discursive nature of dignity underpinning the 'Capabilities Approach' allowed a view that urination through the use of incontinence pads fulfils the capability to achieve bodily health.

The 'Capabilities Approach' provides then a terrain which enables defensive actions to support positive, but minimalist implementations of the Social Model of Disability. The Capability Approach, although more substantive than one based on traditional Human Rights, still has similar failings. Both Capabilities and Rights are individualistic and agnostic on issues of politics beyond formal liberal freedoms. The main contribution of the 'Capabilities Approach' is that is provides a framework to support not just freedom of expression and action, but also freedom from want. There is no freedom from exploitation and oppression though in neither a Human Rights framework nor the 'Capabilities Approach' as long as basic dignity is met.

Nussbaum's insists that she develops her approach upon the conviction that humans are political animals. Yet her desire to provide an ethical cloak which can be applied across a variety of political jurisdictions inevitably requires an essentially apolitical approach. There are no developed politics of disability in Nussbaum. She has no theory of oppression, which could account for the position of the disadvantaged groups she wishes to support. We need, therefore, to move beyond the minimalist and defensive to propose a new framework to advance the interests of disabled people in general and visually impaired people in particular. This extension beyond the arena of minimalist guarantees inevitably involves the application of political criteria for distribution.

It is with a discussion of the politics which must underlie these criteria that I shall conclude this inquiry in the next chapter.

Chapter 17

Beyond Dignity - Towards a New Politics of Disablement

We commenced the final part of our inquiry by examining the requirement for a positive context for the Social Model of Disability. We then looked at the inherent difficulty both the Human Rights and Capabilities Approach has in supporting this context beyond a guaranteed minimum. We now need to consider how disabled people can secure distribution beyond the minimal. This will require political strategisation to compete against rival constituencies. Political clarity is also necessary as disabled people have to work harder, overcoming access discrimination, to make their voices count (Barnes and Oliver 2012 p154). In this final chapter I outline some thoughts which may assist this project. This will require a brief discussion of selected political concepts formulated by Macintyre, Foucault, Derrida and Marx. Obviously a thorough review of these contexts would require a separate book; instead here I attempt to break a theoretical impasse. The theoretical pen pictures I sketch here are intended to provide an agenda for the discussion of a developing, positive and alternative politics of disablement.

Whilst the Social Model is valuable in supporting a politics of discrimination, there are other important themes. These include ideological depictions of impairment, identity management, and assumptions of dependency relations. We also have a relatively undeveloped Social Model of Impairment (Oliver 1996 p 42). Here then I sketch out some principles which could underlie three further, inter-linked, analyses, a politics of identity management, dependency and impairment.

The key question in tackling the employment exclusion of visually impaired people is whether this is resolvable by economic rationalism. That is, business case proposals of the kind advocated by Sayce in her employment review. Under this rational 'business model' employment inclusion should not involve conflict. It is, rather, an 'everybody wins' scenario where the main task is one of enlightenment and education. Economic rationalism is supported by a 'Whig' history of inexorable progression. Yet our historical review does not support this, but rather, illustrates forces contending over principles of social distribution. From the beginning equality arises not so much out of enlightenment and education but conflict. Reform appears generally after high profile political campaigning, or in response to the power of political constituencies. In successive stages, campaigners have to revolutionise conceptions of what is 'realistic' and 'possible. The blind marchers of the 1920s and 1930s had to fight against a political view that welfare was unaffordable. The 1974 Miners strike increased interest in the 'realistic' credibility of discrimination law as an alternative to collective Trade Union power. In the USA and the UK, successive campaigns against discrimination had to overcome 'common sense' arguments that employing disabled people was unrealistic and unaffordable. At the time of writing similar ideas underpin the attempt by the 'Red Tape Challenge' to roll back advances won in Equality Law (Cabinet Office 2012). Since the banking crisis, disabled people have had to resist attempts to redefine the affordability of their benefits (Hardest Hit 2012). Consistently, over the last 100 years, the arguments over affordability have compelled disabled people to compete for resources and reshape definitions of 'realistic' and 'affordable'.

Campaigns in the streets and parliament are not the only arenas. Disabled people fight to assert their individual political rights in welfare, workplaces and within services. The State manages these struggles daily within Courts, Employment and Social Security Tribunals. Disability outstrips both Age and Race amongst complaints at employment Tribunals (ETS 2012). In 2010-11, 78% of 418,700 Social Security Tribunals concerned Disability related benefits (MoJ 2012). This means that, on average, there are 1,254 hearings daily considering entitlement to some form of disability support. Thousands of disabled people attempt to advance and protect their interests through judicial structures. As we have seen in our review of Employment Tribunals these legal struggles are neither straightforward nor successful. Appeals to Social Security Tribunals are more fruitful, but the DWP denies benefit inappropriately in nearly 4 out of 10 cases heard. (MoJ 2012).

In Chapter 7 we reviewed the risk of negative legal interpretation through the defence of Right, such as in the Malcolm and Jones cases. These judgements roll back, rather than advance equality. There is a history of negative interpretations by the Judiciary in respect of discriminated groups which have forced political repair in Parliament (Fredman 2002 p 4-16). Politics underlie decisions in all these arenas.

If politics is an exercise in power, it is logical to commence with Foucault's theory of power and dominance. He rejected history as an advance towards liberal humanitarianism. He instead pointed to the strait jacket, aversion therapy, forced showers (Foucault 1962 p 153, 252- 254) and other 'treatments' as expressions of power. Despite his early support of Marxist historical materialism (Eribon 1991 P 11-14), he discerned super structural relations of power beyond that characterised by capitalist employers and their workers. In *Discipline or Punish'* and *Madness and Civilization* he rejected a singular analysis of state dominance. Instead he identified a multilayered architecture of discrete relations. Foucault found power and violence in not just capitalist and worker, but doctor and patient, prisoner and guard, asylum manager and inmate. He described a **'carceral archipelago'**, a network of institutional systems. Dominance was exerted through the management of not only the body but knowledge itself (Foucault 1991 p 167), (Foucault 1991 p 22). Foucault considered definitions of normality as part of knowledge management (Foucault 1991 p 169, 253), and concluded the management of identity is a key component in his description of the maintenance of dominance. Power was located as much in the archaeological management of knowledge, as the gun or the whip.

There is no doubt some of these ideas resonate with the experience of disabled people. Since the 1960s, disabled people have protested against the stigmatised, disempowering delivery of services and institutional care. Foucault's *Madness and Civilization* was contemporaneous with Goffman's *Stigma*. Both analyses informed critiques of institutional care. Goffman identified the blind as particular recipients of spoilt identities. They received inappropriate social reactions, varying from experience of aversion, often from people resistant to seeing or touching, to the attribution of supernatural senses of hearing, smell or touch (Goffman 1963 p 15-16). Foucault provided a theory of managed oppression in welfare, specifically in the purportedly benign asylums (Foucault 1962 p 228-232). These sociological critiques help inform the beginnings of an opposition to the medical modelling of disability (Hunt 1966) (Finkelstein2001).

Whilst the Social Model was unknown to Foucault, his identification of oppression in welfare and medicine is congruent with the Social Modelling of Disability and provides a possible contextualising enhancement. There might also be interest in his identification of the management of bodies, including that of identity as a mechanism for the assertion of dominance (Foucault p 76-77, 142, 169-170). This potential congruence has led some supporters of the Social Model to attempt to utilise both Goffman's and Foucault's insight to develop a politics of Disabled Identity. For example, Liggett started from a Social Model analysis to argue that identity was not formed naturally but as a consequence of discursive interactions and social relations. She defined disability as an **'interpretative process'**. It was through the **'violent'** or **'surreptitious'** appropriation of a system of rules that individuals were forced or **'bent'** into identities (Liggett 1988). In this sense, identity for visually impaired people was as much a matter of subjugation and violence as it was for the prisoner, leper, or madman. Labels helped maintain relations of dominance (Liggett 1988) (27).

In this view identities were more than simply assigned labels, but mechanism for management and control. In *The Making of Blind Men*, Scott utilised this idea to argue that blind people are constructed into their identity by blindness agencies, identities which in turn oppress them (Scott 1969 p6-10). Labels facilitated a 'legitimating discourse' which, in turn, maintains the dominance over and management of blind people. These discursive processes of identity construction and labelling denied access to the status of core humanity. Blind people were separated to another category. This facilitated legal and social policy responses which preserved unequal status. Wheatley constructs a similar analysis of blindness in the historical context of Medieval Europe (Wheatley 2010 P 78-92).

Foucault died in 1984 but if resurrected he would have no difficulty in comprehending indignity inherent in the McDonald judgement. Mrs McDonald's treatment is only comprehensible if she is allocated to a lower status of an 'other' outside core humanity. Foucault would stand in defence of Mrs McDonald. He embraced those excluded from society. He identified with groups oppressed by their imposed identity and reaffirmed their humanity. For example in *Madness and Civilization*, Foucault rejected attempts to separate the mad as a distinct group of others. He quotes Erasmus '**There is no madness but that which is in every man**'. (Foucault 1962 p23)

However, this analysis begs a question. If this stereotyping and labelling is not a 'natural' process, what is the motivation for this form of social relations? The answer appears, in discourse analysis, as a special form of functionalism. In *Memoirs of the Blind*, Derrida examined the oppression in the construction of the 'otherness' of the blind, and the denial of our right to inclusion within core humanity. The exploration of 'otherness' was achieved through a deconstructionist, semiotic process. The functionalism was revealed as the construction of 'otherness', created cultural unity for the non-blind. Elements of discourse, words, meanings, ideas, philosophy, were permeated through social organisations to maintain apparent cohesion in social relations. This cohesion was achieved only through an active process of exclusion. The 'other' in this sense had a functional import. Members of society could define their worth by reference to their not being in the category of the 'other'. Worth was achieved through definition as 'not blind', 'not disabled', 'not mad', and 'not criminal'. From this world view those who were put into the role of the 'other' were placed into this role to provide reassurance of our own identity. This view was introduced in the existentialism of Sartre. In *Being and Nothingness*, he argued we constructed an understanding of ourselves according to what we consider ourselves not to be. Being able to posit what we are not was a more certain and less ambiguous process than attempting to turn our gaze on ourselves to comprehend our being (Sartre oe1943) (Grene 1971).

So Derrida describe a cultural process where the blind were created into a role of the ‘other’. He demonstrated how Greco-European ideology depicted blindness as an assault on reason. From the Greeks to the present day seeing was associated with knowing. Both Biblical and classical texts equated seeing the world with knowing the world. Blind men, never women, were always depicted as the ‘other’. The possibility of seeing and knowing the world through blind eyes was never encountered. (Derrida 1993 p 12-20).

However there are alternative constructional depictions of blindness which do not confirm to this Derridean analysis. In particular there is the depiction of the **‘blind sage’** (O'Ryan 2010 p 101). Seeing is not always equated with knowing in popular culture, the blindfolded Goddess of Justice, whilst not organically blinded, nevertheless does not see to discharge her function (Lodders 2008 p 122).

Derrida's insights were derived from deconstructive textual and image analysis. His textual analysis of statute informed his rejection of the neutrality of law. For Derrida the texts in law were based not on **‘truth’** but on **‘intellectual violence’** perpetrated by a source claiming authority (Costic 2004). He challenged law as a legitimate authority, since historically and contemporarily it had rested and continues to rest upon violence. (Derrida and Cornell 1992 p 14). He described law as building a self-legitimising logic (Cahoone 1996 P 33, 37).

What then can Foucault and Derrida offer towards a politics of disablement? In their perspective our identities, as visually impaired people, are exploited through the availability of our ‘otherness’ in the search for being in ‘normalised’ society. The ability, within wider society, to self reflect meaning in being that is not blind, not partially sighted, not visually impaired, assists effort to achieve a cohesive view of the self. We are alongside other groups of alienated, rejected ‘others’. However, we, as visually impaired people, are not immune from this process. We assure ourselves that we are not a madman, criminal, or any other perceived form of deviance. Through this effort to achieve cohesion of the self, society is fractured into a set of violent oppositions and rejections which, in turn, inhibit social cohesion.

In Social Policy and legal terms the work of Foucault and Derrida drive us towards principles of cohesion and inclusion. They resonate with a support, for example, for protection from Indirect Discrimination. They are also useful in the stressing of tolerance of difference. Rather than conforming to a stylised imaginary image of the normal, society should embrace difference.

In addition both Derrida and Foucault help reveal mechanisms of oppression in areas previously considered benign. To this extent they are consistent with motivations which criticise a medical modelling of disability, and imply support for a social modelling of disability.

However there are also areas where their ideas fit poorly, especially in Foucault's concept of the elasticity of our **'constructed'** and **'docile'** bodies. Consider his description of the eighteenth century soldier;

> **".., the soldier has become something that can be made; out of a formless clay, an innate body, the machine required can be constructed; posture is gradually corrected; a calculated constraint runs slowly through each part of the body, mastering it, making it pliable, ready at all times, turning silently into the automatism of habit"** (Foucault 1991 p136).

A constructionist analysis of self and identity, whilst useful for the concept of socially constructed disability, has profound difficulty with embracing the physical reality of impairment. For Foucault the body was elastic and plastic, capable of construction into virtually any role, the warrior, the guard, the prisoner. However, there is inelasticity to the reality of impairment which does not fit with this elastic self. Put simply, blindness cannot be moulded into seeing. Foucault's understanding of the impact of impairment and the special dynamics of dependency that are created were, therefore, relatively narrow. If William's complaint about a disappearing body was to have a legitimate target, it would be the constructionism of Foucault rather than the thought experiment of the Social Model of Disability.

What about Derrida? He did address impairment explicitly and, indeed, embarked on an analysis of blindness. Nevertheless, we are, in the end engaged in a largely super structural analysis of symbol and semiotics, sign and signifiers, images and text. In essence Derrida provided a cultural critique. He revealed the violence behind law, but there was little to develop political strategy in the complex and contradictory dynamics of social, welfare and legal policy for visually impaired people. His suspicion of law does not guide us to better law. To demonstrate the potential difficulties, let us consider some of the issues we have covered earlier in our inquiry.

Derrida would completely sympathise with the members of the National Federation of the Blind who protested against a 'Mr Magoo' type comedy in which a visually impaired person was ridiculed. His cultural deconstruction is useful here. Yet, where Derrida, and Foucault, would struggle is in the more complex and contradictory welfare world we inhabit, where we have to evaluate material interest against super structural organisation and negative depictions. For example, models of welfare entitlement, and the demeaning problems associated with benefit application are culturally oppressive and can be deconstructed and critiqued. Yet disabled people must defend these entitlements, despite the inherent negative impact of what Foucault would describe as knowledge management within oppressive welfare structures. Every disabled person who has undergone protracted assessment for disability benefit will recognise the negative maintenance of dependent identity through labelling. This does not prevent them marching on the streets to defend this entitlement.

In addition, it is more difficult to use either Foucault or Derrida to justify the special in social policy and legal terms. For example, both Foucault and Derrida are likely to have difficulty with the defence of the Remploy factory. Such specialised facilities are likely to have haunting resemblance to the oppressive asylum that Foucault exposes. Specialised policy intervention for visually impaired and disabled people is likely to generate suspicion amongst supporters of Foucault and Derrida. The categorisation involved in the creation of the specialist support structure could be interpreted as yet another tool with which to deliver oppressive management of knowledge. We can speculate further. Although the concept was unknown to them, their response to specialised Reasonable Adjustment, as a late stage amendment to social arrangements, may also have provoked suspicion for Foucault in particular. Foucault did not, in general, respond well to arrangements which provided specialised management of social relations. His instincts are instead to stress communality.

Cultural analysis struggles then, to encompass both the contradictory imperatives of welfare, and positively, embrace the specialist supportive initiative. We need then, a politics which does not simply rely on a criticism of structures of dependency through cultural analysis, but, in addition, guides a defence for the material well being of disabled people.

In the last Chapter, we saw how Nussbaum has investigated the relationship between impairment, dependence and independence. In *Dependent Rational Animals*, Macintyre, a fellow Aristotelian, is also committed to fetching disability from the margins of 'otherness'. He is committed to a project which re-integrates disabled people into a core conception of humanity. He does this by placing disabled people's dependent nature alongside all other humans who, at various stages of their lives have equally dependent natures. All humans are dependent as babies, in old age, in sickness and so on (Macintyre 2001 p 2-6).

The insights Nussbaum and Macintyre provide into the universality of dependence are useful and deserve support. However, not surprisingly, as non-disabled theorists, their investigation is relatively shallow, and a deeper, multi - dimensional analysis of dependency is required.

Dependency is too flat and linear in both Nussbaum and Macintyre. They describe dependency as a series of episodes characterised by childhood, sickness, old age and so on. This one sided description characterises these dependencies as time limited episodes where we are reliant on norms of just generosity. However 'just generosity' provides an insufficient coverage of the motivations underpinning dependency relations. A more dynamic explanation of the relations of inter-dependence is required.

The closest Macintyre comes to appreciating this is when he states;

> **'Sometimes those others who rely on us are the same individuals from whom we ourselves received. But often enough it is from one set of individuals that we receive and to and by another that we are called on to give'** (Macintyre 2001 p 101).

What is not revealed in this account is the constantly varying patterns of inter-dependence which is not, as Macintyre suggest, unusual, but rather the norm. In other words the reality that underlies the character of social relations with people with disabilities is that of the dependence on the dependent. On first consideration this notion of dependence on the dependent seems awkward, illogical and strange. This is because it flatly contradicts common ideological representations of dependency. Given this common obscuration I will briefly review the deeper understanding which underlies this apparent juxtaposition of relations.

The central, commonly unrecognised point to which must be grasped is that non-disabled people are dependent on disabled people in many, and varied ways.

The extent of this is rarely acknowledged. Yet every example of a successful disabled worker provides evidence of this inter-dependency, the blind judge, the disabled manager, the blind lecturer, all powerfully contradict these ideological conception of dependency as an one way state in which only the dependent receive help. If a blind man employs and manages sighted staff, which is dependent on whom? The answer is clear that they are inextricably dependent on each other. The blind employer is dependent on her staff to deliver business goals, and the staff are dependent on the blind employer for strategic management and wages. Now consider the dependency relations if a blind woman works as a radio journalist, and as a consequence earns money to feed her sighted children. In this scenario she may be reliant on her children's help in the home, perhaps in identifying tins, reading out food instructions and so on. However her children are just as reliant on her skills, not just in providing income with which to buy the food, but also the cooking of the food. In this sense we can see that in many instances the arguments for the employment of visually impaired people confront core ideological assumptions of dependency. These common perceptions are disrupted every time a visually impaired person gains valued employment. A new form of social relation is created which stresses the absolute inter-dependencies of our lives, whether disabled or not.

So, whenever disabled people move into work, and especially achieve positions which confront traditional views of the under valued status of a disabled person, expectations of the patterns of traditional dependency relationships are disturbed. This is not a point with which either Macintyre or Nussbaum really get to grips. Nussbaum correctly identifies that there is asymmetry in dependent relations but fails to describe how these exist on a number of fluid levels. This fluidity in inter-dependent relations is thrown into sharpest relief when the disabled person enters work.

Fluidity in dependent relations exists everywhere, but is also ideologically projected, even disguised in a further special sense. In dominant ideology, dependency has an overwhelming association with welfarism, paternalism and charity. These narrow constructions disguise universal real life patterns of dependence both within and outside the workplace. Rather than reflecting the experience of disabled people, specific patterns of dependency are problematised to obscure alternative interpretations of our lives. Non disabled or impaired people have all sorts of dependencies. These, rather than presented as a problem, are validated as reasonable requirements. They are routinely assimilated, accommodated, and normalised into invisible patterns of support. For example, the secretarial typist is supplied without question for the dependent consultant unable to use a keyboard to type his medical letters. An indispensible Personal Assistant is provided as standard for the dependent Chief Executive unable to organise a diary. The millionaire who has poor housekeeping and organisational skills can organise domestic help without threat to feelings of self-worth and social status.

In contrast dependencies provoked by impairments are separated, problematised and highlighted as issues for special consideration and rationing. The requirement for a visually impaired person to receive PA support, despite its similarity to the requirement of the Chief Executive, is a problem. A visually impaired person needing help with reading a Consultant's handwriting is considered a special problem whilst the Consultant's inability to type is not. Visually impaired people's need for domestic support is a matter of concern for welfare rationing and is only available after a debasing assessment process. For the visually impaired, dependencies are separated into funding streams which are constantly criticised against different norms of affordability. The organised problematisation of impairment support forms a key component of the oppression disabled people face. Nussbaum and Macintyre's failure to investigate this creates a relatively shallow analysis in their work.

Macintyre clearly draws upon a Marxist background. He accepts a principle of socialist distribution; from each according to ability, to each according to need (Macintyre 2001 p131). Like Nussbaum he develops his philosophy with Aristotelian conceptions of the 'common good', revealed through a process of shared rational deliberation. However Macintyre identifies a problem. This is inhibited by vested interest. Vested interest is defined as an interest in achieving a sectional, partial rather than common good (Knight 2007 p 147). Macintyre castigates the alleged neutrality of the state;

> **'when the nation-state masquerades as the guardian of such a common good, the outcome is bound to be either ludicrous or disastrous or both'** (Macintyre 2001 p 133).

A Macintyrean description of managerial manipulation could explain negative judicial interventions. Under this view, technocrats organise managerial manipulation in defence of vested interests, disguised under apparent state neutrality (Knight 1998 p 249).

Applying Macintyre's notion of technocratic, managerial manipulation to welfare and legal structures does have some plausibility. We have reviewed how technical manipulation of law has resulted in negative judicial decisions, in particular Jones and Malcolm which have both required political repair.

We can also welcome the dismissal of the myth of independence by both Nussbaum and Macintyre, and their common insistence on our mutual dependence, irrespective of impairment, is entirely consistent with the political interests of disabled people.

Where Macintyre is weaker is in his appliance of these ideas to the constituency of vested interest. Whilst these vested interests are clearly powerful their actual identity, in 'Dependent Rational Animals' is relatively shadowy. He associates negative vested interest with the power of money. Money is the power behind the scenes. It is;

> **'what determines both bargaining power and such ability is in key part money, money used to provide the resources to sustain political power electoral resources, media resources, relationships to corporations. This use of money procures very different degrees and kinds of political influence for different interests'**. (Macintyre 2001 p132).

By itself, this Macintyrean stance is relatively indisputable, but it is debateable how far it has moved us forward. The sourcing of this money used to support vested interests remains vague, as is the power expressed in the consequential abuse of this vested interest. Nowhere in *Dependent Rational Animals* does Macintyre discuss, for example the relationship of this monied vested interest to profit. A strange lacuna is created and as a result, a discussion of the dynamics of problems arising out of an economic system driven by profit is missing. By concentrating on the virtues and the need for shared rational deliberation, Macintyre shifts focus away from the historical and materialist to a more super structural discussion of the principles of morality. The Macintyrean response is perhaps understandable, given the shattering experience of Stalinism for his generation. The Gulag was a nightmare consequence of amoral 'means' separated from justified ends. However the struggles of disabled people reviewed in this enquiry, have achieved success from divisive rather than shared rational deliberation. There was little shared in the deliberations of disability campaigners such as Barnes, Oliver, Morris and Finkelstein with reform opposes in the 1994 Parliament,, such as, Scott, Maitland and Major. Each of these diverse groups laid claim to shared rational deliberation, with a central grounding of rationality defined by the needs of social solidarity on the one side, and the needs of profit and affordability on the other. The process of politics is not just that of discussion but of struggle to define rational access to the surplus provided by profit.

In summary we have, so far, some tenets which could support a developing politics of disability. From the neo-Aristotelians, Macintyre and Nussbaum, we can develop a politics of dependency which challenges ideological assumptions of disabled status. From the deconstructionists, Foucault in particular, we can see how this ideology helps create a 'disabled' identity which is managed through institutions of welfare, legal and social policy. Constructionist politics of identity has the clearest and bleakest recognition of the daily experience of oppression. Disabled people are oppressed through categorisation and stereotyping in a variety of power architectures. In Nussbaum and Macintyre, in particular, oppression is implicit rather than explicit. This dependent status is an ideological conception which disallows our rights to ownership of core humanity. Their relative lack of both a materialist and historical perspective, focussing on the principle of virtue, lead to a detachment from a guiding framework to support a struggle to define and redefine the boundaries of 'political rationalism'.

So whilst Macintyre and, in particular Nussbaum, lack specificity in identifying structures of oppression and power, Foucault provides a detailed analysis of their management. Whilst the elastic body constructionist of Foucault struggles to relate to the rigidity of bodily impairment, Derrida provides an alternative, intelligible deconstruction of blindness which embraces impairment. However, both Foucault and Derrida are largely confined to a cultural criticism. This has difficulty in strategising policy within the contradictory material and ideological constructions of welfare provision.

So, in brief, although we have uncovered some useful ideas, they are in each case, constrained by caveat. There is however, a useful political theme which unites the Neo-Aristotelians, Nussbaum and Macintyre with the Deconstructionist, Derrida and Foucault, which could be welcomed by visually impaired people. For all these contributors, disabled people are not 'special' 'deviant' non-normal people. All insist on our common humanity which embraces disabled as well as non-disabled people. We are not divided into a society of dependence and independence. We are all dependent. In addition, Foucault and Derrida would protest alongside Macintyre, at the negative manipulation of disabled people's legal rights.

This insistence on common humanity implies supports for certain social and legal policy. First, it means that wherever the state grants individual rights we should, as a first principle, look for augmentation through social solidarity and support. The implications of this is that, for example, in Employment, Social Security and Mental Health Tribunals it is absolutely unacceptable for disabled people to have only individual rights of enforcement, without equivalent rights of support, advice and guidance. Similarly, in the workplace, disabled people should not have to endure the onus for establishing principles of fair accessibility in design and infrastructure. Instead positive workplace enforcement and social positive duties should be supported. Such support would reduce our vulnerability to the negative, technocratic manipulation to which Macintyre, in particular, alerts us.

Secondly we can say something broader. Human Rights are not necessarily deconstructed into a political irrelevance. Deconstruction allows us to understand subtle distribution of power relations, the violence in fractured identities and negative domination of 'others'. There is nevertheless one Human Rights value which shows promise which explicitly rejects fractured identities and separation of self. It is the value of brotherhood. It is with the consideration and application of the value of brotherhood that the enhancement of dignity to a more cohesive, positive ideal becomes possible. Dignity, stripped of its individualistic chains becomes richer and more supportive. Equality in dignity, supported by brotherhood, becomes a clearer, more positive ideal. The inter-relationship of brotherhood and dignity is clearly signalled in Human Rights Law.

Article 1 of the Universal Declaration of Human Rights states:

> **'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of "brotherhood"'.**
> (United Nations 1948)(1)

Brotherhood and sisterhood are the forgotten Human Rights values. They provide the missing social solidarity to associate alongside dignity. It is this concept of dignity within brotherhood and sisterhood which needs fuller articulation in Human Rights jurisprudence. The idea of social solidarity makes dehumanising judgements, as in the case of McDonald, harder to sustain. It creates pressure for policies which stress inclusion rather than exclusion. By this principle, accessible transport for all would replace the special mobility bus. Inclusive design would replace segregated accommodation.

So, the deconstructionists as represented by Foucault and the Neo-Aristotelians as represented by Macintyre provide good insight into the ideology and mechanism of oppression. For Foucault, oppression is revealed in the deconstruction of the roles of prison governor, asylum doctor and the Social Services and NHS manager. For Macintyre, the oppressor is a less specific managerial manipulator operating in equally shadowy vested rather than common interest.

There is however, a problem with a view of the state which describes oppression and manipulation by vested interests. Whilst this provides a good explanation for legal reverses, it is less comprehensive as an explanation for legal and social policy victories. If disabled people are achieving victories, against who are these victories? Foucault and Macintyre are less useful when we move from the consideration of mechanism to the appraisal of constituency. Foucault provides a detailed local, description of politics in the organisation of social relations within institutions. Yet, how politically useful is an analysis which reveals a plethora of power relations in various architectures across society? He provides limited guidance on the identification of opposing constituency. Macintyre has a similar problem. Managerial manipulators are not specifically defined. In addition, in *Dependent Rational Animals* at least, Macintyre is unclear as to the specific vested interests for which managers manipulate.

This is unsatisfactory. In issues of conflict it is logical to identify clearly contesting parties and their interests. Visually impaired people should 'know their enemy' and what their motivations are. With a clearer political view of constituency we could strategise potentials for victory as well as defeat. However our opponents, though relatively shrouded, are amenable to identification. At the beginning of this section we referenced the centralising theme which tends to underpin the structure of political conflict. This has underpinned nearly all of our investigation. The campaign for fair employment for visually impaired people has consistently encountered opposition which insists that meeting their needs is 'unaffordable'.

This theme of affordability is not peculiar to disabled people and is shared with other groups. There is a long history of social measures which were inhibited by 'affordability'. In the nineteenth century, opposition to the Factory Acts and prohibition of Child Labour rested on the concerns of affordability. Pregnancy and Maternity Rights were once considered unaffordable. Opposition to pensions for blind workers, the Disability Discrimination Act and even the Minimum Wage were all opposed on fears of affordability and negative impact on business.

Impact on business is generally code for impact on profit margins. We can coherently analyse this where visually impaired and disabled people have contended with other interest groups for distributions and allocation of available surplus. If we are to consider issues of the social distribution of surplus value we are led logically to consider the ideas of Marx.

Marxist ideas have provided arguably the greatest controversy over the last 150 years. Debates and interpretations of Marx continue to polarise opinions. With the fall of the Berlin Wall, the relevance of Marx appeared to diminish, but the recent reappearance of worldwide instability in global capitalism has reawakened interest in Marxist economic theory (Jeffries 2012).

In my view it is possible to interpret constructively useful insights from Marx. Marx himself would have recoiled from any attempt to convert his writings into an uncritical theology, where his texts achieve sacred status. We can engage constructively with his ideas without fearing the shadow of the Gulag.

What could Marxist theory offer to illuminate a politics of disablement? Marx's conception of politics was both historical and materialist. The material conditions of society structured relations in society. For Marx, the history of all hitherto societies had involved oppressor and oppressed, free man and slave, patrician and plebeian, lord and serf, guild-master and journeyman (Marx 1848 p 15). Capitalism was the latest manifestation of oppressor and oppressed, with a class of borgeoise owners of the means of production with proletarian workers of the means of production.

Marx envisioned capitalism as a contradictory, dynamic system. On the one hand, it was the creator of unprecedented development and increase in wealth but on the other hand it was a cancer eating away from within forcing renewed and repeated, ever deepening crises. The crisis was born out of the need to compete and generate levels of profit. Competitive pressures relentlessly drove capitalism to new developments. However, the drive to maximise profit caused systemic conflict between employers and workers. To understand this conflict we need to briefly review how profit is created in Marx's theory.

For Marx the only source of value was labour. Material goods in the world were transformed through labour into units of social exchange. Consequentially the only source of profit was, in the end, labour. For example, oil in the ground required labour to transform it into a product which could drive forward machines and engines. The source of all profit was, therefore, labour. Profit was derived from an exploitative exchange during which surplus value was accrued by employers from the labour of their workers.

However, the drive to maximise profits caused ever increasing pressure on labour, which as we have seen, was the only source of value. Employers were therefore driven, by competitive pressures, to reduce wages to maximise profits. Yet this was the inexorable contradictory pressure which east away at the system from within. Workers were not only the recipients of wages; they were also the major source of consumption and, therefore, markets. Reducing wages constrained consumption, reduced demand and recession ensued. Once wages were driven low and prices fall sufficiently markets may recover to a boom, but a subsequent recession was inevitable.

Clearly this is a sketchy representation of the ideas in Capital but will have to suffice for our purposes here. What is the relevance of any of this for visually impaired and disabled people? There is an argument that Marxist notions of exploitation do not have a great deal to offer to explain the condition of disabled people. It could be argued that this theory of exploitation in the workplace has little relevance to the experience of visually impaired people, who are in any case, as we have seen, largely excluded from employment. There is also an apparent lack of relevance to the consideration of the major importance of welfare. Marx does not anticipate the Welfare State, and on the face of it a theory of exploitation does not satisfactorily explain the twentieth century allocation of compensatory welfarism. Despite these difficulties, a complete dismissal, in my view, risks abandoning important insights.

Marx did not provide a Social Model of Disability. This is not surprising; however he did provide the groundings for a Social Model of Impairment. For Marx, Capitalism was revolutionary in its dynamic capacity to generate wealth through the inexorable drive to compete in the market. This systemic pressure caused workers to become alienated from their labour. Rather than labour expressing their humanity they were separated and disempowered from the products of their labour. There was therefore a systemic pressure which caused workers to become victims to their labour. In 1886 Marx's compatriot, Engels described the process of impairment caused by the drive to exploit workers. Workers were physically deformed through the unnatural effort of excessive labour on the production line. Certain industries appeared to create similar health problems for the workers in those industries (Engels 1845).

The world in the twenty first century is largely unrecognisable from the world in the nineteenth century. However the early insights of Marx and Engels do have a resonance in modern times. We have devoted a great deal of attention to the Social Model of Disability, yet as Oliver observed there is relatively little attention given to its logical twin, a Social Model of Impairment (Oliver 1996 p42). Engels can lay claim to the origins of this theory with his early observations of Occupational Hazard. Avoidable Injuries and illness arising from work are the clearest representation of the Social Model of Impairment. It would offer a reframing, in much the same way that a Social Model of Disability provides. That reframing would offer the refutation of the assumption that impairment and disability are exclusively natural phenomena. The relationship of social basis for impairment in occupation is incontrovertible. For example, nobody could seriously support a view that miners were, by their nature, more susceptible to lung disease. This initial insight can be greatly developed to show that a great proportion of impairment is constructed. We can develop this social thesis further. Globally, not just occupational hazard, but war and avoidable disease create the vast majority of impairments.

This commitment to a Social Model of Impairment implies, therefore, a certain political response. For example, it would support political campaigns for enhanced positive reinforcement of public and workplace Health and Safety policy. In addition the model has potential to support two further political interventions. Firstly, as the capacity to screen out medically and prevent causes of impairment develops; the proportion of impairment which can be considered socially constructed must also necessarily expand. Conditions such as cataracts, once seen as a natural and unavoidable impairment, are now an avoidable condition structured by decisions on the allocation of resources. The Social Model of Impairment would therefore guide policy to encourage the expansion of health investment to prevent the creation of avoidable impairment.

A second, less obvious, social creation of impairment is through the investment decisions we take into infrastructure. Consider the causal impairment effects of the motor car, not just from the obvious consequences of car crashes, but pollution, sedentary life and the negative affect on communities of road and motorway construction. We make investment and planning decisions based on assumptions of car ownership at unsustainable levels.

What else could Marx offer us apart from this politics of impairment? He offers us a clear conception of a constituency against which disabled people must compete. He essentially identified a constituency who will have contrary material interests to that of disabled people. This is not because the people in this constituency are by nature necessarily hostile to disabled people, but because they are driven by systemic pressures to maximise profit. Every time disabled people win a victory which lays claim to this social surplus, they do so in the face of these systemic pressures. The optimism of Marx that the proletariat would become the inevitable grave diggers for the bourgeois has not materialised. This does not invalidate, however, his insights into the dynamics of a system geared for profit.

Capitalism has proved remarkably enduring and dynamic. It has managed to re-invent itself after periodic periods of crises. Each of these crises is underpinned, by crises in profitability. This then is the systemic agenda against which disabled people must create competing political pressure. This is why Marx has utility today. His theory of exploitation defines the limits against which we must press. This theory has utility even though most of us are outside the prime locus of exploitation, the workplace. His theory of exploitation helps explain our employment exclusion. We have to fight for the right to achieve employment because there are problems with our rate of profitability. If there are reduced levels of profit delivered from visually impaired and disabled worker, it is entirely comprehensible that a system geared to the maximisation of profit will tend to discriminate in favour of more profitable non-disabled labour.

Similarly although Marx was silent on the Welfare State, his unveiling of systemic pressures also assists us here. We have to compete for available surplus against countervailing interest attempting to protect rates of profit. This is a never ending systemic conflict in which we must engage to maintain reasonable standards of welfare. The constant concern as to the affordability of fair provision for visually impaired people becomes entirely explicable if we understand the advance of our interests as a contentious claim on the availability of surplus.

Marx's insights also suggest that the notion of economic rationalism is problematic. This does not disqualify arguments for the economically rational. I have for example argued, at length, the economic case for the employment inclusion of visually impaired people. Rather Marx's insights suggest that we are engaged in a constant struggle to reshape and redefine the boundaries of what is economically rational. For the Victorian mill owner the investment in disability employment support would seem entirely irrational. For the eighteenth century landowner the notion of universal free education for all may seem startlingly Utopian. However, the boundaries of economically rational shift not just with time but across geographical boundaries. Today in the USA, the provision of free universal health care is considered by many Republicans to be economically irrational, and a dangerous incursion of Socialism. In the UK, whilst under constant pressure, the NHS is not only considered rational but also enshrined as a national treasure. It formed the centrepiece of the UK expression of national pride in the 2012 Olympic opening ceremony.

We also know that progress towards definitions of economic rationalism that better meet the needs of visually impaired and disabled people is not inevitable. We have to defend constantly the rationality of spending on NHS health care. Marx showed us that we live not in a straightforward world of economic planning, but rather, in a world of competing and contradictory systemic pressures. We live in societies geared for the maximisation of profit. Our relative inefficiency in delivering this profit, and our relatively increased demands on social surplus, creates inevitable systemic tensions in our struggle for fair distribution. We are therefore vulnerable to criticism of our claim on an ever pressured surplus, a claim that is disallowed on the apparently neutral ground s of affordability. The political implication of this is that whilst we have to stress the economically rational benefits of the employment of visually impaired people, we cannot accept the chains of relative profitability in the business case as a limitation of our rights.

Marx's ideas have, so far, failed in their historic expectations of international communism. The socialist revolution may never arrive to deliver a Utopia. In addition, visually impaired people will, in the main, not have an interest in advocating revolution. They will be content with the struggle for a reasonable life with inclusion into the main body of society. Yet to abandon Marx, because of a historic failure of revolution, is to miss an opportunity. His ideas are not only relevant for revolutionary struggle. They also provide useful context to the lower level political aspirations of visually impaired people. His ideas can validate recognition of the historic, materialist dynamic which has underlay the struggle of visually impaired and disabled people over the last 100 years. The Blind Marchers marched for reform and not revolution. The National Federation of the Blind, despite its revolutionary rhetoric, was never a supporter of Communism. The campaigners of the nineties wanted change to law, not the scrapping of the state. Yet in each campaign we can identify an enemy of ‘affordability’. In each campaign we are thrown into a struggle for a fairer distribution of surplus. An appreciation of Marx and the contending parties for distribution will serve disabled people well in their resistance to definitions of rationality and affordability.

Where does this leave us? We have seen that the Social Model of Disability is insufficient as a politics of discrimination. We need a politics which uncovers the oppression inherent in models of dependency. Whilst the cultural analyses of Foucault and Derrida provide insight into the mechanisms of oppression they provide insufficient guidance into the contradictory elements of social and legal welfare for visually impaired people. The dependency analysis of the Neo-Aristotelians offer genuine insight but needs serious development to overcome its episodic one sided flatness.

We need, therefore, to arrange further elements alongside the Social Model of Disability. We need to work on and develop the sophistication of a Social Model of Impairment. We need to develop a Politics of Dependency which reveals the oppression in day to day assumptions about our social relations.

Marx's ideas show us that there are contradictory dynamics at work. We have to recognise that there is a political constituency against which we are in systemic conflict. The sharpness of this conflict will increase and recede according to the relative pressure on available surplus. This constituency is not necessarily confined to one party, but has representations in all parties. Ed Miliband, as well as George Osborne, has pointed to the cutting of benefits to disabled people as a strategy for rescuing profitability in the UK economy. I have described this constituency as the Guardians of Profit. Whilst we live in a world of multiple and distributed share ownership, inequality in wealth is, if anything, increasing. The constituency of the super rich also has the support of those who are supported and financed by their corporations. Clear vested interest is represented in this group, protecting their international competitiveness against our demands on social, surplus value. We therefore need an opposing political force, a re-born disabled people's movement to represent our interests in laying claim to a fair share of this surplus. The insights of Marx may well have the most relevant modern resonance in describing the pressures which will continue to force employment exclusion for visually impaired and disabled people. They make comprehensible the contradictory and peculiar political dynamics we have described in this inquiry and are likely to provide important assistance for a still developing politics of disablement.

Conclusion

In my final chapter I described a need to develop a political analysis to inform the legal and social policy response required to confront employment exclusion. Yet Barnes and Oliver, veterans of the 1990s campaigns, have become pessimistic as to the prospects for a successful politics of disablement. They argue that the combination of successive progressively Right Wing governments and the big Charities have usurped key ideas, describing a **'disabling corporatism'** which hijacks the language and models of the past disabled people's movements. Big charities have been bought into subservience by a **'contract culture'** where they must provide political compliance to receive operating funds. They mourn the passing of former giants of the Disability Movement (Barnes and Oliver 2012 p 155-166).

Yet this pessimism is too bleak. It is true that disabled people have faced difficult attacks on Welfare, Access to Work, Remploy and Independent Living payments. In addition Disability Charities are weakened because of cuts in funding (Wigglesworth2012). Remaining Charities may be effectively gagged by Government Contract culture through fear of losing funding (BBC 2013). Concern is raised that cuts in the NHS and the reforms potentially harm the well- being of disabled people (Duffy2012). Yet these attacks reveal a paradox that Marx would recognise. He explained how the pressure to guarantee profits tends to produce a political reaction between parties contending for available surplus. The economic is transformed into the political. So these attacks on the conditions of life for disabled people's welfare have created a new force. A new generation of disabled people have entered the arena of political campaigning for the first time. It is no longer, necessarily, the 'old guard, distinguished campaigners, who hold the floor. The picture is not one of uniform and constant reverses. At the time of writing the RNIB are celebrating significant concessions won in the campaign for drawing up the assessment criteria for the new Personal Independence Payment (RNIB 2013). These concessions would not have been won without the organised campaigning and resistance by thousands of visually impaired people and their supporters. A new generation of political activism has grown in organisations like 'Black Triangle', "and "Disabled People against the Cuts'. The 'Hardest Hit' is one of 'the highest profiles examples of resistance to Coalition policy. The resistance of disabled people to these attacks has steadily increased in profile over 2011 and 2012.

In the last chapter we asked the question: how could we preserve the positive intent of the Social Model of Disability? We saw that the answer involves the use of politics. We have an opposing political constituency which attempts to guard access to surplus. We must create an equivalent political constituency which in turn becomes the guardian of the Social Model of Disability. The remaining question is upon what broad principles this political strategy should be based in a realistic project to overcome employment exclusion.

Dangerfield, in his classic explanation of the *Strange Death of Liberal England* describes how the core rationale of individualism met its nemesis from a political crisis forced by new movements. The collective organisation of Suffragettes and Trade Unions provided challenges with which Liberal Individualism was ill equipped to deal. Conservative reaction in the Lords and opposition to Home Rule in Ireland completed a political cleft stick which progressively forced the Liberals into increasing irrelevance. Dangerfield's description is not one of calm Macintyrean' political manipulation, but of a struggle of movements, a collection of groups with competing interests.

In this inquiry we have uncovered a further, contemporary crisis of individualism. Legal and social policy Initiatives towards visually impaired people arise not out of a progressive 'Whig' historicism, but are, rather, inextricably linked to competing social forces. These include political power whether expressed through wealth or collective action, demographic pressures, and competing constituency interests. We have described how individualised enforcement regimes arose out of a Catch 22 at the heart of Discrimination Law. The British state was reluctant to encourage collective radical protest; instead encouraged state managed individualised Anti-Discrimination rights. These atomised rights, in the absence of a positive enforcement regime, lay at the heart of the paradoxes, contradictions and dilemmas I have presented.

Visually impaired people only have agency and identity in law as weakened, dependent individuals. They must simultaneously prove themselves deserving of support through incapacity assessment, yet also prove their capacity for employment. They are atomised outsiders with 'special' needs, struggling to achieve recognition within a discriminatory mainstream designed on exclusionary principles. Consequently the rare access into employment is, all too often, expensive and complicated rather than low cost and straightforward. We have a disability employment strategy based on the use of individualised, inefficient, and reactive Reasonable Adjustment arrangements, rather than efficient inclusive design based on principles of social solidarity.

We have a legal/social policy framework which consolidates and institutionalises employment exclusion for visually impaired people, rather than confronting the need for a radical step change which could transform lives and expectations. We have seen how individual rights are weak with an enforcement regime which would, for most visually impaired people, 'burn a bridge too far' with their employers. Whilst visually impaired people are the demographic victims of employment exclusion we require collectivist principles of shared support, positive enforcement, and social solidarity.

Visually impaired and disabled people are not only denied access to employment but also Human Rights. The resultant perverse minimalism arising from this individualism allows Judges to consider that there is inherent dignity in the compulsory wearing of incontinence pads for toileting by people who are not incontinent. We require a Human Rights framework which rejects negative, individualistic interpretations of dignity and instead stresses social solidarity. We require an alternative value of positive dignity. This needs support from the forgotten Human Rights values of sisterhood and brotherhood. These principles resonate with, and are entirely consistent with the historic and collective striving for reform that visually impaired and disabled people have engaged with for the last 100 years. Advancing on these principles allows the prospect of a positive future for a society which genuinely embraces and supports diversity.

When sisterhood and brotherhood are rejected in favour of individualism, we end up with a policy dead end trapped within notions of biology, charity and welfare. A policy which invests billions in preserving unemployment exclusion through benefits, and the perverse squeezing of specialist employment support which consolidates this exclusion is condoned. Remploy factories are closed in the name of mythical replacement 'individual employment opportunities. There is no discussion of a positive, reformed collectivist response to these problems. There is only a familiar retreat into the alleged superiority of individualism and the market.

We have a culture which promotes and celebrates blind heroes rather than blind community and solidarity. We have allowed the creation of a legal and social policy framework which cannot find a place within statute for considering communities of disabled people as sources of collective, yet heterogeneous support. There is no vision of a social policy response which could promote community amongst impairment groups. Yet such a policy of community support is not unrealistic. Deaf people have created many examples of strong community founded upon shared support and self-help to the extent that some deny that they are disabled. Finding positive community-based ways to express and take forward our distinctness, whether based on deafness, blindness or any other shared impairment characteristic is not necessarily a retreat into a ghetto, any more than membership of a Church, or Golf Club. Such communities could provide a basis from which we can achieve the strength to engage with the mainstream. Impairment based communities are not a hostile alternative to the mainstream world, but an addition to it. They could provide opportunities to add creatively to the variety of human experience.

The deaf community is, in reality, as dependent on everyone else as the blind community and those who are neither blind nor deaf. They create self-dependence though communities of visually impaired people could similarly produce new creative and supportive dependencies, as much now as their forbears did in the struggles of the National League of the Blind, in the last century. Such an approach would rely upon political support, not least from visually impaired people themselves. We need a new clarity of vision. We need to stress not just our reliance upon sisterhood and brotherhood, but also the essential inter-dependence of all our lives, whether disabled or not. This would also require the fundamental ideological challenge to the perception of visual impairment and disability. It is with the realisation of our dependence on the dependent that the case for our inclusion into core humanity can be forged.

Part 5 Appendix.

Chapter References

Preface.

Butterfield 1932. The Whig Interpretation of History. New York. W. W. Norton. Available on:
http://www.eliohs.unifi.it/testi/900/butterfield/preface.html

Phillips 2004. The Blind in British Society: Charity, State, and Community, c. 1780-1930. Ashgate Publishing.

Introduction

Access Economics 2009. Future Sight Loss UK 1: Economic Impact of Partial Sight and Blindness in the UK Adult Population. RNIB.
Available on:
http://www.rnib.org.uk/aboutus/research/reports/prevention/pages/fsluk1.aspx

Access World 2013. 2012-Technology Year in Review. Access World February 2013.
Available on:
http://www.afb.org/afbpress/pub.asp?DocID=aw140203

Aisquared 2012. Zoom text Screen Magnifier.
Available on:
www.aisquared.com/.

Apple 2012. Voice Over Screen reader.
Information Available on:
www.apple.com/accessibility/.

Barry and Murray 2005. Unregistered Visual Impairment: Is Registration a Failing System? Ophthalmology. Division of Immunity and Infection. University of Birmingham. Birmingham UK.
Available on:
http://www.ncbi.nlm.nih.gov/pubmed/1602 4852.

Boston, McGraw, Hill and Gray 2002. Disability Discrimination in Education. A review undertaken on behalf of the DRC. London. DRC (Disability Rights Commission).

Bruce and Baker 2003. Employment and Unemployment Among People with Sight Problems in the UK. RNIB.

Bruce, McKennell, and Walker 1991. Blind and Partially Sighted Adults in Britain: The RNIB survey. HMSO.

Cabinet Office, 2007. Helping People Achieve Their Full Potential: Improving Specialist Disability Employment Services. Cabinet Office.
Available on:
http://www.dwp.gov.uk/docs/full-consultation.pdf

Cabinet Office 2008. Towards a Fairer future- The Equality Bill. Cabinet Office
Available on:
http://www.cpa.org.uk/cpa/The_equality_bill_2008.pdf

Charities Direct 2012. The Top 500 Charities 2010.
Available on:
http://www.charitiesdirect.com/charities/top500.php

CNIB (Canadian Institute for the Blind) 2005. An Unequal Playing Field: Report on the Needs of People Who Are Blind or Visually Impaired Living in Canada.

Cook 2004. A History of Accessibility at IBM. Arch.
Available on:
www.afb.org/afbpress/pub.asp?DocID=aw050207

CRE (Commission for Racial Equality) 2006. Final Briefing a Lot Done, A Lot to Do.
Available on legacy web site: http://83.137.212.42/sitearchive/cre/publs/alottodo.html

Kirton and Greene 2005. The Dynamics of Managing Diversity: A Critical Approach, Second edition, Butterworth Heinemann.

DoH (Department of Health) 2012. Sight Lost: Identification and Notification: Department of Health - Health Care.
Available on: http://www.dh.gov.uk/en/Healthcare/Primarycare/Optical/DH_4074843

Dolphin Access 2012. SuperNova Screenreader Magnifier.
Available on:
www.dolphinuk.co.uk

DRC (Disability Rights Commission) 2006. Disability Briefing. DRC.
Available on Legacy Website:
www.ehrc.org.uk

DWP (A) 2012. Work Choice. Department for Work and Pensions.
Information Available on:
http://www.dwp.gov.uk/supplying-dwp/what-we-buy/welfare-to-work-services/notices-to-providers/workchoice.shtml.

DWP (B) 2012. Employment Programmes for Disabled People. Department for Work and Pensions.
Available on:
http://www.dwp.gov.uk/policy/disability/employment-programmes-for-disabled/

Freedom Scientific A 2012. Jaws Screen Reader.
Available on:
www.freedomscientific.com.

Freedom Scientific B2012. Magic Screen Magnifier.
Available on:
www.freedomscientific.com.

GEO (Government Equality Office 2011). Evaluation of the Equality Act 2010: Evidence Dossier. Home Office.
Available on:
http://www.edf.org.uk/blog/wp-content/uploads/2011/08/EDF_Dossier_250711.pdf

GW Micro 2012. Window Eyes Screen Reader.
Available on:
www.gwmicro.com

Lawrence 1999. Technological Change Computerisation and the Wage Structure. Harvard University and National Bureau of Economic Research.
Available on:
www.economics.harvard.edu/faculty/katz/files/lkdig2.pdf

Leonard Cheshire 2008. Disability Poverty in the UK. Leonard Cheshire.
Available on:
http://www.lcdisability.org/?lid=6386

Munn 2006. Through the Glass Ceiling: Equalities in the 21st Century. Speech by Parliamentary Under Secretary of State 23 October 2006. Department of Communities and Local Government.
Available on:
http://www.communities.gov.uk/speeches/corporate/glass-ceiling #Page

Network World 2012. Windows 8 adds help for visually impaired and physically challenged. Network World.
Available on:
http://www.networkworld.com/news/2012/021412-windows8-accessibility-256132.html

NHS 2008. Social Care - Blind Commentary. NHS Information Service.
Available on:
http://www.ic.nhs.uk/webfiles/publications/Social%20Care/Blind%202008/Blind%20Commentary%202008_final%20v5.pdf

NHS 2011. Registered Blind and Partially Sighted People. Year Ending 31 March 2011 -England. NHS Information Service.
Available on:
http://www.ic.nhs.uk/pubs/blindpartiallysighted11

NHS London 2012. London Specialty School of Ophthalmology. NHS.
Available on:
http://www.synapse.nhs.uk/pages/public/66289ed80d16152acf6f650cc667b858

NHS 2012. 2010 Treatment Specialty.xls. NHS Information Service.
Available on:
http://www.hesonline.nhs.uk/Ease/ContentServer?siteID=1937&categoryID=895
NB figure derived by adding Ophthalmology at 6,365,308 and Ophthalmology Paediatrics at 167,898.

NVDA 2012. NVDA Screenreader. NVDA Project.
Available on:
www.nvda-project.org/

McCreath 2011. The Politics of Blindness. Granville Island Publishing.

ONS (Office for National Statistics) 2011. Life Opportunities Survey – Interim Results 2009-2010. Office for National Statistics.
Available on:
www.ons.gov.uk/ons/rel/los/life-opportunities-survey/life-opportunities-survey/index.html

Open Salon 2011. Windows 8 and Accessibility for the Blind. Open Salon.
Available on:
http://www.open.salon.com/blog/the_weird_writer/2011/06/22/windows8_and_access

Pope & Bambra 2005. Has the Disability Discrimination Act Closed the Employment Gap? Rehabilitation in Practice. Disability and Rehabilitation. October Issue 30.

Pope and Bambra 2007. Evidence Based Public Health Policy and Practice. What are the effects of anti-discriminatory legislation on socioeconomic inequalities in the employment consequences of ill health and disability? Epidemiol Community Health.
Available on:
http://jech.bmj.com/content/61/5/421.full.pdf.

Roulstone and Barnes Ed 2005. Working futures: Disabled People, Employment Policy and Social Inclusion, Policy Press

Riddell, Edward, Weedon and Ahlgren A 2010. EHRC Research Report 59 Disability, Skills and Employment: A review of recent statistics and literature on policy and initiatives. Table 2.1. Centre for Research in Education, Inclusion and Diversity. University of Edinburgh.
Available on EHRC website:
http://www.equalityhumanrights.com/uploaded_files/research/disability_skills_and_employment.pdf

Robinson, Deutsch, Jones, Youngson 1994. Unrecognised and Unregistered Visual Impairment. British Journal of Ophthalmology October 1994

RNIB (Royal National Institute of Blind People) 2012. Key Statistics. RNIB. Available on: http://www.rnib.org.uk/aboutus/research/statistics/Pages/statistics.aspx.

Roberts, Heaver, Hill, Rennison, Howat, Kelly. Krishnan, Tapp and Thomas, 2004. Disability in the Workplace: Employers' and Service Providers' Responses to the Disability Discrimination Act in 2003 and Preparation for 2004 Changes. DWP Report 202. DWP.A
Available on:
http://research.dwp.gov.uk/asd/asd5/rrs2004.asp

Simkiss 2005. Work Matters: Visual Impairment, Disabling Barriers and Employment Options, RNIB. reprinted in Rawlsone and Barnes 2005. Working Futures. Policy Press.

SOVIL (Society of Visually Impaired Lawyers) 2012.
Information available on:
www.sovil.org.uk/

Spriggs 2007. Results and Observations from Research into Employment Levels in Australia. Market Research and Development. April 2007.
Available on:
http://www.visionaustralia.org.au/docs/news_events/Employment_Details.doc

Seraphin 2010. Rejoining the Apple Family.
Available on:
http://behindthecurtain.us/2010/09/11/rejoining-the-apple-family/

System Access 2012. SA to Go Screen reader.
Information available on:
www.satogo.com

The Judicial Office 2012. Judges Tribunals and Magistrate featured Giving the Gift of Sight. The Judicial Office.
Available on:
http://www.judiciary.gov.uk/about-the-judiciary/judges-magistrates-and-tribunal-judges/features/giving-gift-sight

The National Archive (A) 2010. Equality Act 2010. Introductory Text. The National Archive.
Available on:
www.legislation.gov.uk/ukpga/2010/15/introduction

The National Archive (B) 1995. The Disability Discrimination Act 1995 Introduction. The National archive.
Available on:
http://www.legislation.gov.uk/ukpga/1995/50/introduction/enacted/.

Vinux2012. Accessible Linux Implementation for Visually Impaired People.
Information available on:
www.vinuxproject.org/

Web Aim 2009. Web Aim Screen Reader Survey 2009. Web Aim.
Available on:
www.webaim.org/projects/screenreadersurvey2/

Zuckerman 2004. Blind Adults in America: Their Lives and Challenges. Washington, DC: National Centre for Policy Research for Women & Families.

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Aim 25 (Archives in London and Within M25) 1998. Greenwich Workshop for the Blind.
Available on:
http://www.aim25.ac.uk/cgi-bin/vcdf/detail?coll_id=12975&inst_id=118

Archive Wales undated. Newport and Monmouthshire Blind Workshops Committee Records. Archive Wales.
Available on:
http://www.archiveswales.org.uk/anw/get_collection.php?inst_id=36&coll_id=2595&expand=

Barnes 1991. 'Disabled People in Britain and Discrimination: A case for Anti-Discrimination Legislation. Retrievable on the Leeds University Database in PDF format by chapter. Chapter 4 Employment.
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/Barnes/disabled%20people%20and%20discrim%20ch4.pdf

Barnes and Davies 2011. A Brief History of Discrimination and Disabled People. Davis (ed.) The Disability Studies Reader: Third Edition. Routledge.

Barnes and Oliver 2012. The New Politics of Disablement. Palgrave MacMillan.

Beacon Centre for the Blind 2011. Our History. Beacon Centre for the Blind.
Available on:
http://www.beacon4blind.co.uk/about-beacon/our-history/

Blind and Partially Sighted society 2012. Our History. Blind and Partially Sighted Society.
Available on:
http://www.dundeeblindsociety.org.uk/About-Us/History/

Bloy2002. The Principle of Less Eligibility. Victorian Web.
Available on:
http://www.victorianweb.org/history/poorlaw/eligible.html

Care and Health Law 2004. The National Assistance Act 1948 - Section 29. Database - Social Care and Health, Web-based Education and Human Rights - Social Services law, Health Care law, Human Rights law. Care and Health Law.
Available on:
http://www.careandhealthlaw.com/Public/Index.aspx?ContentID=-

Clarity 2009. Our History. Employment for Blind People. Clarity.
Available on:
http://www.clarityefbp.org/clarity People/clarity_history.php

Disability Now 2012. Direct Action. Life on the Streets. September. Disability Now.
Available on:
http://www.disabilitynow.org.uk/living/features/direct-action-life-on-the-streets

Enabling Technologies 2012. Braille History. Enabling Technologies.
Available on:
http://www.brailler.com/braillehx.htm

Hatlen 2004. Is Social Isolation a Predictable Outcome of Inclusive Education? JVIB November 2004. Volume 98 Number 11.
Available on:
http://www.afb.org/jvib/jvib981102.asp

Hansard 1936. Hansard. Prime Minister's Questions on 5 November 1936. HMSO.

Humphrey and Gordon 1992. Out of Sight: Experience of Disability, 1900-50. Northolt House Ltd.

Labour Party undated. The History of the Labour Party. The First Labour Government. The Labour Party.
Available on:
http://www.labour.org.uk/history_of_the_labour_party

Lysons 1973. The Development of Social Legislation for Blind or Deaf Persons in England 1834-1939. Doctoral Thesis. Brunel University.
Available on:
http://bura.brunel.ac.uk/handle/2438/5232?mode=full

National League of the Blind 2008. The National League of the Blind.
Available on:
http://www.pcs.org.uk/en/equality/news/news-items/the-national-league-of-the-blind.cfm

Phillips 2004. The Blind in British Society: Charity, State, and Community, c. 1780-1930. Ashgate Publishing.

RNIB 2008. A longitudinal study of the social and psychological benefits, for adults with sight loss, from participation in weekly telephone social groups.
Available on:
http://www.rnib.org.uk/livingwithsightloss/Documents/Executive_summary_tele_befriending_research.doc

Vista 2010. History of Vista.
Available on:
http://www.vistablind.org.uk/about-us/history-of-vista/

Chapter 2 - The Catch 22 of Disability Discrimination Law

BBC 1995. Labour - The Wilderness Years. Four Part Documentary. BBC.
Available on:
http://icampaigned.com/blog/2011/09/the-wilderness-years-bbc-documentary-on-uk-labour-party/

BBC (A) 2008. On this Day. BBC.
Available on:
http://news.bbc.co.uk/onthisday/hi/dates/stories/december/8/newsid_44570004457112.stm

BBC (B) 2008. Powell's Rivers of Blood Legacy. BBC News West Midlands.
Available on:
http://news.bbc.co.uk/1/hi/england/west_midlands/7343256.stmo

BBC (A) 2012. Toxteth Riots: Howe proposed 'managed decline' for Liverpool. BBC.
Available on:
www.bbc.co.uk/news/uk-england-merseyside-16355281

BBC 2013. On this Day 17 March. Tet Marches. 1968: 'I remember being terrified'. BBC.
Available on
http://news.bbc.co.uk/onthisday/hi/witness/march/17/newsid_4090000/4090886.stm

Beckett 2010. When the Lights Went Out: Britain in the Seventies. Faber and Faber. Kindle Edition.

Benn 2005. A Conflict of Interest. RNIB Talking Books – read by Author. Original Publishers Arrow

Beveridge 1943. The Pillars of Security. George Allen & Unwin.

Bleich 2003. Race Politics in Britain and France
Ideas and Policymaking since the 1960s. Cambridge University Press.

Brockway 1986. 98 Not Out. Quartet Books

Cabinet Office 2008. Towards a Fairer future. The Equality Bill. Cabinet Office.
Available on:
http://www.equalityhumanrights.com/en/projects/newequalityact/Pages/newequalityact.aspx 2008

Cain 2013. A Chronology of the Conflict - 1968. CAIN Web Service - Conflict and Politics in Northern Ireland.
Available on:
http://cain.ulst.ac.uk/othelem/chron/ch68.htm

Carter, Harris & Joshi 1987. The 1951-55 Conservative Government and the Racialisation of Black Immigration. Policy Papers in Ethnic Relations No.11 Centre for Research. October 1987 Ethnic Relations. University of Warwick.

Cawood 2003. Britain in the Twentieth Century. Routledge.

Connolly 1998. Recent Cases Note Discrimination Law: Requirements and Preferences. University of Surrey.
Available on:
http://epubs.surrey.ac.uk/3057/5/falkirkvwhyteilj.pdf

Coyle 2005. The Economic Case for Immigration. Economic Affairs. Vol. 25, No. 1, pp. 53-55, March 2005

David 1982. The New Right in the USA and Britain: A New Anti-Feminist Moral Economy, Critical Social Policy. 2: 31-45

DTI (Department for Trade and Industry) 2005. Towards a Business Case for Diversity. The Department of Trade and Industry.
Available on:
http://www.bis.gov.uk/files/file9334.pdf

Fawcett Society 2005. Are We There Yet? Fawcett Society.
Available on:
http://www.fawcettsociety.org.uk/index.asp?PageID=113

Fitzpatrick 1992. The Effectiveness of Equality Law Remedies: A European Community Law Perspective. In Hepple Ed. Discrimination: The Limits of Law (Studies in Labour & Social Law). Continuum International Publishing Group – Mansell.

Gardner 1992. Private Activities and Personal Autonomy. In Discrimination: The Limits of Law (Studies in Labour & Social Law. Ed. Hepple). Continuum International Publishing Group – Mansell.

Grantham Journal 2012. 1981 FILES: Papers reveal Thatcher's role as the 'Ironing Lady'.
Available on:
http://www.granthamjournal.co.uk/news/local/1981_files_papers_reveal_thatcher_s_role_as_the_ironing_lady_1_3396295

Green 1998. Days in the Life - Voices from the English Underground 1961-1971. Excerpt Available in -The Origins of the Gay Liberation Front and Disrupting the 'Festival of Light' - UK 1960s. Pimlico.
Available on:
http://libcom.org/library/origins-of-gay-liberation-front-and-disrupting-festival-of-light

Greer 1970. The Female Eunuch. Harper Perennial Modern Classics.

Hardy undated. Rosie the Riveter: Journeys and Crossing. Transcript and Discussion Paper. Library Of Congress Digital Resource Section.
Available on:
http://www.loc.gov/rr/program/journey/rosie-transcript.html

1992. Have Twenty Five Years of the Race Relations Acts in Britain been a Failure? In Hepple Ed. Discrimination: The Limits of Law (Studies in Labour & Social Law). Continuum International Publishing Group – Mansell.

HM (Her Majesty's) Treasury 2011. Budget Statement March 2011. HM Treasury.
Available on:
http://www.hm-treasury.gov.uk/2011budget_speech.htm

IMDB (Internet Movie Database 2010. Made in Dagenham. IMDB.
Information Available on:
http://www.imdb.com/title/tt1371155/

Jacobs 1988. Margaret Thatcher and the Inner Cities. Economic and Political Weekly
Vol. 23, No. 38 (Sep. 17, 1988), pp. 1942-1944

Janus2012. The Papers of Fenner Brockway.Janus.
Available on:
http://janus.lib.cam.ac.uk/db/node.xsp?id=EAD%2FGBR%2F0014%2FFEBR

Jones 2010. Veterans of Dagenham dispute strike another blow for equality 42 years on. Guardian Unlimited.
Available on:
http://www.guardian.co.uk/film/2010/sep/22/dagenham-strikers-42-years-on

Joseph 2007. This Pineapple is a Vegetarian. Times of India.
Available on:
http://timesofindia.indiatimes.com/articleshow/msid-2588318,prtpage-1.cms

Reece 2009. Does Brown's 'new consensus' mean another period of humiliation? Telegraph. 2 April 2009.
Available on
http://www.telegraph.co.uk/finance/comment/damianreece/5096529/Does-Browns-new-consensus-mean-another-period-of-humiliation.html

Lester 2006. 30 Years On. Originally on CRE website now cached on Engage Forum website.
Available on:
http://www.engageonline.org.uk/blog/article.php?Id=1476

Mayhematics.com Undated. Fenner Brockway - Biography.
Available on:
www.mayhematics.com/r/brockway_fenner.htm

Meeham 1991. Equality Politics and Gender Vol. 29 Sage.
Extract available on:
http://www.buythemap.com/Articles/1970s_Equal_Pay.html
(Retrieved 20 October 2008).

Mullin 2006. A Very British Coup. The Guardian Online.
Available on:
http://www.guardian.co.uk/politics/2006/mar/07/past.comment

Murray 2003. BBC History - British History in Depth: 20th Century Britain. The Woman's Hour. BBC.
Available on:
http://www.bbc.co.uk/history/british/modern/jmurray_01.shtml

Parek 1990. The Politicisation of Race Relations. Government & Opposition, Volume 25, Issue 2.

Spare Rib 1972. Monthly Magazine.
Available on:
http://www.grassrootsfeminism.net/cms/node/234

The National Archive 2012. British Economics and Trade Union Politics 1973-1974. The National Archive.
Available on:
www.nationalarchives.gov.uk/releases/2005/nyo/politics.htm

Times Magazine 1978. Thatcher's Bold Gamble. Times Magazine.
Archived on:
www.time.com/time/magazine/article/0,9171,948011,00.html

Wainwright Trust 2006. Equal Pay Heroes Honoured: Breakthrough 2006. Wainwright Trust.
Available on:
http://www.wainwrighttrust.org.uk/archive_winners.htm

WEU (Women and Equalities Unit) 2003. Business Case for Diversity and Equality. Women and Equalities Unit.
Available on:
www.equalities.gov.uk/research/bus_case_div.pdf -

Wright 1988. Spycatcher, Dell.

Chapter 3 - “Stuff Pity” Marching for Reform.

ACB Am NFB 2012. Statement on Legal Action Against Amazon Kindle.
Available on:
http://www.nfb.org/nfb/NewsBot.asp?MODE=VIEW&ID=449

APP (American Presidency Project) 2012. Richard Nixon: Veto of the Vocational Rehabilitation Bill. American Presidency Project.
Available on:
http://www.presidency.ucsb.edu/ws/?pid=4154#axzz1muVX0oc3

Beacon 2005. Reasonable Accommodation.
US Disability Resource Centre.
Available on:
www.fairfaxcounty.gov/dsb/HTML_Docs/Beacon_Summer_05.htm

Brown 2001. The League of the Physically Handicapped & Independent Living in 1935. Disability World.
Available on:
http://www.disabilityworld.org/10-12_00/il/league.htm

Charity Commission 1989. Report of the Charities Definition Inquiry. Charity Commission.
Available on:
http://www.cdi.gov.au/report/rtf/AppendixJ.rtf

Crescendo 2009. Wheel Dance – Piss on Pity. Link and blog discussion.
Available on:../Dropbox/Jim share/%0dhttp:/cripwheels.blogspot.com/2009/05/piss-on-pity.html
http://cripwheels.blogspot.com/2009/05/piss-on-pity.html

Disabled in Action 2012. History. Disabled in Action.
Available on:
http://www.disabledinaction.org/singers_history.html

Disability Now 2012. Direct Action. Life on the Streets. September 2012. Disability Now.
Available on:
http://www.disabilitynow.org.uk/living/features/direct-action-life-on-the-streets

Disability Right Centre 2010. Our History – A brief history of the Disability Rights Movement. Disability Right Centre.
Available on:
http://www.drckansas.org/disability-awareness-project/HistoryofDisabilityRightsinKSandUS.pdf

DWP 2012. Personal Independence Payment. Department for Work and Pensions.
Available on:
www.dwp.gov.uk/policy/disability/personal-independence-payment/

Flix 2012. Photo Sharing. Blind Boy Collection box. Flix.
Available on:
http://www.flickr.com/photos/greenypics/5178000663/

FIRPR (Foundation for Information Policy Review) 2009. Civil Litigation Costs Review. Foundation for Information Policy Review.
Available on:
http://www.fipr.org/090730jackson.pdf

Gooding 1992. Disabling Laws, Enabling Acts-Disability Rights in Britain and America. Pluto Press.

Hershey 1993. From Poster Child to Protestor. Independent Living Institute.
Available on:
http://www.independentliving.org/docs4/hershey93.html

Hughes 1998. A Suitable Case for Treatment? In Saraga Ed. Embodying the Social–Constructions of Difference. Constructions of Disability. Routledge.

Jackson 2010. Review of Civil Litigation Costs: Final Report. The Judicial Office.
Available on:
www.judiciary.gov.uk/NR/.9C4A./jacksonfinalreport140110.pdf

JebsBlog 2011. US Law School Council Settles Web Access Legal Action.
Available on:
http://jebswebs.net/blog/2011/06/us-law-school-council-settles-web-access-legal-action/

Little 2002. RNIB aims for 50,000 members. Third Sector Magazine April 10th 2002.
Available on:
http://www.thirdsector.co.uk/news/617330/

McCreatt 2010. The Politics of Blindness. Granville Island Publishing.

MSCIL (Mountain Space Centre for Independent Living) 2012. Background to the History of the Independent Living Movement.
Available on:
http://www.mtstcil.org/skills/il-2-background.html

New Internationalist 2005. Stuff Pity. Issue 384. New Internationalist. Available on
http://www.newint.org/features/2005/11/01/keynote/

NFB (National Federation of the Blind) 2011. About the NFB. NFB.
Available on:
http://www.nfb.org/nfb/About_the_NFB.asp

NFB 2008. NFB - National Federation of the Blind and Target Agree to Class Action Settlement. NFB.
Available on:
http://www.nfb.org/nfb/NewsBot.asp?MODE=VIEW&ID=357

NFB 2009. A Bill of Rights. Transcript of Presidential Speech by tenBroek 1940. NFB.
Available on:
http://www.nfb.org/images/nfb/Publications/convent/banque48.html

NFB (National Federation of the Blind) 1990. Walking Alone, Marching Together. NFB.
Available on:
http://www.nfb.org/legacy/books/books1/wamtc.htm

NFB UK (National Federation of the Blind United Kingdom) 2012. Home page. NFB UK.
Available on:
http://www.nfbuk.org/site/index.php

NSCAI (National Spinal Cord Injury Association) 1998. Evan J. Kemp, Jr. Dies at age 60 - Archive. National Spinal Cord Injury Association.
Available on:
http://users.erols.com/nscia/newsroomu/archive/disability/kemp.html

OMT 2008. Our Money Too. Accessible version. Ruling against the Treasury Department. Court Judgement. Our Money Too.
Available on:
http://www.ourmoneytoo.org/ruling.php
(Retrieved 13 September 2010).

Peck 2008. RNIB and Action for Blind People set to merge. Disability Now 27 October 2008.
Available on:
http://www.disabilitynow.org.uk/latest-news2/old-news/rnib-and-action-for-blind-people-set-to-merge

RADAR 2008. Four decades of parliamentary work for disabled people's rights 1968-2008. Radar.
Available on:
http://www.radar.org.uk/radarwebsite/RadarFiles/Documents/'A%20celebration%20of%20the%20work%20of%20the%20APPDG'%2040%20years.pdf

Richardson 1993. In Wheelchairs and on Crutches, Some Disabled Protest a Telethon. New York Times.
Available on:
http://www.nytimes.com/1993/09/07/nyregion/in-wheelchairs-and-on-crutches-some-disabled-protest-a-telethon.html

RNIB 2000. The Price of Justice. RNIB.
Available on:
http://www.epolitix.com/Resources/epolitix/Forum%20Microsites/RNIB/priceofjustice.ht

RNIB 2011. Ten Successful Campaigns of 2011.RNIB.
Available on:
http://www.rnib.org.uk/getinvolved/campaign/campaignwithus/england/regional_news/Pages/local2011.aspx

RNIB 2012. RNIB serves legal proceedings on BMI baby - RNIB.
Available on:
http://www.rnib.org.uk/aboutus/mediacentre/mediareleases/mediareleases2012/Pages/pressrelease27Jan2012.aspx

RNIB (b) 2012. Corporate Partnerships. RNIB.
Available on:
http://www.rnib.org.uk/getinvolved/fundraising/corporate/Pages/corporate_partnerships.aspx

RNIB 2013. AMD campaign - RNIB.
Available on:
http://www.rnib.org.uk/getinvolved/campaign/succes/amdcampaign/Pages/amd_campaign.aspx

Russell 2012. Is Accessibility Going Backward? January 2012 Newsletter. British Computer Association of the blind
Available on:
www.bcab.org.uk

Stein 1994. From Crippled to Disabled: The Legal Empowerment of Americans with Disabilities. College of William & Mary Law School.
Available on
http://scholarship.law.wm.edu/facpubs/697

UK Parliament 2009. House of Commons - The Equality Bill: how disability equality fits within a single Equality Act - Work and Pensions Committee. UK Parliament.
Available on:
http://www.publications.parliament.uk/pa/cm200809/cmselect/cmworpen/158/15809.htm

Vision 2011. Access to justice consultation: charities still unlawfully exposed to unmanageable costs under proposed rules. Client Earth 20 October 2011.
Available on:
http://www.clientearth.org/news/press-releases/access-to-justice-consultation-charities-still-unlawfully-exposed-to-unmanageable-costs-under-proposed-rules-1578?

Web Standards project 2007. Amazon Legal Truce with NFB. Web Standards project.
Available on
http://www.webstandards.org/2007/03/31/amazoncom-to-enhance-its-accessibility
(Retrieved 14 October 2011).

Winter 2003. The Development of the Disability Rights Movement as a Social Problem Solver. Disability Studies Quarterly Vol. 23, No 1.
Available on:
http://dsq-sds.org/article/view/399/545

Chapter 4 - Breaking the Mould

Angrist 1990. Lifetime Earnings and the Vietnam Era Draft Lottery: Evidence from Social Security Administration Records', American Economic Review 80, 313-336.

Angrist and Stacey 2008. Long-Term Economic Consequences of Vietnam-Era Conscription: Schooling, Experience and Earnings. Institute for the Study of Labour.
Available on:
http://ftp.iza.org/dp3628.pdf

Barnes 1991. 'Disabled People in Britain - A Case for Anti-Discrimination Legislation. Retrievable on the Leeds University Database in PDF format by chapter. Chapter 4 Employment. Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/Barnes/disabled%20people%20and%20discrim%20ch4.pdf

Barringer 1998. The Anti-War Movement in the United States. From Encyclopaedia of the Vietnam War: A Political, Social, and Military History. Ed. Tucker. Oxford, UK. Extract Available on:
http://www.english.illinois.edu/maps/vietnam/antiwar.html

Barnes and Oliver 1992. Discrimination, Disability and Welfare: From Needs to Rights. In Equal Rights for Disabled People. Institute for Public Policy Research.
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/bynoe/equal%20rights%20for%20disabled%20people.pdf

Beckett 2010. When the Lights Went Out: Britain in the Seventies Faber and Faber. Kindle Edition.

Bynoe 1992. The Case for Anti-Discrimination Legislation. In Equal Rights for Disabled People. Institute for Public Policy Research.
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/bynoe/equal%20rights%20for%20disabled%20people.pdf

Conason 2007. Rudy and Romney: Artful Dodgers. Salon.com.
Available on:
http://www.salon.com/2007/07/20/rudy_and_romney/

Cronkite 1968. Commentary on Tet Offensive. U.S. History Resources
Available on:
http://www.sonic.net/~scds/resources/US-History/1968_Walter%20Cronkite,%20Commentary%20on%20Tet%20Offensive.pdf

CSDPA 1970. Chronically Sick and Disabled Person's Act 1970. Office for Public Sector Information.
Available on:
http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1970/cukpga_19700044_en_1

CSDPA, Chronically Sick and Disabled Person's Act 1976. The UK Statute Database.
Available on:
http://www.statutelaw.gov.uk/content.aspx?LegType=All+Primary&PageNumber=53&NavFrom=2&parentActiveTextDocId=1243917&ActiveTextDocId=1243917&filesize=10609

CSDPA, 1970, S 5 ss 6, UK Statute Database
Available on:
http://www.statutelaw.gov.uk/content.aspx?LegType=All+Primary&PageNumber=53&NavFrom=2&parentActiveTextDocId=1243917&ActiveTextDocId=1243917&filesize=10609

DA (Disability Alliance) 1975 Poverty and Disability: the case for a comprehensive income scheme. London

DIG (Disablement Income Group 1985. An Introduction to the Disablement Income Group. London.

Disability Now 2012. Direct Action. Life on the streets. September.
Available on:
http://www.disabilitynow.org.uk/living/features/direct-action-life-on-the-streets

Fletcher 1993. Fighting for the Right to be Different. New Statesman, 29 October 1993.

Finkelstein 2001. A Personal Journey into Disability Politics. Independent Living Institute.
Available on:
http://www.independentliving.org/docs3/finkelstein01a.html

Finkelstein 2005. Reflections on the Social Model of Disability: The South African Connection.
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/finkelstein/Reflections%20on%20the%20Social%20Model%20of%20Disability.pdf

Gill 2012. Military Conscription, Recruiting and the Draft.
Available on:
http://uspolitics.about.com/od/electionissues/a/draft.htm

Goffman 1963. Stigma: Notes on the Management of Spoiled Identity. Simon & Schuster.

Gooding 1992. Disabling Laws, Enabling Acts - Disability Rights in Britain and America. Pluto Press.

Hasler 1993. Developments in the Disabled People's Movement. In Swain et al. (Eds.), Disabling Barriers, Enabling Environments. Sage.

Hunt J. 2001. The Union of the Physically Impaired Against Segregation - Report by Judy Hunt. Presentation. University of York.
Available on:
http://www.labournet.net/other/0107/upias1.html

Hunt p. ED. 1966. Stigma: The Experience of Disability. London. Geoffrey Chapman.
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/Hunt/Foreword.pdf

Hunt P. 1966. Disabled in Britain: A Critical Condition. In Stigma ibid.
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/Hunt/a%20critical%20condition.pdf

Hunt p. 1972. Letter to the Guardian Wednesday September 20 1972.
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/Hunt/Hunt%201.pdf

Independent 2011. Vic Finkelstein: Academic and Disability Activist - Obituaries - News - The Independent Friday 16 December 2011.
Available on:
http://www.independent.co.uk/news/obituaries/vic-finkelstein-academic-anddisability-activist-6277679.html

MSCIL (Mountain Space Centre for Independent Living) 2012. Background to the History of the Independent Living Movement.
Available on:
http://www.mtstcil.org/skills/il-2-background.html

Morris 1991. Pride against Prejudice: Transforming Attitudes to Disability: A Personal Politics of Disability. The Women's Press.

NHS 1996. National Prosthetics and Wheelchair Services Report (1993-1996). NHS.

Oliver 1983. The Individual and Social Models of Disability. Leeds Disability Studies archive.
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/Oliver/in%20soc%20dis.pdf

Oliver 1991. The Politics of Disablement (Critical Texts in Social Work and the Welfare State). Macmillan.

ONS 2002. Living in Britain- General Household Survey 2002.Office for National Statistics.
Available on:
http://www.statistics.gov.uk/downloads/theme_compendia/lib2002.pdf

RADAR 2008. Four Decades of Parliamentary Work for Disabled People's Rights 1968-2008. RADAR.
Available on:
http://www.radar.org.uk/radarwebsite/RadarFiles/Documents/'A%20celebration%20of%20the%20work%20of%20the%20APPDG'%2040%20years.pdf

RNIB 2011. Introduction to Access Consultancy – RNIB.
Available on:
http://www.rnib.org.uk/professionals/solutionsforbusiness/trainingandconferences/buildings/accessconsultancy/Pages/introduction_accessconsultancy.aspx

Shakespeare 1993. Disabled People's Self-Organisation: A New Social Movement? Disability, Handicap and Society, Vol. 8, No. 3, 1993 249.
Available on:
http://www.um.es/discatif/PROYECTO_DISCATIF/Textos_discapacidad/00_Shakespeare.pdf

Shapiro 1993. No Pity: People with Disabilities Forging a New Civil Rights Movement. Times Books Kindle Edition.

UPIAS and DA (Union of Physically Impaired Against Segregation and Disability Alliance) 1976. Fundamental Principles of Disability- Being a summary of the

discussion held on 22nd November, 1975 and containing commentaries from each organisation. UPIAS and DA.
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/UPIAS/fundamental%20principles.pdf

Wagener 2009. The Political Economy of Conscription. Institute for the Study of Labor.
Available on:
http://ftp.iza.org/dp4429.pdf

Walker 2012. Wheelchair users block Oxford Circus to protest at disability cuts. Society. The Observer.
Available on:
http://www.guardian.co.uk/society/2012/jan/29/wheelchair-users-block-oxford-circus

White 2012. Social Model or Unsociable Muddle? Disability Awareness in Action.
Available on:
http://www.daa.org.uk/index.php?page=social-model-or-unsociable-muddle

Chapter 5 - Scott v Scott.

Alderman and Carter 1991. A Very Tory Coup: The Ousting of Mrs Thatcher. Parliamentary Affairs Volume 44.

Barnes C. 1991. Disabled People in Britain and Discrimination: A case for Anti-Discrimination Legislation. Chapter 9.Leeds University Disability Studies Archive. Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/Barnes/disabled%20people%20and%20discrim%20ch9.pdf

Barnes J. 2005. Nicholas Scott. The Independent. 7th January 2005.
Available on:
http://barneshistorian.com/vm-scott.php

BBC 2005. BBC News – Obituary Nicholas Scott. BBC.
Available on:
http://news.bbc.co.uk/2/hi/uk_news/politics/4153953.stm

BCODP 1997. The Disabled People's Movement -Book Four. BCODP.
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/BCODP/workbook4.pdf

Bagguley 1995. Poverty and Power: a Case Study of the Anti -Poll tax Movement. The Sociological Review. Volume 43, Issue 4, pages 693–719, November 1995.

Brown 1994. Scott Filibuster Wrecks Disabled Bill. The Independent 21 May 1994
Available on:
http://www.independent.co.uk/news/scott-filibuster-kills-disabled-bill-1437437.html

Campbell and Oliver 1996. Disability Politics: Understanding Our Past, Changing Our Future. London: Routledge.

Bailey and Shinkwin 1998. Disability rights in Cowley ed. Conscience and Parliament. Routledge.

Davies 1996. The Disabled People's Movement – Putting the Power in Empowerment. Leeds University Disability Studies Archive.
Available on
http://www.leeds.ac.uk/disability-studies/archiveuk/DavisK/davis-empowerment.pdf

Fletcher 1993. Fighting for the Right to be Different. New Statesman, 29 October 1993

Foley and Pratt 1994. Human Rights Convention - Civil & Political Liberties in England & Wales. In Access Denied. Human Rights and Disabled People. BCODP and Liberty. National Council for Civil Liberties.
Available on:
www.leeds.ac.uk/disability-studies/./human%20rights%20conv.pdf

Gooding 1992. Disabling laws, Enabling Acts - Disability Rights in Britain and America. Pluto Press.

Hague 2012. The Conservative Party - People - Members of Parliament - Rt Hon William Hague MP. The Conservative Party.
Available on:
http://www.conservatives.com/People/Members_of_Parliament/Hague_William.aspx

Hansard 1992. Personal Statement by Robert Hayward. February 1992. UK Parliament.
Available on:
http://hansard.millbanksystems.com/commons/1992/feb/05/personal-statement#S6CV0203P0-01565

Hansard 1993. House of Commons Hansard Debates for 26 Feb 1993. UK Parliament.
Available on:
http://www.publications.parliament.uk/pa/cm199293/cmhansrd/1993-02-26/Debate-5.html

Hansard 1994. Disabled People (Consultation) (Hansard, 15 July 1994). UK Parliament.
Available on:
http://hansard.millbanksystems.com/commons/1994/jul/15/disabled-people-consultation

Hansard 2004. Disability (Hansard, 10 June 2004). UK Parliament.
Available on:
http://hansard.millbanksystems.com/commons/2004/jun/10/disability

Jenkins 1994. A Life at the Centre. Papermac. New edition.

LBC (London Broadcasting Company) 1994. Victoria Scott on Filed Disabled Rights Bill. Radio Interview. LBC.
Available on:
http://radio.bufvc.ac.uk/lbc/index.php/segment/0002700052018

Millward 2012. Disability and Voluntarism in British Policymaking. Voluntary Action History Society.
Available on:

http://www.vahs.org.uk/2012/02/disability-millward/

Mirror A 1996. Tory MP Banned Over `Crushed Buggy' Crash; I wasn't going to be involved in. some hoo-ha argument about what happened. March 28, 1996. The Daily Mirror.
Available on:
http://www.thefreelibrary.com/TORY+MP+BANNED+OVER+%60CRUSHED+BUGGY%27+CRASH%3B+I+wasn%27t+going+to+be.-a061325175

Mirror B 1996. Drunk Tory Scott Faces Boot as MP; Party calls crisis talks. October 18, 1996. The Daily Mirror.
Available on:
http://www.thefreelibrary.com/DRUNK+TORY+SCOTT+FACES+BOOT+AS+MP%3B+Party+calls+crisis+talks.-a061305848

Morris 1991. Pride against Prejudice: Transforming Attitudes to Disability: A Personal Politics of Disability. The Women's Press.

Mughan 1993. Party Leaders and Presidentialism in the 1992 Election: A Post-War Perspective. British Elections and Parties Yearbook – Volume 3, Issue 1

Observer 1993. Major hits out at Cabinet | Politics | The Observer
Available on:
www.guardian.co.uk/politics/1993/jul/25/politicalnews.uk

Oliver 1983. The Individual and Social Models of Disability. Leeds University Disability Studies Archive.
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/Oliver/in%20soc%20dis.pdf

Oliver 1991. The Politics of Disablement (Critical Texts in Social Work and the Welfare State) Macmillan.

ONS 2002. Living in Britain- General Household Survey 2002.
Available on:
http://www.statistics.gov.uk/downloads/theme_compendia/lib2002.pdf

Pagel 1988. On Our Own Behalf: an introduction to the self-organisation of disabled people. GMCDP Publications.

Parker 1995. Spitting on Charity. Independent 09 April 1995.
Available on:
http://www.independent.co.uk/arts-entertainment/spitting-on-charity-1614885.html

Parliament 1995. House of Commons Library 1995. Disability Discrimination Bill 1994/95 [BILL 32]. Research Paper 95/9. 19 January 1995 UK Parliament.

Available on:
www.parliament.uk/briefing-papers/RP95-9.pdf

Perkins 2002. 'Nasty party' warning to Tories, still seen as too narrowly-based, conference. The Guardian, Tuesday 8 October 2002
Available on:
http://www.guardian.co.uk/politics/2002/oct/08/uk.conservatives2002

RADAR 2008. Four Decades of Parliamentary Work for Disabled People's Rights 1968-2008, RADAR.
Available on:
http://www.radar.org.uk/wp-content/uploads/2011/04/Doc_12_40_Years_APPDG.pdf

Roth 2005. Nicholas Scott – Obituary. The Guardian. Friday 7 January 2005.
Available on:
http://www.guardian.co.uk/news/2005/jan/07/guardianobituaries.conservatives

GMT 1994. I won't quit says Scott. Independent 22 May 1994.
Available on:
http://www.independent.co.uk/news/uk/home-news/i-wont-quit-says-nicholas-scott-

Shakespeare 1993. Disabled People's Self-organisation: A New Social Movement? Disability, Handicap and Society, Vol. 8, No. 3, 1993 249.
Available on:
http://www.um.es/discatif/proyecto discatif/Textos_discapacidad/00_Shakespeare.pdf

Slorach 2011. Marxism and Disability. International Socialism Journal. Issue 129. January 2011.
Available on:
http://www.isj.org.uk/?id=702

Telegraph 2005. Sir Nicholas Scott. 08 Jan 2005.
Available on:
http://www.telegraph.co.uk/news/obituaries/1480655/Sir-Nicholas-Scott.html

Chapter 6 - The Strange Death and Resurrection of Indirect Discrimination

Allen 1990. Black awakening in capitalist America: An analytic history. Africa World Press Alston, Bustelo, Heenan 1999. EU and Human Rights, Oxford University Press.

BAILII ((British and Irish Legal Information Institute) (A) undated. Williams V J Walter Thompson Group Ltd [2005] ewca civ 133. (17 February 2005).
Available on:
http://www.bailii.org/ew/cases/EWCA/Civ/2005/133.html

BAILII (British and Irish Legal Information Institute) (B) undated. Hlimmenos v. Greece - 34369/97 [2000] ECHR 162 (6 April 2000).
Available on:
http://www.bailii.org/eu/cases/ECHR/2000/162.html

Barnes 1991. Disabled People in Britain and Discrimination: A Case for Anti-Discrimination Legislation. British Council of Organisations of Disabled People. Leeds University Disability Studies archive.
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/Barnes/disabled%20people%20and%20discrim%20foreward.pdf

Connolly 1998. Recent Cases Note Discrimination Law: Requirements and Preferences. University of Surrey.
Available on:
http://epubs.surrey.ac.uk/3057/5/falkirkvwhyteilj.pdf

DLCG (Department for local Government and Communities) 2001. Towards Inclusion. Civil Rights for Disabled People. Government Response to the Disability Rights Task force. Department for Local Government and Communities.
Available on:
http://www.education.gov.uk/consultations/downloadableDocs/60_3.pdf

DCLG (Department for Communities and Local Government) 2007. Discrimination Law Review, A Framework for Fairness. Proposals for a Single Equality Bill for Great Britain. Department for Local Government and Communities.
Available on:
http://www.communities.gov.uk/publications/communities/frameworkforfairnesssummary

De Shutter 2007. Reasonable Accommodations and Positive Obligations in the European Convention on Human Rights. In Gooding and Lawson (Ed.) 2007. Disability Rights in Europe from Theory to Practice. Hart Publishing.

Doyle 2001. Disability Discrimination Law and Practice. 2nd Edition 2001 Jordon publishing.

Gooding 1992. Disabling Laws, Enabling Acts - Disability Rights in Britain and America. Pluto Press

Gooding, 2007. One Step Forward, Two Steps Back. IER.
Available on:
http://www.ier.org.uk/system/files/Gooding+paper+FINAL.doc

Hansard 1995.Third Reading of the Disability Discrimination Bill, House of Commons, 28 March 1995. UK Parliament.
Available on:
http://hansard.millbanksystems.com/commons/1995/mar/28/modifications-of-this-act-in-its?

HMSO 1974. White paper – Equality for Women. Cmnd 5724). HMSO.

Home Affairs (Hong Kong) 1996. Lead Paper Legislative Council of the Hong Kong Special Administrative Region of the Peoples' Republic of China.
Available on:
http://www.legco.gov.hk/yr96-97/english/panels/ha/minutes/ha251096.htm?

Oyez 2005. Griggs v Duke Power Company. The Oyez Project at IIT Chicago-Kent College of Law.
Available on:
http://www.oyez.org/cases/1970-1979/1970/1970_124

Waddington and Hendriks. 2002. The expanding concept of employment discrimination in Europe: From Direct and Indirect Discrimination to Reasonable Accommodation. Hague: International Journal of Comparative Labour Law and Industrial Relations Volume 18.

Weir 2006. Unequal Britain: Human Rights as a Route to Social Justice. Politico's Publishing Ltd.

Chapter 7 - The Peculiar Case of the Vanishing Comparator

BAILII (British and Irish Legal Information Institute) A Undated. Clark v TDG Ltd (t/a Novacold) [1999] EWCA Civ 1091 (25 March 1999).
Available on:
http://www.bailii.org/ew/cases/EWCA/Civ/1999/1091.html

BAILII (B) Undated. London Borough of Lewisham v Malcolm [2008] UKHL 43 (25 June 2008).
Available on:
http://www.bailii.org/uk/cases/UKHL/2008/43.html

Cooke 2008. Possession Claims and Disability – what does the future hold? Russell Cooke.
Available on:
http://216.239.59.104/search?q=cache:8WufoKBATtkJ:www.russel-cooke.co.uk/downloads/Contentious_Property_Article_October_2007.pdf+Burgess+of+London+Borough+of+Lewisham+v+Malcolm&hl=en&ct=clnk&cd=4&gl=uk

EHRC 2009. The Malcolm Case. Equality and Human Rights Commission.
Available on:
http://www.equalityhumanrights.com/legal-and-policy/legal-updates/recent-developments-in-disability-discrimination-cases/the-malcolm-case/

Lawson 2008. Disability and Equality Law in Britain: The Role of Reasonable Adjustment. Oxford. Hart Publishing.

McColgen 2005. Discrimination Law, Text, Cases and Materials, Second Edition. Oxford University Press.

Parliament 2009. The Equality Bill: how disability equality fits within a single Equality Act. UK Parliament.
Available on:
www.publicatins.parliament.uk/pa/cm200809/cmselect/./158i.pdf

Chapter 8 - Where to Stand on the Grounds?

BAILII (British and Irish Legal Information Institute) 2006. Attridge Law (A Firm of Solicitors) & Anor v Coleman [2006].
UKEAT 0417_06_2012 (20 December 2006).
Available on:
http://www.bailii.org/uk/cases/UKEAT/2006/0417_06_2012.html

BAILII (A) Undated. Jones v Post Office [2001] EWCA Civ 558 (11 April 2001).
Available on:
http://www.bailii.org/ew/cases/EWCA/Civ/2001/558.html

BAILII (B) Undated. United Kingdom Employment Appeal Tribunal. Showboat Entertainment Centre Ltd v Owens [1983] UKEAT 29_83_2810 (28 October 1983).
Available on
http://www.bailii.org/uk/cases/UKEAT/1983/29_83_2810.html

BAILII (C) Undated. Williams v J Walter Thompson Group Ltd [2005] EWCA Civ 133.(17 February 2005).
Available on:
http://www.bailii.org/ew/cases/EWCA/Civ/2005/133.html

DRC 2001. First Legal Bulletin. Securing legal rights in practice for disabled people. Leeds University disability Studies archive.
Available on:
http://disability-studies.leeds.ac.uk/files/library/DRC-Legal-Bulletin-Issue-1.pdf

DRC 2002. Second Legal bulletin. Leeds University Disability Studies archive.
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/DRC/Legal%20Bulletin%20Issue%202.pdf

EHRC (Equality and Human Rights Commission) Undated. The Coleman Case. Equality and Human Rights Commission.
Available on:
http://www.equalityhumanrights.com/legal-and-policy/legal-updates/recent-developments-in-disability-discrimination-cases/the-coleman-case

Europa.EU 2000. Equal Treatment in Employment and Occupation. Legal Notice. EU.
Available on:
http://europa.eu/legislation_summaries/employment_and_social_policy/employment_rights_and_work_organisation/c10823_en.htm

FRA (European Agency for Fundamental Rights) 2009. Kingdom / Showboat Entertainment Centre v Owens - [1984] 1 All ER 836. FRA.
Available on:
http://infoportal.fra.europa.eu/InfoPortal/caselawFrontEndAccess.do?id=133

Honeyball 2007. Discrimination by Association. Webjcli.
Available on:
http://webjcli.ncl.ac.uk/2007/issue4/honeyball4.html

Parliament 2009. The Equality Bill: how disability equality fits within a single Equality Act.UK parliament.
Available on:
www.publications.parliament.uk/pa/cm200809/cmselect/./158i.pdf

XpertHR 2012 in the employment tribunals: April 2012. XpertHR.
Available on:
http://www.xperthr.co.uk/article/112768/in-the-employment-tribunals--april-2012.aspx#mcgraw?cmpid=ILC|PROF|HRPIO-2012-XHR_Free|58487&sfid=701200000004Zsc

Veitch Penny 2005. Williams v J Walter Thompson Group Limited. Court of Appeal - (17 February 2005. Employment Update. Veitch Penny.
Available on:
http://www.veitchpenny.com/employment-updates/employment-update/williams-v-j-walter-thompson-group-limitedcourt-of-appeal-17-february-2005/menu-id-147.html

Wainwright 2008. Carer brings hope to millions with landmark win on employment rights. Society. The Guardian Online. Friday 18 July 2008.
Available on:
http://www.guardian.co.uk/society/2008/jul/18/socialcare.law

Chapter 9 - Burning a Bridge Too far

Arthritis Care. 2009. Working together? Matching work ambitions with health provision for people with arthritis. Arthritis Care.
Available on:
http://www.arthritiscare.org.uk/Campaigns/Currentissues/Workandhealth/main_content/ArthritisCare-WorkingTogetherSURVEYreport.pdf

BAILII Undated. Project Management Institute v. Latif [2007] UKEAT 0028_07_1005.
Available on:
http://www.bailii.org/uk/cases/UKEAT/2007/0028_07_1005.html

Bennett 2009. Equality Chief Trevor Phillips under pressure after three executives quit. The Times 28 March 2009.
Available on:
http://www.timesonline.co.uk/tol/news/politics/article5989345.ece

Cabinet Office (A) 2007. Fairness and Freedom: The Final Report of the Equalities Review. Cabinet Office.
Available on
http://archive.cabinetoffice.gov.uk/equalitiesreview/

Cabinet Office (B) 2007. Helping People Achieve Their Full Potential: Improving Specialist Disability Employment Services. Cabinet Office.
Available on:
http://www.dwp.gov.uk/consultations/2007/des-consultation-paper.shtml

CIPD (Chartered Institute for Personnel Development). 2005. Labour Market Outlook. Table 11. CIPD.
Available on:
http://www.employment-studies.co.uk/summary/summary.php?id=1511drc

Cunningham. 2004. Bridging the Gap between Rhetoric and Reality: Line Managers and the Protection of Job Security for Employees in the Modern Workplace. British Journal of Management. Vol. 15.

DCLG (Department for Communities and Local Government) 2007. Discrimination Law Review- A Framework for Fairness. Proposals for a Single Equality Bill for Great Britain. Department for Communities and Local Government.
Available on:
http://www.communities.gov.uk/publications/communities/frameworkforfairnesssummary

DRC (Disability Rights Commission). 2005. Using Your Rights – Settlements and Compensation. DRC.
Available on:
http://83.137.212.42/sitearchive/drc/usingyourrights/employmenttribunalguide/settlement.html

EFD (Employers' Forum on Disability) 2001. Promoting change: becoming a disability confident organisation. EFD.

ETS (Employment Tribunal Service) 2012. Employment Tribunal Service Statistics 2010-2011. Employment Tribunal Service.
Available on:
http://www.justice.gov.uk/downloads/statistics/mojstats/employment-trib-stats-april-march-2010-11.pdf/

Ewing and Hendy 2012. Unfair Dismissal Law Changes - Unfair? Industrial Law Journal Volume 41, Issue 1. March 2012.

Fredman 2008. Human Rights Transformed - Positive Rights and Positive Duties. Oxford University Press.

GEO (Government Equality Office) 2013. Government Equalities Office - Inside Government - GOV.UK. Home Office.
Available on:
https://www.gov.uk/government/organisations/government-equalities-office

Gibbons 2007. Better Dispute Resolution: A review of employment dispute resolution in Great Britain. Department of Trade and Industry.
Available on:
www.berr.gov.uk/files/file38516.pdf

Gooding 2000. Disability Discrimination Act: from statute to practice. Critical Social Policy. November 2000 20: 533-549
.
Guardian Online 2009. Equalities Watchdog in Crisis. Guardian Society. 27 March 2009.
Available on:
http://www.guardian.co.uk/society/2009/mar/27/equalities-watchdog-trevor-philips

Hansard 2010. Hansard. House of Lords, 9th November 2010. At Column 66.UK Parliament.
Available on:
http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101109-0001.htm

Hepple 1992. Have 25 years of the race relations acts in Britain been a failure? In Hepple (ED). The Limits of Law (Studies in Labour & Social Law. Continuum International Publishing Group – Mansell

Hepple 2010. The new Single Equality Act in Britain. The Equal Rights Review, Vol5 2010. Five Equal Rights Trust.
Available on:
www.equalrightstrust.org/ertdocumentbank/bob%20hepple.pdf

Hepple, Coussey and Choudhury. 2000. Equality: A New Framework - Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation. Oxford. Hart Publishing.

Hurstfield, Meager, Aston, Davies Mann Mitchell O'Regan Sinclair 1999. Monitoring the Disability Discrimination Act 1995 (Phase 1). In-house Report 91. Department for Work and Pensions. And Disability Rights Commission.

Hurstfield Meager Aston, Davies, Mann, Mitchell, O'Regan and Sinclair 2004. Monitoring the Disability Discrimination Act 1995 (Phase 3). In-house Report 91. Department for Work and Pensions, and Disability Rights Commission, February 2004.
Available on:
http://www.employment-studies.co.uk/pubs/summary.php?id=1511drc

Home Office (A) 2012). Red Tape Challenge - Equalities.
Available on:
http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/equalities-act/

Home Office (B) 2012. Equality Act 2010: consultation on repeal of two enforcement provisions.
Available on:
http://www.homeoffice.gov.uk/publications/about-us/consultations/equality-act-wider-enforcement/

Home Office (C) 2012. Third party Harassment - Consultation response.
Available on:
http://www.homeoffice.gov.uk/publications/about-us/consultations/third-party-harassment/

Hoque and Noon 2004. Evaluating the Empty Shell Hypothesis. Equal Opportunities Policy and Practice in Britain. 2004. Work. Employment and Society. Vol. I 8(3) 481-506.

Howard 2006. Guide to DRC's Legal Case Selection Priorities. Disability Rights Commission.
Available on:
http://83.137.212.42/sitearchive/DRC/pdf/DRC_legal_strategy_March_2006.pdf

Leggett 2001. Report of the Review of Tribunals Service: Tribunals for Users - One System. Chapter 4.
Available on:
http://webarchive.nationalarchives.gov.uk/+/http://www.tribunals-review.org.uk/leggatthtm/leg-04.htm

Leverton2002. Monitoring the Disability Discrimination Act 1995 (Phase 2. In-house Report 91, Department for Work and Pensions.
Available on:
http://research.dwp.gov.uk/asd/asd5/IH91.pdf

Lewis 2012. Proving disability and Reasonable Adjustments. A worker's guide to evidence under the Equality Act 2010.edition 4. Word Version. Equality and Human Rights Commission.
Available on:
http://www.equalityhumanrights.com/uploaded_files/dda_workers_guide_reasonable_adjustments.doc

MoJ (Ministry of Justice) 2012. Charging Fees in Employment Tribunals and the Employment Appeal Tribunal - Response to Consultation. CP22/2011.
Available on:
http://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011/results/employment-tribunal-fees-consultation-response.pdf

Parliament 2003. Equality bill (HL). Lord Lester. January 2003. UK Parliament.
Available on:
http://www.publications.parliament.uk/pa/cm200203/cmbills/105/2003105.pdf

Parliament 2006. The Employment Tribunals (Representation and Assistance in Discrimination Proceedings) - Bill sponsored by Marsha Singh MP. UK Parliament - House of Commons Research Paper.UK Parliament.
Available on:
www.parliament.uk/commons/lib/research/rp2005/rp05-059.pdf

Pring 2009. Commission's Birthday Blues. Disability Now Accessed. April 2009.
Available on:
http://www.disabilitynow.org.uk/living/features/commissions-birthday-blues

Renton 2008. Deliver us from Employment Tribunal Hell. Industrial Relations and the Employment Bill. Employment Law.
Available on:
https://uhra.herts.ac.uk/dspace/bitstream/2299/1632/1/S87.pdf

RNIB 2004. The views of blind and Partially Sighted users on Access to Work. RNIB.

Simkiss 2005. Work Matters-Visual impairment Disabling Barriers and Employment Options. RNIB. Reprinted in Rawlsone and Barnes (Ed) Working Futures. Polity Press. London.

Watson, Owen, Aubrey, and Ellis 1998. Integrating disabled employees: case studies of 40 employers. DfEE Research Report No. 56. DfEE. London.

Chapter 10 - Accentuating the Positive

Beck and Woolfson 2000. The Regulation of Health and Safety in Britain: from Old Labour to New Labour. Industrial Relations Journal 31:1 7

Bell 2010. Judicial Enforcement of the Duties on Public Authorities to Promote Equality. Public Law. October 2010.
Available on:
http://agc-wopac.agc.gov.my/e-docs/Journal/0000017928.pdf

Cabinet Office 2012. Red Tape Challenge and Health and Safety.
Available on:
http://www.redtapechallenge.cabinetoffice.gov.uk/health-and-safety/

DRC 2007. Disabled People and the Duty. DRC Guidance. DisabilityRights Commission.
Archived on:
http://webarchive.nationalarchives.gov.uk/20070705125910/http://drc-gb.org/employers_and_service_provider/disability_equality_duty.aspx

Guardian 2008. Harman delivers diluted version of equality bill. Guardian Online 28th June 2008.
Available on:
http://www.guardian.co.uk/society/2008/jun/27/equality.constitution

Guardian 2010. Theresa May scraps equality in the name of fairness. Guardian Online 17 November 2010.
Available on:
http://www.guardian.co.uk/commentisfree/2010/nov/17/theresa-may-scraps-equality-for-fairness

Hepple 2010. The new Single Equality Act in Britain. The Equal Rights Review. Vol 5 2010. Five Equal Rights Trust.
Available on:
www.equalrightstrust.org/ertdocumentbank/bob%20hepple.pdf

Hepple, Coussey and Choudhury. 2000. Equality: A New Framework - Report of the Independent Review of the Enforcement of UK Anti-Discrimination Legislation. Oxford. Hart Publishing.

Higginson. 2008. The Cost of Accidents.
Available on:

http://web-safety.com/Exchange/Downloads/AccidentCosts.ppt

HMSO. 1974 Health and Safety at Work Act. 1974. HMSO.
Available on:
http://www.healthandsafety.co.uk/haswa.htm

Home Office (A) 2012. Ministerial Statement on outcome of red Tape challenge.
Available on:
http://www.homeoffice.gov.uk/publications/about-us/parliamentary-business/written-ministerial-statement/red-tape-reform-ehrc/

Home Office B2012. Third Party Harassment - Consultation Response.
Available on:
http://www.homeoffice.gov.uk/publications/about-us/consultations/third-party-harassment/

Humphrey 2007. The Health and Safety Act 1974. Is it too late to teach old dog new tricks? Policy and Practice in Health and Safety. Issue 1. (17). Institution of Occupational Health

HSC and DRC. 2006. Health and Safety for Disabled People and their Employers. Health and Safety Executive and Disability Rights Commission.
Available on:
http://www.hse.gov.uk/disability

HSE (Health and Safety Executive) 2012. Risk Management- Health and Safety in the workplace.
Available on:
http://www.hse.gov.uk/risk/?

McCrudden, Muttarak, Hamill and Heath 2009. Affirmative Action without Quotas in Northern Ireland. Equal Rights Review. Volume 4, 2009.

Newton, Ormerod and Thomas 2007. Disabled people's experiences in the workplace environment in England. Equal Opportunities International. Vol 26 Issue 6

OFCCP (Office of Federal Contract Compliance Programs (2012. U.S.Department of Labor.
Available on:
http://www.dol.gov/ofccp/

OPSI Office for Public Sector Information. 2005 Disability Discrimination Act 2005. Public Sector Duties. OPSI.
Available on:
http://www.opsi.gov.uk/Acts/acts2005/plain/ukpga_20050013_en_1#pb1-l1g3

O'Cinneide 2006. Thinking About Positive Duties And Positive Action. Extract from Fumbling Towards Coherence: The Slow Evolution of Equality Law in England and Wales' (2006) Northern Ireland Legal Quarterly 57-102.
Available on:
http://www.equalityni.org/archive/event_resources/OCinneideECNIpaper.doc

Pearson, Watson, Stalker, Lerpiniere, Paterson and Ferrie 2011. Don't get involved: an examination of how public sector organisations in England are involving disabled people in the Disability Equality Duty. Disability & Society. Vol 26:3, 255-268

RADAR 2009. Doing the Duty-The Disability Equality Duty – impact so far and legal enforcement. Conference Report 7th January 2009. RADAR.
Available on:
http://www.radar.org.uk/wp-content/uploads/2011/05/DoingtheDutyTranscript.doc

RNIB. 2009. Disability Equality Duty (DDA) for the Public Sector.
Available on:
http://www.rnib.org.uk/livingwithsightloss/moneyandrights/knowingyourrights/disabilitydiscriminationact/Pages/disability_equality_duty.aspx

Wilkes 1999. The British Century: Wilson's Harsh Inheritance. Electronic Telegraph
Available on:
http://www.telegraph.co.uk/property/4812588/Inside-story-5-Lord-North-Street.html

Chapter 11- From Blind Icons to Blind Guilds

Almusa 2004. Blindness in Islam. Paper Presented in CEC Conference 2004 - New Orleans, Louisiana. King Saud University.
Available on:
http://faculty.ksu.edu.sa/10607/doclib5/Blindness%20in%20Islam.docrunning head blindness in Islam

Bashton, Clark, Bainbridge 2002. Inspection of social care services for disabled people. Dorset County Council. Department of Health. Social Services Inspectorate.

Becattini 2003. Henry Fawcett and the Labour Question in mid-Victorian Britain in Goldman Ed The Blind Victorian Henry Fawcett and British Liberalism. Cambridge University Press.

Blunkett and McCormick 1996. On a Clear Day. Michael O'Mara Books Limited.

Crow 2000. Helen Keller: Rethinking the problematic icon. Disability & Society. 15:6, 845-859.

Dixon1891. The Habits of the Blind in Japan, Transactions of the Asiatic Society of Japan,
19(iii).

Farrell 1956. The Story of Blindness (Cambridge, MA, Harvard University Press.

French 1932. From Homer to Helen Keller: A Social and Educational Study of the Blind. American Foundation for the Blind.
Available on:
http://archive.org/details/fromhomertohelen00rich

Hanks 1872. Blindness and the Blind (London, Chapman & Hall).

Matisoff 1978. The Legend of Semimaru, Blind Musician of Japan. Columbia University Press.

Harvey 2003. Henry Fawcett as Professional Politician. In Goldman Ed. The Blind Victorian. Cambridge University Press

Holt 1914. A beacon for the blind being a life of Henry Fawcett the blind postmaster-general. Houghton Mifflin Company

Mannix 1910. Heroes of the Darkness. Partridge & Co..

Miles 2010. Disability on a Different Model: Glimpses of an Asian Heritage. Disability and Society Vol 15 issue 4.

Phillips 2004. The Blind in British Society: Charity, State, and Community. 1780-1930. Ashgate Publishing.

Rubenstein 2003. Victorian feminists: Henry and Millicent Garrett Fawcett, in Goldman Ed. The Blind Victorian: Henry Fawcett and British Liberalism. Cambridge University Press.

Stephens 1885. Life of Henry Fawcett. Cambridge Library Collection.
Full text available on:
http://www.archive.org/details/cu31924028315426

West 1991. The Rise of the State in Education Policy. The Centre for Independent Studies Autumn 1991.
Available on:
Http://research.ncl.ac.uk/egwest/test/test/egwest/pdf/education%20and%20the%20state/Independent1.pdf

Vaughan 1988. Self-determination of Blind Workers in Chinese guilds. The Braille Monitor. Vol. 31, No. 3 April, 1988. National Federation of the Blind.
Available on:
Http://www.nfb.org/images/nfb/publications/bm/bm88/brlm8804.htm#18

Wheatley 2010. Medieval Constructions of Blindness in France and England. In Davies Ed. 2010. The Disability Studies Reader. Routledge.

Yoshimoto. (1908) Past, present, and future of the blind in Japan, in: Report of the Second Triennial International Conference on the Blind and Exhibition, Manchester, July 24th1908.
Available on:
http://migel.aph.org/product/Report-of-the-Second-Triennial-International-Conference-on-the-Blind-and-Exhibition-held-at-the-Central-Hall-Manchester-July-24th-25th-27th-28th-29th-30th-31st-and-August-1st-1908-1908,14828.aspx?FormatFilter=7

Chapter 12 - Jack of all Trades?

Abberley. 1987. The Concept of Oppression and the Development of a Social Theory of Disability. Disability, Handicap & Society, Vol. 2, No. 1

Barton and Oliver 2000. The Emerging Field of Disability Studies: A View from Britain. Paper presented at Conference on Disability Studies: A Global Perspective. Washington DC.
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/Oliver/Emerging%20field.pdf

BAILII Undated. Project Management Institute v. Latif [2007] UKEAT 0028_07_1005.
Available on:
http://www.bailii.org/uk/cases/UKEAT/2007/0028_07_1005.html

BBC 1999. BBC News. Education. Disabled students' grants extended. BBC News Report.
Available on:
http://news.bbc.co.uk/2/hi/uk_news/education/558015.stm

Hillage, Williams, and Pollard 1998. Evaluation of Access to Work: Final Report. Institute for Employment Studies (IES), Brighton.

NAO (National Audit Office 2005). Gaining and retaining a job support for disabled people. The Department for Work and Pensions. 13 October 2005

Perkins 2012. History of the Perkins Brailler.
Available on:
http://www.perkins.org/resources/curricular/literacy/brailler-history.html

RNIB 2004. The views of blind and partially sighted users on Access to Work. RNIB.

Sellgren 2010. Disabled students wait for specialist equipment grants. BBC News Online. Friday, 5 February 2010.
Available on:
http://news.bbc.co.uk/1/hi/education/8495290.stm

Bulmer, M. 2002. 'The ethics of social research' in Gilbert N Ed 2008 Researching Social Life. London. Sage.

DA (Disability Alliance UK) 2009. Home Page
Available on:
http://www.disabilityalliance.org/

DMU (De Montfort University Leicester) 2009. Professor Alan Roulstone. De Montfort University.
Available on:
http://www.dmu.ac.uk/research/hls/staff/prof_alan_roulstone.jsp

Duckett, P. and R. Pratt. 2007. The emancipation of visually impaired people in social science research practice. British Journal of Visual Impairment, Vol. 25, No. 1,

DRC – Disability Rights Commission. 2006. "Guidance on matters to be taken into account in determining questions relating to the definition of disability". DRC.
Available on:
http://83.137.212.42/sitearchive/drc/docs/definition_guidance_final.doc

Finch and Lewis 2003. Focus Groups. In Ritchie & Lewis. Ed. 2003. Qualitative Research Practice. Sage.

Finkelstein 1975.Comments on the discussion held between the Union and the Disability Alliance on 22nd November, 1975. Union of the Physically Impaired Against Segregation.
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/finkelstein/UPIAS%20Principles%202.pdf

Hurstfield, Meager, Aston, Davies, Mann, Mitchell, O'Regan and Sinclair 1999. Monitoring the Disability Discrimination Act 1995 (Phase 1). In-house Report 91. Department for Work and Pensions. and Disability Rights Commission.
Available on:
http://www.employmentstudies.co.uk/summary/summary.php?id=1511drc

Hurstfield, Meager, Aston, Davies, Mann, Mitchell and O'Regan 2004. Monitoring the Disability Discrimination Act 1995 (Phase 3). In-house report 91.
Available on:
http://www.employment-studies.co.uk/pubs/summary.php?id=1511drc

DRC (Disability Rights Commission). 2005. Using Your Rights – Settlements and Compensation. DRC.
Available on:
http://83.137.212.42/sitearchive/drc/usingyourrights/employmenttribunalguide/settlement.html

LDA) London Development Agency). 2008. Disability Equality Scheme Progress Report.LDA
Available on:
http://www.lda.org.uk/
Retrieved 13 September 2010).

NAO – National Audit Office 2005. Getting and Retaining a Job. National Audit Office.
Available on:
http://www.nao.org.uk/publications/0506/gaining_and_retaining_a_job.aspx

Pope and Bambra 2005. Has the Disability Discrimination Act closed the employment gap? Disability and Rehabilitation. 2005; 27:1261-1266.

RADAR. 2008. Four decades of parliamentary work for disabled people's rights 1968-2008. RADAR.
Available on:
http://www.radar.org.uk/radarwebsite/RadarFiles/Documents/'A%20celebration%20of%20the%20work%20of%20the%20APPDG'%2040%20years.pdf

Roulstone, Gradwell, Price and Child 2003, Thriving and Surviving at Work, the Policy Press, Bristol,

Ritchie, Lewis and Elam 2003. Designing and Selecting Samples in Ritchie & Lewis (Ed.) 2003. Qualitative Research Practice. Sage

Snape and Spencer2003. Defining Qualitative Research. in Ritchie and Lewis (Ed.) 2003. Qualitative Research Practice. Sage

Shakespeare 2007. Disability Rights and Wrongs. Routledge.

Simkiss 2005. Work Matters: Visual Iimpairment, Disabling Barriers and Employment Options. RNIB.

Terzi 2004. The Social Model of Disability: a Philosophical Critique. Journal of Applied Philosophy, Vol. 21, No. 2

SRA - (Social Research Association). 2003. Ethical Guidelines.
Available on:
http://www.the-sra.org.uk/ethical.htm

Thomas 1992. Working with a Disability: Barriers and Facilitators. Social and Community Planning Research.

Williams 1999. Is anybody there? Critical Realism, Chronic Illness and the Disability Debate, Sociology of Health & Illness Vol. 21, No.6

Yin 1984. Case Study Research. Sage

Chapter 13 - The Business versus the Economic Case

Access to Work 2012. Access to Work - Practical Help at Work: Directgov - Disabled people. Department for Work and Pensions.
Available on:
http://www.direct.gov.uk/en/DisabledPeople/Employmentsupport/WorkSchemesAndProgrammes/DG_4000347

AFB (Action for Blind People) 2011. A Year in Brief. Annual Review - Action for Blind People.
Available on:
http://www.actionforblindpeople.org.uk/about-us/annual-reviews/

BBC 2010. Theresa May shelves 'equality duty' on councils. BBC news Online. 17 November 2010.
Available on:
http://www.bbc.co.uk/news/uk-politics-11771302

BBC 2012. Equality laws to be 'simplified' to ease obligations on business
Available on:
http://www.bbc.co.uk/news/uk-politics-18077013

Dewson, Hill, Meager and Wilson 2009. "Evaluation of Access to Work - Core Evaluation" DWP Research Report 619.
Available on:
http:/research.dwp.gov.uk/asd/asd5/rports2009-2010/rrep619.pdf

Blunkett 2000. On Your Side. The New Welfare State as the Engine of Prosperity. DFEE.

Buckler & Dolowitz2006. Can Fair be Efficient? New Labour Social Liberalism and British Economic Policy. New Political Economy. 9:1 23-38.
Available on:
http://www.direct.gov.uk/en/DisabledPeople/Employmentsupport/WorkSchemesAnd

DCLG (Department for Communities and Local Government) 2007. Discrimination Law Review A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain. Word Version.
Available on:
http://www.communities.gov.uk/publications/communities/frameworkforfairnessconsultation

Disability Employment Coalition 2004. Access to Work for Disabled people. The Disability Employment Coalition.
Available on:
http://www.disabilityalliance.org/access.pdf

DTI (Department for Trade and Industry) 2005.Towards a Business Case for Diversity. The Department of Trade and Industry.

DWFL (Diversity Works for London 2012. Diversity Works for London.
Available on:
http://www.diversityworksforlondon.com/

DWP (Department for Work and Pensions) 2007. Helping people achieve their full potential: Improving Specialist Disability Employment Services Public Consultation. Department for Work and Pensions.
Available on:
http://www.dwp.gov.uk/docs/full-consultation.pdf

DWP 2010. Better Access to Work for Disabled People. Department for Work and Pensions.
Available on:
http://www.dwp.gov.uk/newsroom/press-releases/2010/dec-2010/dwp175-10-091210.shtml

DWP 2012. Official Statistic Access to Work. Department for Work and Pensions.
Available on:
http://statistics.dwp.gov.uk/asd/workingage/index.php?page=atw

EFD (Employers Forum on Disability) 2006. Employer's Update. Employer's Forum on disability.
Available on:
www.employers-forum.co.uk/www/update/summer06/update-summer06.doc

GEO (Government Equality Office) 2010. Equality Act 2010: The Public Sector Equality Duty. Promoting Equality through Transparency. A Consultation. Home Office.
Available on:
http://sta.geo.useconnect.co.uk/PDF/110114%20Promoting%20equality%20through%20transparency%20-%20Summary%20of%20responses.pdf

Guardian 2011. Don't Destroy Remploy - workers stage protest outside Radar's London office. Guardian September 21 2011.
Available on:
http://www.uniteforoursociety.org/blog/entry/dont-destroy-remploy-workers-stage-protest-outside-radars-london-office/

Hillage Williams and Pollard 1998. Evaluation of Access to Work: Final Report. Institute for Employment Studies (IES).

HM Treasury 2011. Budget Speech by Chancellor Gorge Osborne. HM Treasury.
Available on:
http/www.hm-treasury.gov.uk/2011budget_speech.htm

MoJ (Ministry of Justice) 2012. Charging Fees in Employment Tribunals and the Employment Appeal Tribunal - Response to Consultation CP22/2011.
Available on:
http://consult.justice.gov.uk/digital-communications/et-fee-charging-regime-cp22-2011/results/employment-tribunal-fees-consultation-response.pdf

NAO (National Audit Office) 2005. Gaining and Retaining a Job. Support for Visually Impaired people. The National Audit Office.
Available on:
http://www.nao.org.uk/publications/0506/gaining_and_retaining_a_job.aspx

NWDA (North West Development Agency) 2008. Working with Us. North West Development Agency.
Available on:
http://www.nwda.co.uk/working-with-us/working-at-nwda/equality-in-employment.aspx

ONS (Office for National Statistics) 2011. Life Opportunities Survey – Interim Results 2009-2010.
Available on:
www.ons.gov.uk/ons/rel/los/life-opportunities-survey/life-opportunities-survey/index.html

OFPSI (Office for Public Sector Information) 2008. Towards a Fairer Future-The Equality Bill.
Available on:
http://www.equalityhumanrights.com/en/projects/newequalityact/Pages/newequalityact.aspx

Parliament 2009. The Access to Work Scheme. Parliamentary Briefing.UK Parliament.
Available on:
www.publications.parliament.uk/pa/cm200809/cmselect/cmworpen/158/15807.htm

RADAR 2011. Press Release: Urgent Expansion of Work Support for Disabled People Required (Undated).Radar.
Available on:
http://www.radar.org.uk/news/4493/

Ramesh (A) 2012. 35 of 1,000 sacked Remploy workers have found new jobs. The Guardian, Friday 23 November 2012.
Available on:
http://www.guardian.co.uk/society/2012/nov/23/remploy-workers-new-jobs-labour

Ramesh (B) 2012. Equality and Human Rights Commission has workforce halved. Guardian society. 15 May 2012.
Available on:
http://www.guardian.co.uk/society/2012/may/15/equality-human-rights-commission-cuts

RNIB 2004. The Views of Blind and Partially Sighted Users on Access to Work.

Roberts, Heaver. Hill. Rennison, Stafford, Howat, Kelly, Krishnan, Tapp and Thomas 2004. Disability in the Workplace: Employers' and Service Providers' Responses to the Disability Discrimination Act in 2003 and Preparation for 2004 Changes. DWP Report 202. Department of Work and Pensions.
Available on:
http://research.dwp.gov.uk/asd/asd5/rrs2004.asp

Robinson and Emerson 2010. Estimating the Number of People with Co-Occurring Vision and Hearing Impairments in the UK. Centre for Disability Research.
Available on:
http://www.sense.org.uk/about_us/five_year_strategy/deafblind_population

RP (Realising Potential) 2008. Realising Potential hosted by Leonard Cheshire Foundation 2008.
Available on:
www.realisingpotential.org

SEDA (South East Development Agency) 2008. Diversity Means Business. South East Development Agency.
Available on:
http://www.esf.gov.uk/archive/2000_2006_esf_programme/case_studies/case_studies_-_south_east/diversity_means_business.asp

Sellgren 2010. Disabled students wait for specialist equipment grants. BBC News Online. Friday 5 February 2010.
Available on:
http://news.bbc.co.uk/1/hi/education/8495290.stm

Stevens 2007. Employers' Perceptions and Practice in the Employability of Disabled People: a Survey of Companies in South East UK. Disability and Society 17 - 7.

Thornton and Corden 2002. Evaluating the Impact of Access to Work: A Case Study Approach. Department for Work and Pensions.
Available on:
http://php.york.ac.uk/inst/spru/research/summs/impact_atw.php asd5/rports2009-2010/rrep619.pdf

TUDA (Trade Union Disability Alliance) 2006. Access to Work Campaign.
Available on:
http://www.tuda.org.uk/atw.htm

WEU (Women and Equalities Unit) 2003. Business Case for Diversity and Equality. Women and Equalities Unit.
Available on:
www.equalities.gov.uk/research/bus_case_div.pdf

Work Choice 2012. Work Choice - Supporting Disabled People in Employment. Department for Work and Pensions.
Available on:
http://www.direct.gov.uk/en/DisabledPeople/Employmentsupport/workschemesandprogrammes/DG187696

Chapter 14 - Counting the Cost.

Access Economics 2009. Future Sight Loss UK 1: Economic Impact of Partial Sight and Blindness in the UK Adult Population. RNIB.
Available on:
http://www.rnib.org.uk/aboutus/research/reports/prevention/pages/fsluk1.spx

AFBP (Action for Blind People) 2012). Facts and figures around issues of sight loss. Action for Blind People.
Available on:
http://www.actionforblindpeople.org.uk/about-us/media-centre/facts-and-figures-about-issues-around-sight-loss/

Binns, Bunce, Dickinson, Harper, Tudor-Edwards, Woodhouse, Linck, Suttie. Jackson, Lindsay, Wolffsohn, Hughes, and Margrain 2009. Low Vision Service Outcomes. A systematic review. RNIB.
Available on:
www.rnib.org.uk/aboutus/research/reports/2011/lovesme_lit_review.doc

DisabledGo 2011. Government sends 'threatening' Access to Work letters. DisabledGoNnews Blog.
Available on:
http://www.disabledgo.com/blog/tag/access-to-work/

DWP (Department for Work and Pensions) 2007. Helping people achieve their full potential: Improving Specialist Disability Employment Services Public Consultation. Department for Work and Pensions.
Available on:
http://www.dwp.gov.uk/docs/full-consultation.pdf

DWP (Department for Work and Pensions) 2010. Better Access to Work for Disabled People. Department for Work and Pensions.
Available on:
http://www.dwp.gov.uk/newsroom/press-releases/2010/dec-2010/dwp175-10-091210.shtml

DWP 2012. Official Statistic Access to Work. Department for Work and Pensions.
Available on:
http://statistics.dwp.gov.uk/asd/workingage/index.php?page=atw

Economy Watch 2012. UK Agriculture | Economy Watch.
Available on:
http://www.economywatch.com/agriculture/country-wide/uk.html

Emerson and Robertson 2011. The Estimated Prevalence of Visual Impairment among People with Learning Disabilities in the UK.
Available on:
http://www.seeability.org/includes/documents/cm_docs/2011/t/the_estimated_prevelence_of_vi_amoung_pwld_in_the_uk_full_report.pdf

Hanks 1872. Blindness and the Blind (London, Chapman & Hall).

Hillage Williams and Pollard 1998. Evaluation of Access to Work: Final Report. Institute for Employment Studies (IES).

Leonard Cheshire 2009. Disability and the Downturn. Word Version. Leonard Cheshire.
Available on:
http://www.lcdisability.org/?lid=11293

Morris and Smith, 2008. Educational provision for blind and partially sighted children and young people in Britain: RNIB.
Available on:
http://www.rnib.org.uk/aboutus/research/reports/education/pages/educational_provision.aspx

NHS 2011Registered Blind and Partially Sighted People. Year ending 31 March 2011 -England. NHS Information Service.
Available on:
http://www.ic.nhs.uk/pubs/blindpartiallysighted11

Parliament 2009. The Access to Work Scheme. Parliamentary Briefing. UK Parliament.
Available on:
www.publications.parliament.uk/pa/cm200809/cmselect/cmworpen/158/15807.htm

RNIB 2004. The views of blind and partially sighted users on Access to Work. RNIB.

RNIB (a) 2012) Briefing on Employment and Support Allowance. RNIB
Available on:
www.rnib.org.uk/esa

RNIB (B) 2012. Briefing on Personal Independence Payment.
Available on:
www.rnib.org.uk/pip

Roberts, Heaver, Hill, Rennison, Howat, Kelly. Krishnan, Tapp and Thomas, 2004. Disability in the Workplace: Employers' and Service Providers' Responses to the Disability Discrimination Act in 2003 and Preparation for 2004 Changes. DWP Report 202.
Available on:
http://research.dwp.gov.uk/asd/asd5/rrs2004.asp

Robinson and Emerson 2010. Estimating the Number of People with Co-Occurring Vision and Hearing Impairments in the UK. Centre for Disability Research.
Available on:
http://www.sense.org.uk/about_us/five_year_strategy/deafblind_population

SPA (Spinal Injuries Association) 2011. Government sends threatening Access to Work Letters. Spinal Injury Association News.
Available on:
http://www.spinal.co.uk/news/government-access-to-work

Stevens 2007. Employers' Perceptions and Practice in the Employability of Disabled People: A Survey of Companies in South East UK. Disability and Society 17 - 7.

Thornton and Corden 2002. Evaluating the Impact of Access to Work: A Case Study Approach. DWP.
Available on:
http://php.york.ac.uk/inst/spru/research/summs/impact_atw.php asd5/rports2009-2010/rrep619.pdf

TUDA (Trade Union Disability Alliance) 2006. Access to Work Campaign.
Available on:
http://www.tuda.org.uk/atw.htm

Work Choice 2012. Work Choice - Supporting Disabled People in employment.
Available on:
http://www.direct.gov.uk/en/DisabledPeople/Employmentsupport/workschemesandprogrammes/DG_187696

Chapter 15 - From Subversion to Perversion

BBC 2007. Tougher Work Tests For Disabled. BBC News Online Monday, 19 November 2007.
Available on:
http://news.bbc.co.uk/1/hi/uk/7101106.stm

BBC Ouch (A) 2012. Talk - Disability Studies University.
Available on:
http://www.bbc.co.uk/ouch/messageboards/nf2322273?thread=4857384

BBC Ouch (B) 2012. Tom Shakespeare.
Available on:
http://www.bbc.co.uk/ouch/writers/tomshakespeare.shtml

Black Triangle 2012. Black Triangle and DPAC confront Professor Mansel Aylward at Ifdm 2012 Imperial College London. Black Triangle Campaign.
Available on:
http://blacktrianglecampaign.org/2012/09/11/black-triangle-and-dpac-confront-Professor-Mansel-Aylward-At-Ifdm2012-Imperial-College-London/

Biomedical Me 2011. Unum Is Still Doing It To The Disabled. Blog Saturday, January 15, 2011.
Available on:
http://biomedicalmecfs.blogspot.co.uk/2011/01/unum-is-still-doing-it-to-disabled.html

Birmingham Council Undated. Involving Disabled People in developing a Disability Equality Scheme
Available on:
http://www.birmingham.gov.uk/cs/Satellite?blobcol=urldata&blobheader=application%2Fmsword&blobheadername1=Content-Disposition&blobkey=id&blobtable=MungoBlobs&blobwhere=1223398693113&ssbinary=true&blobheadervalue1=attachment%3B+filename%3D596977Involving_disabled_people_for_web.doc

Civil Exchange 2012. The Big Society Audit 2012.
Available on:
http://www.civilexchange.org.uk/the-big-society-audit

Consumer Affairs 2003. California Doctor Wins $31 Million in Suit against Unum Provident.
Available on:
http://www.consumeraffairs.com/news03/unum_verdict.html

Garland-Thomson2002. Integrating Disability, Transforming Feminist Theory. NWSA Journal, Vol. 14 No. 3. National Women's Studies Association.

DSpeech 2013. DSpeech Text to Speech conversion tool. Freeware.
Available from:
http://www.jaws-users.com/programs/Utilities/dspeech.zip

Guide Dogs 2011. Say No To Shared Streets.
Available on:
http://gdbass.netefficiency.co.uk/index.php?id=307

Hall 2002. Feminism, Disability, and Embodiment - Introduction. NWSA Journal, Vol. 14 No. 3. National Women's Studies Association.

Halligan, Bass and Oakley (Ed) 2001. Malingering and Illness Perception. Oxford University Press.
Available on:
http://www.afteratos.com/wp-content/uploads/2011/11/malingering_and_illness_deception.pdf

Hansard 2008. House of Commons Hansard Debates for 13 Mar 2008 (Pt 0009). UK Parliament.
Available on:
http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080313/debtext/80313-0009.htm

Hansard 2012. Lords Hansard Text for 17 Jan 201217 Jan 2012 (Pt 0002). UK Parliament.
Available on:
http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120117-0002.htm

Hughes & Paterson 1997. The Social Model of Disability and the Disappearing Body: Towards a Sociology of Impairment. Disability & Society. Vol. 12, N O. 3, Pp. 325 - 340

Jolly 2012. A Tale of Two Models. Leeds University Disability Studies Archive.
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/jolly/a%20tale%20of%20two%20models%20leeds1.pdf

Cavey 2012. Florida Unum Disability Claims. Unum Disability Denial Facts. Cavey Law.
Available on:
http://www.caveylaw.com/florida-unum-disability-claims-unum-disability-denial-facts/

LII (Legal Information Institute 2012. 29 Cfr 1605.2 - Reasonable Accommodation without Undue Hardship as Required by Section 701(J) of Title Vii of the Civil Rights Act Of 1964,
Available on:
http://www.law.cornell.edu/cfr/text/29/1605.2

Mclaren2004. The Biopsychosocial Model and Scientific Fraud. Paper Presented To RANZ Congress, Christchurch NZ May 2004.

Morris 1990. Pride against Prejudice: Transforming Attitudes to Disability: A Personal Politics of Disability. New Society.

Morris 2001. Impairment and Disability: constructing an ethics of care which promotes human rights. Leeds University Disability Studies Archive.
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/morris/constructing%20an%20ethics%20of%20care%20which%20promotes%20human%20rights.pdf

Morris 2011. Rethinking Disability Policy.
Available on:
http://www.inclusionlondon.co.uk/rethinking-disability-policy?device=mobile

Oliver 1990. The Individual and Social Models Of Disability. Leeds University Disability Studies Archive.

Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/oliver/in%20soc%20dis.pdf

RNIB 2012. RNIB IVONA voice CD – Amy. RNIB Shop.
Infomation available on:
http://www. rnib.org.uk/shop/Pages/ProductDetails.aspx?productID=ht26601

Rutherford 2012. New Labour, the Market State and the End of Welfare. In Soundings (eBook). Davison & Rutherford (Ed) 2012. Welfare Reform the Dread of Things to Come.
Available on:
http://www.lwbooks.co.uk/ebooks/welfarereform.html

Shakespeare 2002. The Social Model of Disability. An Outdated Ideology. Research in Social Science and Disability' Volume 2, Pp. 9-28

Shakespeare 2007. Disability Rights and Wrongs. Routledge.

Shakespeare 2009. Tom Shakespeare: The Government's failure to ratify the Convention on the Rights of Persons with Disabilities is shameful. Guardian Online. Monday 5 January 2009
Available on:
http://www.guardian.co.uk/commentisfree/2009/jan/05/convention-rights-disabilities-uk-ratification

Swain, French, Barnes and Thomas 1993. Disabling Barriers, Enabling Environments. Sage Publication.

Terzi 2004. The Social Model of Disability, a Philosophical Critique. Journal of Applied Philosophy, Vol. 21, No. 2

Thomas 1999. Female Forms: Experiencing and Understanding Disability. Buckingham. Open University Press.

Thomas 2007. Sociologies of Disability and Illness. The Body Lost and Found Chapter 5 in Contested Ideas in Disability Studies and Medical Sociology. Basingstoke: Palgrave Macmillan.

Turner 2001. Disability and the Sociology of the Body. In Albrecht, Delores, Seelman, and Bury (Ed). Handbook Of Disability Studies. Sage Publications.

Waltham Forest 2011. Inclusive Design for Non Residential Buildings - Waltham Forest Council.
Available on:
http://www.walthamforest.gov.uk/documents/inclusive-design-planning-non-residential.pdf

WHO (World Health Organisation 2002). Towards A Common Language For Functioning, Disability and Health.
Available on:
http://www.who.int/classifications/icf/training/icfbeginnersguide.pdf

WHO 2012. Tom Shakespeare. Violence and Injury Prevention.
Available on:
http://www.who.int/violence_injury_prevention/about/whos_who/shakespeare/en/index.html

Wilkinson 2009. Defying Disability: The Lives and Legacies of Nine Disabled Leaders. Jessica Kingsley.

Williams 1999. Is Anybody There? Critical Realism, Chronic Illness and the Disability Debate. Sociology of Health & Illness Vol. 21, No.6

Chapter 16 - Human Rights, Capabilities and the Social Model

ASCH 2001. Disability, Bioethics and Human Rights. In Albrecht (d) Delores Seelman (Ed), Bury (Ed) Handbook of disability studies. Sage Publications.

BAILII ((British and Ireland Legal Information Institute) A) Undated. Purdy, R (on the application of) v Director of Public Prosecutions [2009] UKHL 45 (30 July 2009).
Available on:
http://www.bailii.org/uk/cases/UKHL/2009/45.html

BAILII (B) Undated. McDonald, R (on the application of) v Royal Borough of Kensington and Chelsea [2011] UKSC 33 (6 July 2011).
Available on:
http://www.bailii.org/uk/cases/UKSC/2011/33.html

BAILII (C) Undated. Cordell v Foreign and Commonwealth Office (Disability Discrimination): Reasonable adjustments) [[2011] UKEAT 0016_11_0510 (5 October.
Available on:
http://www.bailii.org/uk/cases/UKEAT/2011/0016_11_0510.html

Cragg 2009. A Victory for Human Rights. Guardian Online Thursday 30 July 2009.
Available on:
http://www.guardian.ico.uk/commentisfree/libertycentral/2009/jul/30/debbie-purdy-human-rights.

Cram 2005. Hate Speech and Disabled People: Some Comparative Constitutional Thoughts. In Lawson (Ed) and Gooding (Ed). Disability Rights in Europe from Theory to Practice. Chapter 5 Hart Publishing.

DAIA (Disability Awareness in Action) 2003. A Real Horror Story - The Abuse of Disabled People's Human Rights.
Available on:
http://www.disabilityworld.org/04-05_03/violence/horrorstory

Bickenbach 2001. Disability Human Rights Law and Policy. In Albrecht ((d) Delores Seelman (Ed), Bury (Ed) Handbook of Disability Studies. Sage Publications.

DPI 2003. Report of the Disability Human Rights Network 1999/2000.Leeds University Disability Studies Archive:
Available on:
http://www.leeds.ac.uk/disability-studies/archiveuk/titles.html

Fredman 2001. Discrimination Law. Oxford University Press.

Grant 2007. Equality and Dignity. Human Rights Law Review 7:2. Oxford University Press.

Heap, Lorenzo & Thomas 2009. 'We've moved away from disability as a health issue, it's a human rights issue': reflecting on 10 years of the right to equality in South Africa. Disability and Society. 24:7, 857-868

Hunt 2012. A Toolkit for the Disability Rights Convention. World Blind Union.
Available on:
http://www.worldblindunion.org/English/resources/Pages/Toolkits.aspx

Hirsch 2009. Debbie Purdy wins 'significant legal victory' on assisted suicide. Guardian Society Online. Thursday 30 July 2009.
Available on:
http://www.guardian.co.uk/society/2009/jul/30/debbie-purdy-assisted-suicide-legal-victory

Jarret 2008. 3.Report on Verbal and Physical Abuse Towards Blind and Partially Sighted People across the UK. Action for Blind People.
Available on:
http://static.actionforblindpeople.org.uk/files/summary-of-findings-646.pdf

Hobbes 1651. Leviathan. e text downloaded from Project Gutenberg. Formatted into normal.dot in Microsoft Word.
Available on:
www.butenberg.org

Kant 1781. A Critique of Pure Reason. e text downloaded from Project Gutenberg. Gutenberg Introductory text removed and formatted in default nomal.dot Microsoft Word document.
Available on:
www.butenberg.org

K&CC (Kensington and Chelsea Council 2011. Statement on MacDonald Case.
Available on:
http://www.rbkc.gov.uk/newsroom/allcouncilstatements/mcdonaldcasestatement.aspx

Law Commission 2011. Adult Social Care. Law CommissionReport.
Available on:
http://lawcommission.justice.gov.uk/publications/1460.htm

Locke 1768. Two Treatises of Government. e text downloaded from project Gutenberg. Gutenburg introductory text removed and formatted in default nomal.dot Microsoft Word format.
Available on:
www.butenberg.org

LPC (Low Pay Commission 2012. National Minimum Wage - Report 2012.
Available on:
http://www.lowpay.gov.uk/lowpay/report/pdf/2012_Report.pdf

Macintyre 2001. Dependent Rational Animals - Why Human Beings Need the Virtues. Open Court Publishing.

Mercer and MacDonald 2012. Disability and Human Rights. Lancet Online.
Available on:
http://www.lancet.com/journals/lancet/article/PIIS0140-6736 (07)61272-0/fulltexteventId=login

NCD 2003. UN Disability Convention - Topics at a Glance.
Available on:
http://www.ncd.gov/newsroom/publications/2003/history_process.htm

Nussbaum 2006. Frontiers of Justice- Disability, Nationality, Species Membership. Harvard University Press.

ODI (Office for Disability Issues) 2008. UN- Frequently Asked Questions. Office for Disability Issues.
Available on:
http://www.officefordisability.gov.uk/working/unfaqsdetails.asp

ODI (Office for Disability Issues) 2012. Disabled People and Legislation. UN Convention on the Rights of Disabled People.
Available on:
http://odi.dwp.gov.uk/disabled-people-and-legislation/un-convention-on-the-rights-of-disabled-people.php

OHCR 1976. International Covenant on Civil and Political Rights. Office of the High Commissioner for Human Rights. 1976.
Available on:
http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

Parliament 2008. The UN Convention on the Rights of Persons with Disabilities. First Report of Session 2008-09 Report, together with formal minutes and oral and written evidence ordered by The House of Lords to be printed 16 December Joint Committee on Human Rights. 2008.
Available on:
http://www.publications.parliament.uk/pa/jt200809/jtselect/jtrights/9/9.pdf

Rawls 1971. A Theory of Justice. Harvard University Press.

RADAR 2008. Four decades of parliamentary work for disabled people's rights 1968-2008.Radar.
Available on:
http://www.radar.org.uk/radarwebsite/RadarFiles/Documents/'A%20celebration%20of%20the%20work%20of%20the%20APPDG'%2040%20years.pdf

Sen 2009. The Idea of Justice. Harvard University Press.

Shakespeare 2009. Tom Shakespeare: The Government's Failure to Ratify the Convention on the Rights of Persons with Disabilities is shameful. Guardian Online. Monday 5 January 2009
Available on:
http://www.guardian.co.uk/commentisfree/2009/jan/05/convention-rights-disabilities-

Sin, Hedges, Cook, Mguni and Comber 2009. Disabled people's experiences of targeted violence and hostility. Research report: 21. Equality and Human Rights Commission.
Available on:
www.equalityhumanrights.com/researchreports.

Stein 2007. Disability Human Rights. California Law Review, Vol. 95 2007.

UN 1994. General Comment 5 - Persons with disabilities. United Nations.
Available on:
http://www.unhchr.ch/tbs/doc.nsf/0/4b0c449a9ab4ff72c12563ed0054f17d

Chapter 17- Beyond Dignity - Towards a New Politics of Disablement

Barnes and Oliver 2012.The new Politics of Disablement. Palgrave Macmillan

Browne and Levell 2012. The distributional effect of tax and benefit reforms to be introduced between June 2010 and April 2014: a revised assessment. Institute for Fiscal Studies.
Available on:
www.ifs.org.uk/publications/5246

Cabinet Office 2012. Red Tape Challenge - Equalities.
Available on:
http://www.redtapechallenge.cabinetoffice.gov.uk/themehome/equalities-act/

Cahoone 1996. From Modernism to Postmodernism: An Anthology. Blackwell.

Costic 2004. Deconstruction of the Law.
Available on:
http://media.www.americanjurist.net/media/storage/paper654/news/2004/11/09/Perspectives/Deconstruction.Of.The.Law-787328.html

Derrida 1993. Memoirs of the Blind: The Self-Portrait and Other Ruins. The University of Chicago Press.

Derrida and Cornell 1992. Force of Law: The Mystical Foundation of Authority. Deconstruction & the Possibility of Justice. Routledge.

Engels 1845. The condition of the working classes in England - Single branches of industry.
Available on:
http://www.marxists.org/archive/marx/works/1845/condition-working-class/ch08.htm

ETS (Employment Tribunal Service) 2012. Employment Tribunal Service Statistics 2010-2011. Employment Tribunal Service.
Available on:
http://www.justice.gov.uk/downloads/statistics/mojstats/employment-trib-stats-april-march-2010-11.pdf/

Finkelstein 2001. A Personal Journey into Disability Politics.
Available on:
http://www.independentliving.org/docs3/finkelstein01a.html

Foucault 1991. Discipline & Punish: The Birth of the Prison. Penguin.

Foucault 1962. Madness and Civilisation: A History of Insanity in the Age of Reason. Routledge (edition published 2001).

Fredman 2002. Discrimination Law. Oxford University Press.

Goffman 1963. Stigma. Notes on the Management of Spoilt Identity. Penguin Books edition published 1990.

Grene 1971. Sartre and the Other. Proceedings and Addresses of the American Philosophical Association. Vol. 45, (1971 - 1972), pp. 22-41.

Hardest Hit 2012. Tipping Point Report.
Available on:
http://thehardesthit.wordpress.com/our-message/the-tipping-point/

Hunt 1966. A Critical Condition. Archived on the Leeds University Disability Studies site.
Available on:
http://www.disabilityarchive.leeds.ac.uk/authors_list.asp?AuthorID=89&author_name=Hunt%2C+Paul

Jeffries 2012. Why Marxism is on the rise again. Guardian Online. The Guardian, Wednesday 4 July 2012.
Available on:
http://www.guardian.co.uk/world/2012/jul/04/the-return-of-marxism

Knight 1998. The Macintyre Reader. Notre Dame. University of Notre Dame Press.

Knight 2007. Aristotelian Philosophy: Ethics and Politics from Aristotle to Macintyre. Polity Press.

Lodders2008. Between Violence and Law, Is There a Place for Justice?
Available on:
http://www.arts.monash.edu.au/ecps/colloquy/journal/issue016/lodders.pdf

Macintyre 2001. Dependent Rational Animals - Why Human Beings Need the Virtues. Open Court Publishing.

MoJ (Ministry of Justice) 2012. Social Security and Child Support Statistics Statistics on the activity of the Social Security and Child Support (SSCS) Tribunal 1 April 2011 to 31 October 2011.
Available on:
http://www.justice.gov.uk/statistics/tribunals/sscs-stats

Oliver 1996. Understanding disability: from theory to practice. Basingstoke: Macmillan.

O'Ryan 2010. The Making of a King of Jorge Luis Borges as an Argentine Cultural Icon submitted to the University of Manchester for the Degree of PhD in the Faculty of Humanities 2010

Mariana Casale O'Ryan School of Languages Linguistics and Cultures.
Available on:
https://www.escholar.manchester.ac.uk/api/datastream?publicationPid=uk-ac-man-scw:96315&datastreamId=full-text.pgf

Sartre 1943. Being and Nothingness. Washington Square Press.

Liggett 1988. Stars Are Not Born – An Interpretative Approach to the Politics of Disability.
Available on:
http://www.leeds.ac.uk/disabilitystudies/archiveuk/liggett/chapter11.pdf

Conclusion

Barnes and Oliver 2012.The new Politics of Disablement. Palgrave Macmillan

BBC 2013. Charities 'gagged from speaking out'. BBC News Online. 22 January 2013.
Available on:
http://www.newsrt.co.uk/news/charities-gagged-from-speaking-out-by-government-1155443.html

Duffy 2012. A Fair Society? How the cuts target disabled people. Campaign for a Fair Society.
Available on:
http://www.centreforwelfarereform.org/uploads/attachment/354/a-fair-society.pdf

RNIB 2013. RNIB wins concessions on key disability benefit.
Available on:
http://www.rnib.org.uk/aboutus/contactdetails/scotland/scotlandnews/Pages/pip_regs.aspx

Wigglesworth 2012. Charities in crisis as austerity bites - FT.com. April 1, 2012.
Available on:
http://www.ft.com/cms/s/0/be15e318-7c26-11e1-9100-00144feab49a.html#axzz2LR8yTbpY