

BETWEEN EQUALITY AND DIFFERENCE: THE POLITICS OF DISABILITY IN JAPAN

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1. INTRODUCTION: LEGISLATING EQUALITY FOR PEOPLE WITH DISABILITIES

When U.S. President Bush signed the Americans With Disabilities Act (ADA) in 1990, he heralded it as the “world’s first comprehensive declaration of equality for people with disabilities”, and suggested that other countries, such as the European Union, Sweden, Russia and Japan, would soon follow suit (BURGDORF 1998: 3). This image of the United States as the world leader in disability rights and anti-discrimination legislation is problematic. Clearly, the ADA has served as an inspiration and model for the Disability Discrimination Acts of Australia (1992) and Great Britain (1995), as well as New Zealand’s Human Rights Act (1993), and has inspired movements worldwide in its interpretation of disability as a civil rights issue². We need to keep in mind, however, that approaches to legislating equality for people with disabilities are deeply embedded in political and social norms and assumptions about the meanings of disability and equality, as well as notions of how best to respond to different needs through the equality doctrine.

Two basic approaches emerge: one that guarantees equality of opportunity by outlawing discrimination (the ADA approach) and the other that aims for equality of results by emphasizing special needs and mandating quotas (the European and Japanese approach). In general terms, the ADA equal treatment approach views disability from a civil rights perspective and mandates neutrality, or “blind justice”, in decisions regarding protected groups (PERCY 1989: 245). The traditional European and Japanese approach, in contrast, emphasizes the need to protect difference and analyzes disability as a category that must be given special considerations and state assistance. It responds to the catastrophically high unemployment rates for people with disabilities with employment

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² The Canadian Human Rights Act has prohibited disability discrimination since 1985.

quotas, while the ADA outlaws employment discrimination per se. (WADDINGTON 1996: 62). Many European countries are now trying to blend these two approaches, combining quota systems with basic anti-discrimination legislation³.

1.1. *The International Year of Disabled People: "Full Participation and Equality"*

The passage of the ADA came at a moment when people with disabilities all over the world were forming political and social movements to draw attention to the ways societies stigmatize embodied difference and discriminate against people with mental and physical disabilities. It pointed to the shift in international thinking about disability policy away from welfare and medicine and towards independent living and equal rights. This new way of thinking became an international doctrine through the workings of the United Nations. In 1981 the United Nations declared the International Year of Disabled Persons (IYDP) to mark the beginning of the International Decade of Disabled Persons (1983–1992), both under the motto of "full participation and equality". This motto emphasized the importance of equal rights, social integration, independent living, and government responsibility to combat discrimination against people with disabilities (DEGENER 1995: 10). At the end of this decade the UN Economic and Social Commission on Asia and the Pacific decided that more work needed to be done in that area and declared 1993 to 2003 the UN Decade of Disabled Persons in Asia.

This paper will assess the impact of the UN equality and integration mandate on Japanese disability policy and activism. It has forced the Japanese government to adopt principles aimed at "normalizing" the lives of its disabled population and revise the majority of its disability legislation. At heart, however, Japanese disability policy and legislation are firmly rooted in what I will term the *fukushi* [welfare] model. This model recog-

³ Germany, for example, amended Article 3 of its basic law to include disability in its non-discrimination and equal opportunity clause ("Nobody shall be discriminated against because of disability" Art. 3 (3) *Grundgesetz*). This amendment was added by the *Bundestag* in December 1994 following extensive lobbying by the disability community to change the government's social care policy to one of civil rights which would empower disabled people to lead a self-determined life. Discussion in Germany is now centered on an equal rights act which would clearly define the group of beneficiaries and offer definitions of disability and discrimination, thus truly making the nondiscrimination principle part of German legal culture.

nizes special needs through sophisticated welfare and rehabilitation institutions separate from the rest of society. This recognition of difference, however, comes at the expense of equal rights and integration as mandated by the United Nations.

In contrast, the UN equality mandate invigorated part of the disability movement to shift its demands from welfare to rights and representation. The Japanese disability movement had successfully organized itself around the assertion of “special needs”, which resulted in welfare policies based on well developed but still segregated facilities. It now finds itself working towards a *kenri* [rights] model that demands full participation and integration at all levels of society.

The first part of this paper will give an overview of some of the theoretical considerations important for a discussion of disability rights. I will review the basic premises of the equality versus difference debate and then link it to disability theory, where it is reflected in the contrast between the medical and social models of disability. The second part of this paper will apply these theoretical considerations to the Japanese case by outlining the development of Japanese disability law and policy and its incorporation of the United Nations equality doctrine. The third part of this paper will analyze the way the Japanese disability movement has responded to these policies and to the UN mandate. I will argue that the movement is dividing itself into an older generation that orients itself along the rehabilitation and welfare model and a newer generation that argues for rights and integration. This new generation of activists draws on the American disability movement as an inspiration for political activism and disability pride, and on European disability policies as a model for progressive social legislation. In both cases, the emphasis on equality leads to the question of how equality is defined in a Japanese context, and how equality can be legislated for people with disabilities in Japan. Finally, this paper will consider the implications of this new development in disability law and activism for our understanding of the role of rights and the law in Japanese society.

1.2. Equality and Disability Rights: the Difference Dilemma

One of the central theoretical dilemmas surrounding identity movements is summarized by what legal theorist MINOW (1990: 20) terms the “dilemma of difference”. Minow asks, “When does treating people differently emphasize their differences and stigmatize or hinder them on that basis? And when does treating people the same become insensitive to their difference and likely to stigmatize or hinder them on *that* basis?”

Our assumptions about the meanings of difference form a dilemma; by ignoring or by focusing on difference we risk re-creating and thus re-stigmatizing it.

Minow's difference dilemma is based on the recognition that conventional notions of equality and difference function as comparative terms ("different to whom? equal to whom?") which revolve around an unacknowledged norm. Differences, after all, are not intrinsic but are comparisons among people. This means that people with disabilities differ from those who are non-disabled only on the basis of an unstated able-bodied norm which, for example, uses the voice to communicate, rather than the hands, or the legs to move, instead of a wheelchair, etc. Ignoring difference leaves in place a false sense of neutrality which may recognize that people with disabilities have similar motivations to work, study, commute, and raise families, but which does not take their different needs into account. At the same time, focusing on their difference risks repeating the stigma and limiting assumptions about disability. The difference dilemma has forced subordinated groups into a divided agenda, caught between proving their sameness, which becomes the basis of their equal treatment, and identifying their difference.

1.3. Disability Theory: Medical and Social Models

A look at the literature in the disability field reflects this dilemma. The early literature revolved around the medical model, which focused on cures, treatment, and rehabilitation for what were considered ailments and abnormalities, at the expense of seeing people with disabilities as a political group with a history of discrimination. People with disabilities were considered flawed individuals, with ailments that were to be feared and pitied, who could not be expected or allowed to fulfill social obligations such as working and parenting. Although medicalization played an important role in managing the lives of people with disabilities, it also tended to reinforce their dependent and sick role (FINKELESTEIN (1980: 5).

The growing movement toward independent living and self-determination has now subverted the difference-based medical model in favor of positive identity, dignity, and pride. While disability difference has led to marginalization and discrimination, it is now becoming a source of identity and resistance. An emerging social and political model looks at disability from a civil rights perspective by analyzing disability as a social construction. Disability theorists and activists question common interpretations of disability as physical inferiority and recast it instead in an-

other form of embodied difference which, like race and gender, has traditionally been interpreted as inferior⁴.

This shift of thinking about disability away from cures, treatment, and charity towards access, equal opportunities, and rights has invigorated and strengthened the political aspects of the disability movement. After all, it is not the inability to maneuver a flight of stairs that disables a person using a wheelchair but rather the absence of ramps. In that sense, the social model counteracts the medical model's preoccupation with embodied difference, and the notion of deviance and stigma associated with it, and replaces it with the equality doctrine's basic demand for neutrality and equal treatment.

The new literature on disability therefore makes a central distinction between 'impairment' and 'disability'. Impairment is the functional limitation within an individual caused by physical, mental or sensory impairment. Disability, in contrast, is the loss or limitation of opportunities to take part in the life of the community on an equal level with others due to social or physical barriers. Disability, therefore, encompasses the way non-disabled norms, as well as lack of access, limits the lives and potential of people with disabilities. The focus of the medical model is on the impairment which resides within the person. The social model shifts the focus away from the person and towards society which needs to 'heal' discriminatory norms and assumptions just as much as doctors need to heal shattered limbs.

Just as equality cannot be conceived without an acknowledgement of difference, however, disability cannot deny the physical experience of impairment. Disability theorists influenced by feminist theory have criticized the social model of disability for focusing too much on the workings of non-disabled norms and socially created barriers leading to the

⁴ BARTON, Len (ed.) (1996): *Disability & Society: Emerging Issues and Insights*. London: Longman; CAMPBELL, Jane and Mike OLIVER (1996): *Disability Politics: Understanding Our Past, Changing Our Future*. London: Routledge; CORKER, Mairian (1998): *Deaf and Disabled, or Deafness Disabled?* Philadelphia: Open University Press; DAVIS, Lennard (1995): *Enforcing Normalcy: Disability, Deafness, and the Body*. London: Verso; FINE, Michelle and Adrienne ASH (eds.) (1988): *Women with Disabilities*. Philadelphia: Temple University Press; LINTON, Simi (1998): *Claiming Disability*. New York: NYU Press; MORRIS, Jennifer (1991): *Pride Against Prejudice*. London: Women's Press; OLIVER, Mike (1996): *Understanding Disability*. Basingstoke: Macmillian; SHAKESPEARE, Tom *et al.* (eds.) (1996): *The Sexual Politics of Disability*. London: Cassell; ZOLA, Irving (1982): *Missing Pieces: A Chronicle of Living with a Disability*. Philadelphia: Temple University Press.

exclusion of people with disabilities⁵. With its exclusive focus on the social aspect, they argue, the social theory of disability ignores personal experiences of impairment and disability, such as illness, pain, connections with the non-disabled world, and the fear of dying. The recognition that 'the personal is political', which forms part of the foundation of feminist theory and practice, also applies to social disability theory in that it must find its roots in the personal experiences of disabled people. The importance of recognizing social prejudice and pointing to its failure to meet the needs created by disability cannot come at the cost of denying personal experiences of disability. Disability theory faces the challenge of making social theories more inclusive to personal experience and transcending the 'either-or' dichotomy the physical and the environmental.

2. JAPANESE DISABILITY POLITICS – THE WELFARE MODEL

In Japanese, disability is translated as *shōgai*, literally “barrier”, which could be seen to reflect either model (personal or social), little theoretical attention has been given to this word choice. Japanese law defines a person with a disability as someone “whose daily life or life in society is substantially limited over the long term due to a physical disability, mental retardation, or mental disability” (*Shōgaisha kihonhō* Art. 1 (2))⁶. This definition closely follows that of the ADA, which states that “a disability is a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or, being regarded as having such an impairment”⁷.

The Japanese Prime Minister's office publishes yearly surveys in a disability white paper (*shōgaisha hakushō*). In 1998 it counted a total of 5.7 million disabled Japanese, of which 3.17 million have a physical disability

⁵ MORRIS, Jenny (ed.) (1996): *Encounters with Strangers: Feminism and Disability*. London: Women's Press; FRENCH, Sally: Disability, Impairment or Something In-between? In: SWAIN, John *et al.* (eds.) (1993): *Disabling Barriers – Enabling Environments*. London: Sage Publications, pp. 17–25.

⁶ For the full text of all disability laws cited in this paper see <http://www.dinf.ne.jp/doc/law/jsrd/z00002/z00002.htm> (found: 8.8.1998).

⁷ In fact, English language terminology is very influential. The term “rehabilitation”, for example, has been imported directly after many failed attempts of trying to find Japanese equivalents. *Kōsei*, “rebirth”, or *shakai fukki*, “social integration”, were rejected as alternatives for not coming close enough to the concept of medical and vocational rehabilitation. Other *katakana* imports from the English language are ‘integration’, ‘inclusion’ and ‘normalization’.

(*shintai shōgai*), 400,000 have an intellectual disability (*chiteki shōgai*)⁸, and 2.17 million have a psychiatric disability (*seishin shōgai*) (*Shōgaisha hakusho* 1998: 251). This is considered to be a low percentage (5%) of the general population in comparison to other countries (10% in Germany and the UK, over 30% in Sweden). These differences can be explained by the strict limitations of the types of disabilities recognized by law: they are itemized by type and severity (on a grade level from one to six) on a closed list attached to the legal text. This list recognizes disabilities in heart, liver, and kidney functions but very few other internal disorders. AIDS or HIV-infection, alcohol or chemical dependency, and non-permanent disabilities, such as temporary use of a wheelchair, are not recognized, nor are rheumatism and a host of psychiatric disabilities.

Another explanation for the low percentage is that official surveys only include those people carrying a *shōgaisha techō*, a disability handbook, which lists the name, type, and severity of the individual's disability. Carrying this card is not a requirement, but it is the only way to receive a host of welfare and tax benefits. These benefits include reductions in income tax and exemption from other taxes, subsidies in electronic or mechanical aids, discounts on postage and public transportation, public housing and public assistance, among others. Students attending special schools are encouraged to apply for a handbook, as are job seekers at their local public employment security office, because only handbook owners will count for a company's legal employment quota. Disability activists have criticized the stigma associated with these handbooks, and many of them refuse to carry one.

2.1. Education Policy: Different Worlds

This paper argues that Japanese disability policy continues to respond to the very urgent and special needs of people with disabilities by creating sophisticated yet separate facilities. From a very early age people with disabilities inhabit a separate world. This world is well equipped to respond to their needs but not to their desire to become part of the regular, non-disabled world. The vast majority of students with disabilities are educated in special schools (*yōgō gakkō*) and later employed in private or government-run sheltered workshops (*jusan shisetsu*) or social welfare companies (*fuku-*

⁸ The term "intellectual disability" is slowly replacing the official term "mental retardation" (*seishin hakujakusha*) which is considered to be derogatory and discriminatory by most activists.

shi kōjō). They tend to live at home, if their parents are still alive, in institutions, or in group homes.

Parents fought a long and ultimately successful struggle for basic education rights in the 1970s. Only children with visual or hearing disabilities were subject to compulsory education (which runs until junior high school) after 1948. Special education for children with other physical or mental disabilities did not become compulsory until 1979 (OKUTSU 1997: 64). The struggles of parent groups did not end there; today they are calling for the right to access high school education, something which is often denied to students who are academically qualified but whose inability to fulfill physical education requirements or access school grounds is often used as a reason not to admit them. A typical case involved a student with muscular dystrophy who scored in the upper 10% on the entrance examination of Amagasaki Public High School. The school principle refused to enroll him for not being able to fulfill the gym requirement and because he might endanger himself using a wheelchair on school property. The case went to court in 1991 and the student was admitted to the school. (MOGI 1992: 443).

The Education Ministry is still lukewarm about mainstreaming disabled children into regular classes, citing the lack of facilities and staff to take care of special needs. In many cases they expect parents to accompany their children to school and help them transfer between classes and use the toilet (*Asahi Shinbun* 9.9.1998: 14). The very early separation between a disabled and a non-disabled world is now a source of intense criticism by parents of disabled children who might receive a pedagogically sound and disability-appropriate education in special schools but who, in the process, remain segregated from the children of their neighborhoods. They argue that interaction between disabled and non-disabled students is a basic requirement for future success at a workplace, which relies heavily on interpersonal relations and adherence to social norms.

Another source of struggle is the fact that learning disabilities are not recognized as a disability under Japanese law (ROEDER 1997: 52). This means that children with learning disabilities receive neither special attention nor an appropriate education in Japan's public school system. In 1990, parents of children with learning disabilities united to form the "National Parents' Association of Children Learning Disabilities" to point out official negligence in the case of these special needs.

2.2. Employment Policy: the Quota System

The employment situation of disabled Japanese is also characterized by the difference doctrine. Japan instituted an employment quota in 1960 which is seen as one of the more sophisticated in the international vocational rehabilitation literature for the way it administers its levy and grant system (ISON 1993: 4). The quota system was established following the ILO Recommendation on Vocational Rehabilitation in 1955, which became the internationally recognized guideline for vocational rehabilitation and spurred appropriate legislation in most member nations. Based on this example, a coalition of disability groups led by the Japanese Society of Disabled People for Rehabilitation (*Nihon Shōgaisha Rehabilitation Kyōkai*), one of the first generation disability groups formed by disabled war veterans, demanded that the Japanese government take concrete action.

As a result, in 1960 the Physically Disabled Persons Employment Promotion Law (*Shintai shōgaisha kihonhō*) was enacted as the first employment law for people with disabilities which changed the status of their assistance from one of social welfare to employment opportunities. The law first instituted a quota system of 1.3% for private and 1.6% for government organizations, a grant program, and extensive vocational training and placement services at the public employment security offices (PESOS). The quota remained a moral obligation for employers. Despite the lack of enforcement, however, the employment rate of persons with physical disabilities in private enterprises increased from 0.78% in 1961, 1.10% in 1965, and to 1.25% in 1970. By 1976 the target rate was actually surpassed by 0.6% (to 1.36%) (MATSUI 1994: 368). This increase, however, cannot be credited to the law, but to Japan's high economic growth in the 1960s and early 1970s. This offered employment opportunities for people with light disabilities, especially in small or medium-sized companies who had difficulties recruiting non-disabled workers from the labor market (MATSUI 1994: 368).

But all this changed with the 1973 oil shock, as well as with government surveys showing an increasing number of elderly, as well as of elderly disabled people and people with severe disabilities. The welfare model was no longer enough. People with disabilities had to be able to support themselves, and in 1976 the law was revised to make the employment quota a legal requirement. The quota itself was raised to 1.5% (1.9% for government bodies), and severely disabled persons counted double.

The 1976 revision also requested that employers report to their local PESOS the number of physically disabled persons they employ. Employers not complying with the quota would have to draw up a plan for such employment and would be "urged" to follow it. Such plans might require em-

employers to adapt existing facilities, build new facilities, or provide extra supervision and training. The costs that this might entail were to be covered by grants, which, in turn, were to be provided by the monthly levies collected from employers who did not comply with the employment quota. Non-compliance with these plans would place companies on a list published yearly by the Labor Ministry, and they could be faced with possible fines of up to ¥200,000. The 1976 revision also established the National Association for the Employment of the Physically Handicapped (*Nihon Shintai Shōgaisha Sokushin Kyōkai*) to oversee and administer the levies and grants system. The Association also organized educational programs to raise public awareness, offers counseling to management, and operates 55 vocational rehabilitation centers around the country.

The UN mandate for full participation and equality and the 1983 ILO Convention and Recommendations on Vocational Rehabilitation and Employment of Disabled Persons, which was geared primarily to expand employment opportunity, forced Japan to revise its employment law once more in 1988. To mark the inclusion of mental disability the law was renamed the Law for the Employment Promotion, etc. of the Disabled (*Shōgaisha no koyō no sokushinto ni kansuru hōritsu*) and its main administrative body also dropped the limiting term “physical” and became the Japan Association for Employment of the Disabled (*Nihon Shōgaisha Sokushin Kyōkai*). The quota was raised again, to 1.6% for private enterprises and 2.0% for public enterprises, but the main impact was that both the quota and the levy systems could now also be applied towards people with mental disabilities without, however, making their employment a legal obligation (NIHON SHŌGAISHA SOKUSHIN KYŌKAI 1998: 12). This happened ten years later, on July 1, 1998, when the quota was raised one more time to 1.8% (private) and 2.1% (public).

Companies who fall short of the employment quota are levied ¥50,000 per employee per month, but for now only companies with 300 or more employees are actually levied. However, awards are given to everyone exceeding the quota. Companies with 300 employees or less are awarded ¥17,000 per person per month, and companies with 300 or more are awarded ¥25,000. The 1988 revision also called for the establishment of a National Institute for Vocational Rehabilitation (*Shōgaisha Shokugyō Sōgō Centā*) as a central institution for the nationwide rehabilitation centers. The Institute conducts surveys and research, trains rehabilitation counselors, collects and distributes information concerning the employment and rehabilitation process of people with disabilities, and gives advice and technical assistance to employers.

Today the actual employment rate for people with disabilities still lies below the legal requirement (1.47% in 1997 with the quota still at 1.6%),

which means that half (49.8%) of all enterprises do not reach the quota. Labor Ministry surveys show that, when it comes to quota compliance, only smaller companies show any true effort. Those between 63 and 99 employees even exceed the quota (1.91%), whereas larger companies, between 300 and 499 employees in size have the lowest rate of 1.35% (NIHON SHŌGAISHA SOKUSHIN KYŌKAI 1998: 8). Very large companies have developed a way to comply with the quota by establishing special “barrier-free” subsidiary companies (*tokurei kogaisha*); these hire primarily people with disabilities who then count for the parent company’s employment quota⁹. This de facto re-segregation into separate workplaces falls short of the UN integration mandate but is seen by many companies as the best compromise (HEYER 1999: 18). The Japanese government also promotes the *tokurei kogaisha* system as the preferred means to boost the employment of people with disabilities.

Despite the quota system, then, which was designed to integrate people with disabilities into regular companies, the Japanese workplace remains segregated. Sheltered workshops are the main source of employment for Japanese people with disabilities. The majority of these are private community workshops, which exist as extralegal facilities outside of the sheltered workshops run by the Ministry of Health and Welfare. The first workshops started sporadically in the 1950s, focusing primarily on people with mental disabilities whose employment needs were ignored by the law, but by late 1960s they had spread as an organized, nationwide campaign. There are now approximately 4,000 such workshops – four times the amount run by the Labor and Health and Welfare Ministries combined (FUJII 1994: 146). The Japanese government has acknowledged that the increase of community workshops is due to “the current shortage and uneven distribution of legal facilities”, but it is commonly acknowledged that the government has come to rely on this private network to provide these essential services¹⁰. For example, the 1988 Mental Health Law’s emphasis on social rehabilitation has resulted in the establishment of only 48 sheltered workshops for people with mental disabilities, and only two of these are residential. It is estimated that between 30% and 40% of all psychiatric inpatients could be released

⁹ A 1998 *Nikkeiren* survey counted 65 *tokurei kogaisha* with a total of 4,000 employees. Of these 3,400 are people with disabilities (2,000 with severe disabilities, which count double for the quota). *Tokurei kogaisha no keiei ni kansuru ankē to chōsa* (March 1998), p. 10.

¹⁰ Personal communication with the director of *Seibi Shokugyō Jisshūsho*, the nation’s first private workshop established in 1969 in Tōkyō.

from hospitals if the appropriate transitional facilities were available in communities (FUJII 1994: 146).

2.3. *The Normalization Principle*

How did the UN mandate for “full participation and equality” affect Japanese disability policy? The Prime Minister’s Office immediately became the IYDP headquarters and established a Central Council on Measures for Mentally and Physically Disabled People to formulate an action program to implement the UN mandate in the areas of education, health, employment, recreation, housing, welfare, and public awareness. This led to the official adoption of the “normalization” principle in Japanese law and policy.

The “normalization” principle was first developed and implemented in the late 1960s by Beignt Nirje while he was the director of the Swedish Parents’ Association of Mentally Retarded Children. He was developing programs that would ensure “the right, for any person, to have the opportunity to live independently within society, as an average and fulfilled individual. This includes the respect of the right to privacy, personal possessions, communication with others, and to express individuality”¹¹. While talking to the young adults, Nirje suddenly realized that they knew their own needs and preferences much better than he ever could. Out of this realization came the notion of self-advocacy; people with disabilities could, and should, have a voice in determining the course of their lives and could be expected to share what could be considered “normal” needs for privacy, intimacy, connection, and fulfillment. What seems self-evident today was a revolutionary concept in the 1960s where people with mental retardation were assumed not to be able to make even the most basic life choices for themselves. For Nirje, normalization meant “bringing patterns and conditions of a mentally retarded person’s daily life as close as possible to those of normal society” (EKUSA 1982: 42). The normalization principle and notions of self-determination and self-advocacy that developed from it have profoundly impacted the course of the mental disability rights movement and the provision of services. It has led to the formation of a worldwide “People

¹¹ “25 Years of the Normalization Principle”, a presentation by Beignt Nirje at a symposium in Yokohama (October 15, 1998) honoring his work and activism.

First” movement demanding that we “see the person before the disability”¹².

In Japan, normalization became the official doctrine, reflecting Japan’s adoption of the UN mandate for full integration and equality. A 1982 report by the Welfare Council for People with Physical Disabilities, an advisory council to the Ministry of Health and Welfare, explained how the term was going to apply to Japanese society. It defined normalization as “the creation of a society in which all people can lead ordinary lives in their communities, regardless of the presence of any disability”, and emphasized “the importance of taking measures to enable people with disabilities to lead ordinary lives in their homes and communities, based on the premise that it is only natural for people with disabilities and those without to live together in their communities” (MINISTRY OF HEALTH AND WELFARE 1992: 2).

Adopting the normalization principle was also going to mean expanding conventional notions of “rehabilitation”. The report states that “rehabilitation is not limited to the narrow meaning of the word, i.e. restoring physical functions using medical technology. Rather, it is understood to mean methods to promote, to the greatest extent possible, the self sufficiency and social participation of people with disabilities from the viewpoint of human rights”. As such, rehabilitation is “technology that aims for the restoration of rights as a full citizen for those alienated from human living conditions for reasons of disability, and a comprehensive system for social and political measures” (MHW 1992: 2).

¹² The concept of “people first” developed through the self-advocacy movement of people with developmental disabilities in the 1970s. Activists objected to the use of the words “retarded” and “handicapped” and demanded to be treated “like a person first”. They developed what has become known as “people first language” that seeks to put the person first and the disability second. It describes the impairment, what a person *has*, rather than what a person *is*. Thus, a person is not disabled, but a person has a disability. There are people who use wheelchairs, but they are not wheelchair bound. Children are born with congenital disabilities rather than with birth defects. Rather than referring to people as autistics or epileptics, the correct usage would be “a person who has autism” and “a person who has epilepsy”. Terms such as “suffers from”, “is afflicted with”, or “is a victim of”, are frowned upon. People First activists claim that as a society’s language changes, and as we talk about people first, perceptions and attitudes will change, leading to increasing acceptance and respect for people with disabilities (see the website of the original People First Chapter in Oregon at <http://www.open.org/~people1/people1.htm>).

2.4. Translating Normalization into Disability Law and Policy

Adopting the normalization principle first of all meant that Japan had to significantly change its official language in policy and legislation. It was especially important to broaden the meaning of the very term “disability” itself, which had, until then, been limited to “physical disability” in many laws. The first evidence that the Japanese government selected to show its commitment to the UN doctrine was a 1984 revision of the 1949 Law for the Welfare of Physically Disabled Persons (*Shintai shōgaisha fukushihō*).

This was the first postwar disability law and had responded to the needs of the large number of disabled war veterans. It provided for basic services and assistive technology, such as prosthetic appliances, wheelchairs, canes, hearing aids and artificial limbs. Most importantly, however, it laid the foundation for the vast rehabilitation network, consisting of physical and occupational rehabilitation centers as well as community centers and counseling services. It mandated the issuing of handbooks for physically disabled people, as well as the provision of technical aides for daily living, such as bathtubs, toilets, beds, and communication aids.

This law was revised in 1984 to showcase the Japanese government’s commitment to incorporating the normalization principle. In its opening section, this law now states that the revision was made to “integrate ‘full participation and equality’, the guiding principle for the International Year of Disabled Persons, into the Law”. This was accomplished by changing the language of the law; the term “rehabilitation” was replaced with “independent living and provision of opportunities” (Art. 2). It also defined “full participation and equality” to mean that “all physically disabled persons, as constituent members of our society, are entitled to the opportunity of participating in social, economic, cultural, and other aspects of all fields of endeavor” (Art. 2 (2)).

If these revisions amounted to mere changes in language, it was the field of mental disability law that demanded true reform. The devastation of WW II had made the need for comprehensive mental health legislation very pressing. There was a desperate need for beds in psychiatric hospitals, and fewer families could now take care of their mentally ill family members, as pre-war legislation had mandated¹³. The resulting 1950 Mental Hygiene Law (*Seishin eiseihō*) had a dual objective; it outlined the treat-

¹³ Responsibility for the care of people with mental disabilities fell almost exclusively on family members. Those whose mental illness was seen as a threat to public safety were confined and isolated from the community, with the family holding the initial responsibility for confinement. Prewar public policy to-

ment and protection of mental patients, while also providing for the protection of the society at large. There were many aspects of the law that violated basic human rights principles under the normalization doctrine, the most striking being compulsory hospitalization (SALZBERG 1991: 148). Over 90% of all hospitalizations occurred without the patient's consent under a system (misnamed "consent admission") that allowed either a physician or, in most cases, a family member to order the hospitalization without any possibility of appeal by patients and with little to no possibility of external review.

Stories of human rights abuses in mental hospitals abounded, but it was not until the infamous 1984 Utsunomiya Incident, which brought the situation in Japan to international attention, that policymakers started talking about reform. It was revealed that patients in a mental hospital north of Tōkyō had been beaten to death by hospital staff, in full view of other patients, and that the families had been told the death had been caused by epileptic seizures. Investigations revealed a list of abuses so long and horrific that Japanese human rights organizations called the International Commission of Jurists (ICJ) and the United Nations to intervene. The ICJ conducted on-site investigations and released a report concluding that "the present structure and function of the Japanese mental health services created conditions which are conducive to inappropriate forms of care and serious human rights violations on a significant scale"; and recommended a complete overhaul of the Mental Hygiene Law (HARDING, SCHNEIDER and VISTOTSKY 1985: 81).

It seems clear that in this case domestic and international pressure, rather than a commitment to the normalization principle, caused the government to make major changes in the law. The 1988 revision renamed it the Mental Health Law (*Seishin hokenhō*) and instituted stricter treatment standards for patients as well as the introduction, for the first time, of a legal form of voluntary hospital admission. It established psychiatric review boards as a mechanism to monitor the need for continuing hospitalization and treatment of patients involuntarily hospitalized. For example, it set limits on the use of physical restraints and established patient communication rights. Another important aspect of the revision was its emphasis on community-based social rehabilitation, establishing facilities (such as halfway houses and sheltered workshops) to ease re-integration into society. The law, however, still ignored central issues of self-determination now being discussed in the mental disability rights

wards mental illness was oriented more towards public safety than it was towards mental health. (SALZBERG 1991: 144).

movement and has not prevented further rights abuses in mental hospitals¹⁴.

The stigma and ignorance surrounding mental disability were so profound that for many decades people with mental disabilities were not officially covered under the fundamental law that outlines the basic principles of the government's disability policy, among them the definition of what counts as a disability under the law. In the initial lawmaking process for the 1970 Physically Disabled People's Fundamental Law (*Shintai shōgaisha kihonhō*), the term for "physically disabled person" (*shintai shōgaisha*) was used to designate all people with disabilities (*shōgaisha*), and it took the intense lobbying of a growing mental disability rights movement to publicize that omission. Finally, in 1993 the law was renamed Disabled Peoples' Fundamental Law (*Shōgaisha kihonhō*) to reflect the expanded legal definition: "disabled person are persons whose daily life or life in society is substantially limited over the long term due to a physical disability, mental retardation, or mental disability" (Art. 2).

Notions of independence and participation in society, both fundamental aspects of the normalization principal, were also incorporated: "disabled persons shall endeavor to participate actively in social and economic activities by making effective use of the abilities they possess. The family members of disabled persons shall endeavor to promote the independence of disabled persons" (Art. 6). This last sentence is significant because it recognizes the complicated relationship between people with disabilities and their families in matters of independence. Especially women with disabilities are expected to remain living at home with their parents, and often struggle with their family's over-protectiveness (NAKANISHI 1992: 25).

Finally, the employment needs of people with mental disabilities took a long time to find legal recognition. As mentioned earlier in this paper, Japan instituted one of the more sophisticated employment quota systems. Its main weakness, however, was its negligence towards people with mental disabilities and their employment needs. The 1960 Physically Disabled Persons Employment Promotion Law (*Shintai shōgaisha koyō sokushinhō*) was the first law directly targeting the employment status of

¹⁴ History repeated itself on October 1, 1997, when the Ōsaka Prefectural Government withdrew the license for Yamatogawa Hospital three years after mental health and human rights activists started their movement to force an official response to the human rights abuses occurring there (presentation given by Yamamoto Miyuki of the *Ōsaka Seishin Iriyō Jinken Centā* [Ōsaka Human Rights Center for the Mentally Ill] during the 1998 *Zenkaren* Conference in Tōkyō.

people with disabilities through a voluntary quota aimed to ensure employment opportunities in regular workplaces. People with mental disabilities were not included in the quota until 1988 when the law was renamed Law for the Employment Promotion, etc. of the Disabled (*Shōgaisha no koyō no sokushinto ni kansuru hōritsu*). This marked the official recognition of people with mental disabilities as members of the labor force.

Besides reforms in the major disability laws, the Japanese government also responded to the UN mandate by significantly expanding welfare services. From 1983 to 1991 it doubled the number of sheltered workshops (from 543 to 946) and tripled the number of licensed rehabilitation specialists (from 4,000 to 11,000 physical therapists and from 1,400 to 5,200 occupational therapists). The number of rehabilitation institutions increased by about 25% (from 1,834 to 2,280) (MINISTRY OF HEALTH AND WELFARE 1992: 29–31). In 1986 the government established a disability pension system to cover disability for persons not covered under the National Pension System or Employers Pension System.

The UN Asia Pacific decade saw a further expansion of services during the 1990s. In 1993 the Prime Minister's office formulated its "New Long Term Action Plan for Disabled Persons", which outlined what would be the government's basic policies towards its stated goal of "creating a society based on equality". It wasn't until two years later, however, that actual implementation measures were passed. The 1995 "Government Action Plan for Persons With Disabilities: A Seven-Year Strategy to Achieve Normalization" set up concrete numerical goals regarding what should be implemented by 2002. The goal of normalization was defined as one that would "enable people with disabilities to lead regular lives in their communities as members of society" (HEADQUARTERS 1995: 489).

Concrete goals included a plan to quadruple the current capacity of group homes. Public housing was made available for the establishment of physically accessible group homes in residential districts. Special attention was to be paid to the construction of group homes for people with severe mental disabilities, following the reforms of the Mental Health Law towards social rehabilitation and welfare infrastructures in local communities. This would be accompanied by an increase in the number of home helpers and day care programs for children and adults living at home, as well as the establishment of more sheltered workshops and vocational rehabilitation facilities in the communities. Finally, the Transportation Ministry was to "provide guidance" by installing elevators in existing train stations that serve 5,000 or more passengers a day. These were ambitious promises that responded to the obvious need for the extensive social expenditure necessary to implement the normalization principle. The actual

implementation of these plans throughout years of economic recession, however, remains to be seen¹⁵.

3. THE JAPANESE DISABILITY MOVEMENT – TOWARDS A RIGHTS MODEL

As I described in the previous section of this paper, the Japanese government interpreted the UN equality mandate to mean more welfare. The Japanese disability movement, in contrast, has interpreted it to mean more rights. A new generation of disability organizations is moving away from a welfare-based model and frames itself in the context of rights, equal access, and disability pride.

The first generation disability organizations successfully organized themselves around the assertion of “special needs” which resulted in welfare policies based on well developed but still segregated facilities. Organizations such as the Japan Federation of the Deaf (*Nihon Rōa Renmei*), the Japan Federation of the Blind (*Nihon Mōjinkai Rengō*), the National Federation of Families with Mentally Ill People (*Zenkoku Seishin Shōgaisha Kazoku Kai Rengokai; Zenkaren*), and the Japan Federation of Disabled Peoples Association (*Nihon Shintai Shōgaisha Dantai Rengōkai; Nisshinren*), all founded during the immediate postwar period, successfully lobbied the appropriate Ministries for services and protective legislation.

3.1. *The Independent Living Movement*

The new generation of disability organizations now finds itself working towards a rights-based model that demands full participation, self-determination, and integration into all levels of society. The most prominent representative of this new generation is the growing network of Independent Living Centers. The first Center, *Human Care*, was established in 1986 and modeled after the very successful IL Center in Berkeley, California, which was both the origin and center of the American disability rights movement in the late 1960s. There are now 50 IL Centers nationwide,

¹⁵ The launching of the Normalization Plan came at the same time the government passed the 10-year “Angel Plan” in recognition of the need for child-care facilities for working parents. The Angel Plan was equally ambitious in its promise to expand daycare centers, and only a year later the Ministry of Health and Welfare announced that it was reducing its planned expenditures in half; instead, it introduced legislation that encouraged a private, market-oriented approach to welfare. (BOLING 1998: 177).

which united in 1991 under the Japan Council on Independent Living Centers (JIL) (*Zenkoku Jiritsu Seikatsu Centā Kyōkai*).

The notion of independent living lies at the heart of the normalization principle. It represents the shift from the medical model, which places decisions about care and welfare provisions in the hands of rehabilitation specialists, to what DEJONG (1979: 435) has termed the “independent living model”, which places control back in the hands of the consumer. Rather than spending public funds on nursing homes and institutions, IL advocates argue that social services should go directly to the consumers, who can then hire, fire, and train the attendants necessary to assist them to live self-determined lives. An attendant is not a caretaker, they insist, because the word “care” suggests a patient, someone who is sick and passively dependent on an assistant’s help. An attendant, in contrast, should be a neutral extension of the person with the disability. As such, the work of an attendant is regulated by a strict code of ethics and behavior. Sign language interpreters, for examples, translate words into signs and vice versa to enable communication between the hearing and the deaf. As in any conversation, eye contact is important, and it is considered poor manners to speak to the sign language interpreter directly rather than to the person who is deaf.

This shift from passive, dependent lives to a philosophy of independent living has had a powerful impact on the Japanese disability movement. Similar to the United States, Japanese IL Centers and their staff form the center of movement activities and organizing. On a local level they assist people with disabilities make the transition from institutions or group homes to independent lives in their own apartments. This includes organizing peer counseling services and training sessions for independent living skills, arranging for attendant care based on consumers’ needs and experiences, working towards economic independence, organizing planning daily schedules, and counseling consumers on how to communicate better with attendants and family members. The key word used in all these goals is “self determination”. This word holds special meaning for people with disabilities in Japan, argues Higuchi Keiko, JIL president and movement activist, because they have been taught from an early age to accept as well as cherish their dependence on the care they receive from parents and institutions. Self-determination and assertiveness are not always valued positively in Japanese culture, especially if they imply a separation from the family¹⁶. It is the special task of IL Centers to take what might be considered foreign concepts and integrate them into a Japanese setting. Self-determination, then, does not have to mean living apart from your family or self-

¹⁶ Personal communication with Ms. Higuchi; Interview on 16.12.1998 (see also HIGUCHI 1998).

ishly asserting your will without regard for others. It does, however, place the consumer at the center of analysis and starts a process of determining life choices based on an awareness of rights and equal opportunity¹⁷.

3.2. Barrier-Free Access

Another prominent member of the new generation of disability organizations is the Japan Branch of DPI, Disabled Peoples International (*DPI Nihon Kyōkai*), founded in 1986. DPI itself was founded during the 1981 International Year of Disabled Persons and represents the first international human rights organization of rather than *for*, people with disabilities. The process that led to the birth of DPI demonstrates the clash within disability organizations between well-meaning professionals and disabled people who no longer wanted to be spoken for but were ready to express their own needs and demands. DPI started as a breakaway from Rehabilitation International (RI), an international organization of professionals, because it rejected a resolution calling for equal representation of disabled people in RI's decision-making body. RI participants with disabilities formed their own organization, DPI, under the slogan "nothing about us without us" (DRIEDGER 1989: 28).

The tension between service providers and consumers is not only a reflection of an unequal power relationship which allows doctors, social workers, and physical and occupational therapists to control the bodies, voices, and life decisions of disabled people. All too often service providers prefer talking to personal assistants or family members rather than with the people with disabilities themselves, and this silencing has been denounced in the literature. The unequal power relationship, however, is also reflected in unequal access to political and social power. Organizations for disabled people by service professionals such as RI are the ones that governments still tend to turn to when defining social policies and distributing resources.

In its brief history, DPI's influence in international disability policy has been remarkable. It provided a catalytic role in the formation of national

¹⁷ On a national level JIL organizes conferences with an increasingly international audience. Its 1998 conference (*Jiritsu Seikatsu Kokusai Fuoramu* [International Forum on Independent Living] Nov. 2–4, 1998) featured guest speakers from the United States, Great Britain, Korea and the Philippines, as well as two members of the US House of Representatives. Since 1990 the Asia Disability Institute, founded by Human Care, has promoted the IL philosophy in other Asian countries through networking and financial support.

disability movements, particularly in developing countries, through the training of national leaders. It was influential in the writing of UN policy documents, such as the 1982 World Program of Action Concerning Disabled Persons, and in pushing for the swift passage of the 1983 ILO Convention Concerning Vocational Rehabilitation and Employment of Disabled Persons.

In Japan, DPI was instrumental in bringing the Utsunomiya incident to the attention of the world community and coordinated the international fact-finding mission which eventually led to the revision of the Mental Health Law in 1988. It also started a series of yearly protests against the lack of accessibility in the nation's public transportation systems. The first protest took place in 1989 with approximately 100 disability activists gathering in Tōkyō's Shinjuku Station and taking the Yamanote Line to Ueno. Station officials and the general public had to witness the kind of commuting nightmare wheelchair users face every day because railway companies had not installed elevators as a part of their initial policy¹⁸. Station attendants still have to be called ahead of time and to meet commuters at the platform. Between four and seven attendants will then carry the wheelchair down the stairs and up to the next platform, guiding the commuter into a specified compartment where she or he will then be met by the next station's attendant (KAWAUCHI 1996: 17).

The protest has now spread to over 30 other cities and has become one of the movement's primary consciousness-raising techniques. It includes demonstrations and leafleting around stations, information seminars on the implications of barrier-free designs, and meetings with local transportation officials. The Transportation Ministry has launched a "barrier-free campaign" as part of its Normalization Plan, which aims to install escalators or elevators in 1,900 train stations for both elderly and disabled users. It has also promised improved access to public buildings with the 1994 "Law for Buildings Accessible to and Usable by the Elderly and Physically Disabled Persons". Commonly known as the "Heart Building Law" (*Hāto biruhō*), this law is the official response to the UN mandate for social integration and barrier-free access. Japanese disability groups, headed by DPI Japan, have long called for the construction of elevators in train stations, as well as ramps on public buildings¹⁹. The 1994 law responded to these demands, encouraging owners of what are called "specialized buildings", such as hospitals and theatres, to modify entrance designs. The law imposes no penalties for those who ignore it, and compliance is only encouraged through administrative guidance (*gyōsei shidō*).

¹⁸ Personal communication with Mr. Nakanishi Shōji, one of the protest's original organizers.

3.3. Increased Rights Consciousness: the “JDA” and “Disqualifying Clauses”

The new generation disability organizations are increasingly using the language of rights in framing their demands. They look towards the United States as an example of defiant disability pride and rights consciousness. In fact, the leadership of this new generation of disability activists has, both individually and collectively, made virtual pilgrimages to the United States to be trained by rights activists there, most prominently to the IL Center in Berkeley, and to forge connections and exchanges with American disability groups. There is an overwhelming sense that Japan lags many decades behind the U.S. and Western Europe in terms of disability law and activism. The only way to catch up, these activists argue, is by moving into new and foreign territory: the language of rights, self-assertiveness, and equality.

The work of three prominent groups exemplifies this preoccupation with rights. The first is a network of academics and activists that have formed a Disability Policy Research Group (*Shōgaisha Seisaku Kenkyūkai*, SSK) advocating the inclusion of anti-discrimination legislation in the year 2000, when the Japanese government is planning to update and amend a series of existing disability laws. Some SSK members see this as an opportunity to include anti-discrimination clauses in existing legislation and are working to propose draft language. Others propose to go even further and propose an entirely new law, closely modeled after the American with Disabilities Act, forbidding any kind of discrimination on the basis of disability. They are calling for the establishment of a “JDA”, a “Japanese with Disabilities Act” that they believe would truly fulfill the government’s promise to incorporate the normalization principle and move towards equal right (SEKIGAWA 1998: 97–108). The construction, scope, and implications of such a law will be the subject of further analysis. Its mere existence, however, points to a new direction for the Japanese disability movement²⁰.

¹⁹ Of the 6,915 stations operated by JR, subways, and private lines around the country, only 336 were equipped with elevators in 1994. This was a mere 4.9% of all stations. Only 2.5% of all JR stations are wheelchair accessible. But the use of public transportation by people using wheelchairs is increasing. Estimates show that 60 people use Tōkyō Station and 30 use Shinjuku Station every day (*Shōgaisha hakusho*, Prime Minister’s Office, 1995).

²⁰ This was the subject of SSK’s fourth national meeting in Tōkyō on Dec. 13, 1998, under the title *21 seiki ni mukete watahikara no teigen – kiwā dowa kenrikakuristu to sabetsukinshi* [Our Proposal for the 21st Century: the key words are establishment of rights and anti-discrimination].

Another move towards legal reform is currently being organized by a coalition of activists from Ōsaka, journalist Ōkuma Yukiko, DPI Japan executive Kim Jonoku, and Democratic Party Diet member Ishige Eiko, forming the “Citizens’ Committee on Abolishing Disqualifying Clauses”. This group is protesting the large number of clauses (*kekaku jōkō*) that restrict, or even prohibit, disabled people from obtaining licenses or certifications, from being engaged in certain professions, and from using certain facilities and receiving services²¹. For example, when a ministry issues a particular license or certification, the applicant is required to submit to a medical exam certifying that the applicant’s condition does not contradict *kekaku jōkō* limitations. If the doctor performing the routine exam writes that the applicant’s disability falls under the restrictive clause, the government will not issue the license and the applicant has no recourse. Applicants who prove their intellectual or physical capabilities by passing the licensing exam will still be denied certification if their medical exam gives evidence of certain disabilities. People with certain disabilities are prohibited from, among others, serving on juries, riding public transportation unaccompanied, boarding commercial ships, living in public housing, owning a horse, or becoming a politician. Similarly, people who are deaf cannot obtain driver’s licenses, and those with psychiatric disabilities do not fall under the minimum wage law and are barred from receiving licensing in all medical fields²².

The Japanese government has begun reexamining the 79 disqualifying clauses it officially recognizes and by July of 1999 will present guidelines for all ministries to follow for potential revision by 2004. The Citizens’ Committee is now collecting examples from other countries (Canada, England, Sweden, France, Germany, Italy, Spain and the United States) of the presence or absence of such restrictive clauses, which they see as human rights violations that “indiscriminately prohibit disabled people from being professional citizens”. The foreign examples are meant to lobby (and shame) the government into completely abolishing *kekaku jōkō* rather than just revising them; and exposing their official justification as backwards and discriminatory. For example, bureaucrats have argued that allowing people with disabilities to obtain licenses in medical fields would raise public health concerns and diminish the license’s credibility²³. The

²¹ The Committee counts 274 clauses, in contrast to 79 clauses acknowledged by the government.

²² For a full list of restrictions see the online database *Shōgaisha wo shokugyō nado kara jogai suru kekaku jōkō wo motsu hōritsu no dētashū*. [database of restrictive clauses eliminating people with disabilities from occupations] at <http://www.humind.or.jp/welfare/disablep/restrict/index.html> (found: 15.3.1999).

²³ Interview with Committee member Akiyama Akiko, 20.12.1998.

Committee argues that qualification for licenses or certifications should be based on a person's ability to perform the tasks, rather than assumptions regarding limitations imposed by their physical or mental disability.

The most urgent argument for infusing Japanese disability politics with notions of rights and rights consciousness comes from the "Legal Advocacy on Disability Development Committee" (LADD). While on a trip to Berkeley in 1996 to learn about the American disability rights movement, these legal experts formed LADD and have conducted monthly meetings ever since, working on putting together a "declaration of disability rights". Their goal is to politicize the Japanese disability movement by increasing the role of rights and rights consciousness. People with disabilities should not only be aware of the rights they currently have but also feel empowered by using them, making rights the main tool towards leading self-determined lives. LADD members often hold talks at community centers to stress this point, which inevitably becomes the focus of heated discussions centering on the question of, "how do we assert our rights without being seen as selfish?"

4. CONCLUSION

LEGISLATING EQUALITY FOR PEOPLE WITH DISABILITIES IN JAPAN

This question is likely to become a central issue in the Japanese disability movement's quest to emphasize rights consciousness and orient itself along a *kenri* model. How can rights become instruments for personal empowerment and community building? How can they be set to work in a historical and cultural setting that has emphasized difference and separation rather than equality and integration? If the Japanese disability movement can successfully integrate rights language, what implications will this have for the role of the law in Japanese identity-based social movements?

Rights and equality have been the focal point of the international disability movement for the last two decades. Japan has been slow to reflect this spirit in legislation and in policy. However, the Japanese example can offer an interesting response to the central question of equality theory: how to guarantee equality while recognizing difference. Is there a Japanese road to equality that is more inclusive of difference, thus avoiding the dilemma of difference Minow has warned us about?

4.1. The Difference Dilemma for Japanese Disability Politics

As I mentioned earlier in this paper, using the American example as a model for Japanese disability politics might be problematic. The American disability rights movement very clearly and self-consciously builds on a rights tradition developed by its own civil rights movement and, to a lesser degree, the women's rights movement and has in that process created notions of equality that might not apply to the Japanese situation. The ADA's interpretation of equality is one that emphasizes sameness and non-discrimination: i.e. mandating that people with disabilities must be treated like other citizens with "reasonable accommodation" for their differences. The emphasis is on the removal of barriers that prevent equality of opportunities.

Lacking a civil rights tradition, Japanese legislation has emphasized different needs over equal rights, and in the area of employment opportunity, it has moved towards an 'equality of results' approach through the use of the disability quota. The actual impact of the quota system has been limited by businesses establishing separate companies to accommodate disabled workers. In general, however, the right to be different is well protected and supported in Japan. Especially in the areas of education and employment policy, the emphasis on difference and special needs has resulted in well equipped but nonetheless separate facilities. Disability groups have traditionally adopted their demands accordingly and have focused their energies on improving the quality and quantity of services rather than demanding full integration. The fields of education and employment are seen as especially risky to test Western notions of equality and mainstreaming because they would have so much to lose. Instead, the current focus of activism is on other issues, such as the right to live independent lives, attendant care, access to public transportation, and the removal of disqualifying clauses in Japanese law.

The UN mandate for full participation and equality has indeed greatly impacted Japanese society. This paper concludes, however, that the Japanese disability movement should emphasize "full participation" over "equality" to avoid the limiting aspects of the equality doctrine. Full participation can be more inclusive of difference and avoid the dilemma of guaranteeing equality at the expense of recognizing special needs, or of emphasizing difference and thus re-stigmatizing it. Moreover, full participation can allow for a more culturally specific notion of what equality can mean and of what combination of services, accommodations and anti-discrimination measures are necessary to ensure that people with disabilities can lead both equal and different lives in society.

4.2. Lessons from Other Social Movements: EEO, Pollution, and AIDS Activism

During a symposium in Yokohama honoring Beignt Nirje and his work on the normalization principle in October 1998, Asahi Shinbun journalist Ōguma Yukiko summarized the meaning of the normalization principle for Japanese society. She closed the symposium with the suggestion that “the normalization principle is deeply embedded in notions of rights, equality, and government responsibility. But in Japan, we tend to translate it into a mere wish of, let’s all be friends and get along well”²⁴.

This comment summarizes the challenge facing both disability policy and movements today: how to translate rights-based principles into difference-based social policy and legislation so that they are both culturally appropriate and politically useful. Notions of equality and rights consciousness are commonly considered to be concepts foreign to Japanese civic culture, and as a strategizing tool, the difference-based *fukushi* model used by traditional disability organizations has clearly been more successful than a calls for equal rights and anti-discrimination legislation. The official recognition of special needs remains the disability movement’s most politically powerful argument, even though it comes at the expense of equality or rights-based claims.

The experience of Japanese women struggling for equal treatment and opportunities in the workplace provides a good example for this. The discourse surrounding Japan’s adoption of the 1986 Equal Employment Opportunity Law shows the workings of the difference dilemma in another setting, with all the actors involved (feminists, labor activists, male politicians and bureaucrats) continuously re-interpreting culturally embedded notions of equality and difference (MOLONY 1995: 268–302). The difference dilemma during the EEOL debate forced feminists to decide between demands for equality – working conditions based on undesirable male norms (long hours, frequent transfers, etc.) which made it impossible for women to maintain a family – or emphasis on women’s different needs, a strategy which had resulted in workplace protection but had also provided the foundation for discriminatory practices and a gender-segregated labor market that had kept women from advancing on the job²⁵.

The result was a law that diluted or deleted many of the hard-won workplace protections women had gained in previous years while making

²⁴ This seminar was entitled “*21-seiki no normalization*” which took place on October 15, 1998.

²⁵ Women’s divided identity between productive and reproductive work enabled social and labor policy to oscillate between gender difference policies: on the

only formal calls for equality by stipulating that companies should “endeavor” to treat women equally with men in recruiting, hiring, placement, and promotions. Even though this contained the term “equality”, it was still based on an ideology of difference; namely, that men work outside the home and women work inside. Women who wanted to work were forced to adopt a male-based work model, and while it did allow for pregnancy leave, the EEOL was still male defined in that it ignored the social realities of combining work and mothering. It told women to “harmonize” the home and the workplace, but it did not require employers to provide the mechanisms that would make this possible (KAMIYA 1995: 40–83).

The debate surrounding the EEOL, then, was one that forced a choice between different needs or equal treatment, rather than pointing to the need to improve working conditions for both women and men, allowing both to combine their roles as workers and parents. The EEOL has been interpreted as an attempt by the Japanese government “to regain the initiative in the area of women’s rights in employment” by leaving the enforcement of the law in the hands of the Labor Ministry and relying on administrative guidance as an enforcement mechanism (UPHAM 1986: 155). It can be seen as a way of keeping the issue of women’s equality out of the courts and within government control.

Nonetheless, the example of other social movements, particularly the hemophilic community’s protest against the AIDS Prevention Law and the tainted blood scandal²⁶, as well as that of the anti-pollution movement²⁷, shows a shift towards rights consciousness and an increasing use of the law as an instrument for social change. Groups are framing claims using rights language and directly criticizing the bureaucratic elite in order to become part of the policymaking process. Rights might not hold the organizing force they do in American political life and social movements, but they are also becoming increasingly significant in Japan.

one hand, to boost birthrates and encourage women’s unpaid caring work at home to relieve state and corporate welfare responsibilities, and, on the other hand, de-emphasizing gender difference to respond to labor market needs for flexible employment. Japanese companies have long used women as a buffer against economic downturn, earning the long-term loyalty of male employees by refraining from laying them off during recessions. In exchange, male workers have agreed to work long hours, making it necessary for their wives to take the primary responsibility for home and family.

²⁶ FELDMAN, Eric (1999): HIV and Blood in Japan: Private Conflict into Public Scandal. In: FELDMAN, Eric and Ronald BAYER (eds.): *Blood Feuds: AIDS, Blood and the Politics of Medical Disaster*. New York: Oxford University Press, pp. 60–93.

²⁷ See the article by Wilhelm Vosse on the environmental movement in this volume.

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