

**The Common Good in an Unequal World – A conference on the Compendium of
the Social Doctrine of the Church 2nd March 2006**

Disability and difference: The Compendium on the inherent dignity of the human person.

Presentation by Deirdre Carroll

I am honoured to be asked to address this conference as an advocate and representative of people with disabilities, and their families and to speak to the Compendium of the Social Doctrine of the Church on “disability and difference” and the inherent dignity of the human person. I believe this invitation is an indication that issues of disability have moved from sidelines to one of genuine interest and concern and a legitimate topic for public debate in this country reflecting the wider international movement for human and social rights for people with disabilities over the past five decades. This movement has sought to counter deep layers of prejudice and cultural influences which normalised the institutional isolation and segregation of disabled people and, in many cases, legitimised the handing of their care over to people, who had a lesser view of their humanity .

Professor Gerard Quinn, Professor of Law and Dean of the Faculty of Law at NUI Galway, who has published extensively on disability law , has pointed out that the application of the human rights approach in the field of disability is relatively new. He states that the human rights revolution in the context of disability has to do ¹with making the human being visible and making the benefits of human rights and democracy available to all.

¹ Quinn,G. with Bruce,A (2003) “ Towards free and inclusive societies for people with disabilities” in Quin, S. and Redmond, B. (eds) *Disability and Social Policy in Ireland*. University College Dublin Press. P182

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The Compendium devotes a small but important section in chapter 3 (148) to people with disabilities under the heading The Equal Dignity of All People. It makes two key statements:

Persons with disabilities are fully human subjects with rights and duties

The rights of persons with disabilities need to be promoted with effective and appropriate measures

The first statement mirrors closely the most famous of international human rights instruments The UN Universal declaration of Human Rights (1948) which proclaims in its opening article that all human beings are born free and equal in dignity and rights.

The second statement raises the more modern question of how we deal with difference in our world. In the last two decades there have been a number of international conventions, covenants and treaties drawn up to protect people from abuse and discrimination including people with disabilities. Many of these international instruments are legally binding on the states who ratified them and they are obliged to observe them. for example The International Covenant on Economic, Social and Cultural Rights (1966), International Covenant on Civil and Political Rights (1966) , The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984) The Convention on the Rights of the Child (1989) all of which have been ratified by the Irish Government. In addition many countries have introduced into their national law anti discrimination legislation to protect the rights of marginalised groups. In Ireland the broad equality legislation of the late nineties impacted on people

with disabilities in their right not to be discriminated on the grounds of their disability in their access to employment and goods and services.

The Compendium with its emphasis on the rights of people with disabilities is part of this disability rights revolution. The Compendium does not see rights in a minimalist way it talks about how people with disabilities “are to be helped to participate in every dimension of family and social life at every level accessible to them and according to their possibilities”² Human rights should not be just be about protection against power but about restoring power to the person. To quote Professor Quinn again when describing the importance of using rights to restore power to people “ *economic, social and cultural rights have an enabling function: they provide a bridge whereby persons with disabilities can take their place as valued and often highly productive citizens* ”³

The core principles at the heart of the rights based perspective is that the real problem in relation to disabled people lies not with the person but in the way society treats the difference of disability. This is not to deny that differences exist but while all people are different they are as the Compendium states equal in the eyes of God and as our Constitution acknowledges equal in the eyes of the law

² Pontifical Council for Justice and Peace (2005) Compendium of the Social Doctrine of the Church Veritas Publications, Dublin. p. 70

³ Toolan D. (2003) “An emerging rights perspective for disabled people in Ireland: an activist view” in Quin, S. and Redmond, B. (eds) *Disability and Social Policy in Ireland*, University College Dublin Press p.183

This poses many challenges for us and creating a society that recognises and values differences is not easy. The medical model of disability is still a dominant force in our society. This model defines people in terms of their physical deficiencies against a bench mark of some ideal type of norm of the able bodied.

It has led to the creation of services dominated by the “expert” or “professional” whose job is to provide care and cure or the “culture of care” as long time disability campaigner Donal Toolan calls it. Disabled people and their families were expected to participate in this process and if they did not do so wholeheartedly enough or questioned what was being put in place for them were, either dismissed as not having come to terms with the reality of their condition, or as has happened, and continues to happen, more frequently than we might care to believe, were told if they did not like what was on offer they could look elsewhere - a realistic option in a society where choices are few and rights non-existent.

Historically services in Ireland have been provided under the medical model. Religious and charitable organisations dedicated to single type of disability “the mentally handicapped,” “the deaf” “the blind” provided care and services in the absence of any state provision. Their pioneering role in this area must be recognised and applauded. However, at the same time the traditional charitable model can be rightly viewed as a reactionary force in the development of a modern policy in relation to disability.⁴ For example, Charities preoccupation with private fundraising due to lack

⁴ Quin, S. and Redmond, B (2003) “Disability Policy in Ireland” in Quin, S. and Redmond B. (eds) *Disability and Social Policy in Ireland*, University College Dublin Press. Pp.1-9

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of inadequate state support and their perceived role as interpreters of what disabled people need.

The first major landmark in the breaking with this model in Ireland was the publication of the report of the Commission on the Status of People with disabilities in 1996⁵. Chaired by Justice Flood the Commission set out a radical programme for change on how services for people with disability are delivered including a call for disability legislation which would establish rights for people with disabilities. This was indeed a major shift in philosophy when it is recalled that a little over ten years previously a Green Paper on services for people with disability, discussing the need for legislation, stated “the most important thing which any disadvantaged minority needs is good will and understanding” and continued with “the Government are convinced that the promotion of the rights of the disabled people can best be achieved by general agreement rather than by measures of compulsion.”⁶

Today we have a Disability Act which was passed last year amidst much controversy.

This is an Act which is considered by my Association and many disabled people to fall far short of the vision imagined by the Commission. The Irish Human Rights Commission in their observations on Bill before it became an Act listed 17 areas in

⁵ Commission on the Status of People with Disabilities (1996) *A strategy for Equality*. Dublin Stationary Office.

⁶ Department of Health and Social Welfare (1984) *Towards a Full Life: A Green Paper on Services for Disabled People*. Dublin : Stationary Office. P.112.

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which it could be improved upon. The Disability Legislation Consultative Group (established by government and to consult on new legislation) as recently as last May pointed out 5 core issues which they said must be addressed before the then Bill proved acceptable to people with disabilities and their families. Last November the Ombudsman Ms Emily O'Reilly has also expressed concern that the wording of the Act may not be robust enough to ensure that public bodies take sufficient steps to improve access for disabled people to buildings and services. The consensus is that the Act is not an enabling piece of legislation which will assist people to take charge of their own lives. It represents the least the state can do for its disabled citizens, citing throughout phrases like "where practicable" and "having regard to resources and obligations." The current Act is an opportunity lost. Lost because there was a deep seated fear in certain quarters that to offer even the possibility of a right to life enhancing services over a specified time is to offer an open cheque book to already well paid lawyers. In addition the somewhat disturbing argument was put forward that enshrining rights in law for disabled people would deny the needs of others such as the effective treatment of cancer patients or the care of the elderly.

Although there is a now much welcomed public commitment on the part of many politicians to improve the quality of life and opportunities for people with disabilities including strong personal support from the Taoiseach there is no doubt that the issue of rights based legislation is not on the political agenda. However we cannot continue to invest public monies in a system that is dysfunctional and fails to prohibit practices which violate the basic human rights of disabled people.

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The recent scandals about the illegal charging of elderly people for long stay care which also I may add was happening to people with disabilities in residential care and the appalling scandal of Leas Cross nursing home are examples of what happens when people are left to the vagaries of a system that has no legislative back bone. The practice of moving vulnerable disabled people to private nursing homes is still alive and well I can assure you. These scandals have led to call for an independent social services inspectorate for homes for elderly people. What most people do not know is that children and adults with disabilities in residential care have no protection from any type of inspectorate. Research shows that they are amongst the most vulnerable groups in our society and experience higher levels of abuse than others such as children and the elderly. The delay in introducing standards for and inspections of disability services is one of many indicators to measure progress in developing an more inclusive society. Others include the well documented high unemployment rates of disabled people and the number living below the poverty line.

If we and the Government are serious about promoting change in this sector significant changes as to how services are provided for and financed must be made. This will require extra resources, but surely there has never been a better time in our history to do so. But above all these changes must be underpinned by legislation which is clear and unambiguous and which has at its centre the rights of people with disabilities

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People with disabilities, their families and representatives groups have fought long and hard to get this issue on the political agenda and what has been heartening in the last few years has been the reaction of the general public. It is such positive public support that will ultimately ensure the political will to give rights meaning for disabled people. The unambiguous statements in the Compendium on the fundamental right of all people with disabilities to participate to the full in the economic social and cultural life of their communities will give strength, support and courage to the disability rights movement not only in this country but throughout the world as they fight for a new UN Convention on the rights of Disabled People.