**Academia in Ableism Book Event – Focus on Policy, 3rd December 2020**

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**My focus - policy, strategic litigation and institutional ableism**

Thank you for the opportunity to present today especially as I was a late entrant to this event. As you would be aware, I have a chapter in *Ableism in Academia*, chapter 12: *The violence of technicism: ableism as humiliation and degrading treatment*. I encourage you to read it. Today I wish to talk about policy, strategic litigation and institutional ableism.

It is absolutely critical that disabled people as a group, and individually are the drivers behind the development of disability and associated policies in the Four Nations. For too long, prominent individuals, and nondisabled led charities have been able to be effective lobbyists. In other words, they have had the ear of government and therefore have shaped and influenced policies. Despite the slogan ‘nothing about us with without us’, disabled peoples’ organisations to a greater or lesser extent, in the Four Nations, have held marginal positions in influencing policy. In Scotland however, organisations like Inclusion Scotland have been able to exert some influence over policy development but others do not. Nonetheless, I wish to reiterate that very powerful organisations with money, with capacity, with professional lobbyists have had *undue influence* on policy development by civil servants in the government as a whole. So, don't be fooled, disability policy and law reform are very much a contested terrain.

Unlike other marginalised groups or those with protected characteristics, under the Equalities Act; the disability voice or I should say voices, is often conveniently ignored. There is an absence of transparency about policy development processes and I would argue that the sector experiences some degree of policy capture by peak organisations. Not all charities are in the ‘bad box’, but some seem to think that it's conveniently okay to ignore or erase the voices of the service users or disabled people in general. Disabled Staff Networks need to be at the apex of planning and evaluation processes.

From my perspective, it is clear, that any disability strategy by government needs to be holistic and comprehensive. These strategies need to be based on either the social model of disability or have an awareness of the insights of Studies in Ableism. They need to be also inclusive in terms of intersectional issues, for disabled people can also be a sex class, impacted by racism, caste, minority religious and sexuality issues. What I do want to say, is that we must *actively resist* any attempts to divide up our movement and community along the lines of diagnosticism. That does not mean that policy and laws should not take particularised impairments into account. Rather any focus on impairment needs to be undertaken in the context of a holistic approach to disability. Dividing disability policy along the lines of diagnosticism is dangerous. For example, it could privilege certain disability groups over others, some groups are less noticeable or weaker in terms of influence. That privileging is not necessarily based on need, but on the degree of success that lobbyists have had with government. It's also divisive in the sense of dividing and pitting disability groups against each other, especially in relationship to access to funding. If there are any disability specific initiatives, these initiatives need to be tide back to a holistic disability strategy framework.

I want to move on briefly to the issue of strategic litigation, sometimes referred to as public interest advocacy. To my surprise in the UK, especially Scotland there is a weak or indeed non-existent culture of public interest advocacy. What this means is that the disability community is not putting forward cases before the courts that test or will seek clarity about provisions within in disability legislation or laws in general, that impact on disabled people's lives. What we have is a paucity of disability jurisprudence, that is, the courts interpreting the meaning of legislation and significantly the jurisprudence or reasons underpinning a decision. There are many areas of law that require clarification such as the term ‘substantial’ or ‘substantive’ disability, in the Equalities Act. In Scotland for instance, there's no definition of social care in law which means that either we either wait for governments to define legislative definitions or turn to the courts to provide greater clarity. In October The United Nations issued human rights indicators for the convention on the rights of people with disability. Alongside the UN sustainable development goals, human rights indicators are critical for measuring the performance of government. We need to ensure that the convention’s human rights indicators are built into each of the Four Nations National Performance Frameworks. As a movement we need to think carefully about what strategic litigation can come forward before the courts and raise money through crowdfunding as these cases are often very expensive.

Finally, I would like to address the issue of institutional ableism which I have discussed in my chapter in the book. Institutionalised ableism is closely connected with the practises of humiliation and indeed represents a form of degrading and inhumane treatment. Whilst the Equality Act 2010 is significant and must be complied with it, is part of a discrimination framework which has limitations. A focus on the insights of studies and ableism particularly around institutionalised ableism is critical. In my chapter I point out that ableism is not simply about ignorance, it is an epistemological and organisational system that legitimises certain ideas about normalcy and what it means to be fully human in particular what it means to be a competent employee. Insitutionalised ableism rewards certain classes of people for their corporeal alignment through practises such as technicism.

The whole apparatus of the University community is built around an imagined community of able bodied and able minded people who are bound together by an ableist homosocial world view that asserts the preferability of the norms of ableism. Universities and other employers really need to come to grips with the existence of institutionalised ableism, and not just see reasonable adjustments as an opportunity to pressure disabled people to ameliorate their impairments.

Universities as meritocratic institutions really need to overhaul their understanding of ‘merit’ which continues to discriminate against disabled people and BAME staff. Technicism in the workplace is based on certain assumptions about the archetypal employee who are seen primarily in terms of resources. And these resources in many ways are deemed characterological. The academic is required to be flexible and able to be shifted about in different spaces online, scheduled classes, meetings, and in various intercampus locations and time zones. Academics need to be moulded to fit standardised practises such as ratio of staff, work allocation formulas for marking, and built environment specifications which are based on theories of the optimum body.

The disabled academic is assumed to be an unencumbered sex neutral employee, otherwise their contribution is questioned, or we may be seen as a burden. This is a fiction however this fictitious employee is assumed to not have any caregiver responsibilities, have their domestic tasks in hand and to be able to be available full time, year-round available to work overtime. Disabled academics rarely fit this mould. When we challenge this state of affairs, often we experience gaslighting, a denial of our experiences and a claim of unreasonableness.

The reasonable adjustment provisions under section 20 -21 of the equalities act Due to the delimitation of the concept of reasonableness another manifest legal concepts makes adjustments and social inclusion within our communities somewhat provisional. Instead as I've argued in this chapter that universities as purveyors of new knowledges, need to be *proactive* and engage with the *anticipatory duties* of the legislation. Interestingly, it's taken 10 years since the Equalities Act 2010 came into force, to have a case before the UK Supreme Court judgment around the *positive action* provisions of the Equalities Act. On 16 October 2020, the Supreme Court in [**R (on the application of Z and another) (AP) (Appellants) v Hackney London Borough Council and another (Respondents)**](https://www.supremecourt.uk/cases/docs/uksc-2019-0162-judgment.pdf) clarified the basis and principles behind the *positive action* provisions in the Equality Act. On the back of this case, I look forward to universities and other employers , in their recognition of institutionalised ableism, acknowledge the absence of a level playing field for disabled employees, institute positive actions and measures to deal with the under representation of disabled employees within universities and the barriers, once they are employed, that they might experience.