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# Supporting Rights-Based Ideas in Policy and Practice

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## ABSTRACT

Principles of human rights rest at the heart of social justice and notions of an inclusive society. This article seeks to refocus practice attention on the issue of human rights and the ways in which rights-based ideas can be integrated across practice, policy and legal domains. It argues that creating systems in which critical components mutually reinforce rights-based ideas will be more likely to have the depth of influence required to shift thinking toward rights-based practice and maintain its endurance over time.

## KEYWORDS

Human rights; rights-based practice; rights-based policy



## INTRODUCTION

The past decade has seen a surge of popular and academic interest in the subject of human rights (Churchill, 2006; Donnelly, 2003; Dunn & Wheeler, 1999; Gewirth, 1998; Li, 2006; Nickel, 2007; Orend, 2002). On a daily basis we see media reports on human rights and their violations. Nations have become galvanised by the idea of human rights and are prepared to monitor its abuses and to intervene to stop violations elsewhere. Therefore, the claim that every human being has intrinsic value has ignited the international political community. The topic of human rights has become a moral cause, and declarations such as the United Nations Universal Declaration of Human Rights (United Nations, 1984) and the two associated United Nations covenants are increasingly utilised in the evaluation of international and national laws and political processes (Donnelly, 2003; Orend, 2002).

Law and policy provide an environment within which ideas and beliefs are sanctioned and supported in practice. They provide the overarching mission and goals for human services (Pecora, Whittaker & Maluccio, 2006) and they can provide the impetus for innovative change and development. In this article, we will consider the role policy and law can play in furthering rights-based practice. We also consider some of the challenges involved in shifting practitioners toward a focus on human

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rights. We then discuss opportunities to create an integrated framework to support rights-based ideas in practice and to support good outcomes for clients.

## RIGHTS AND RESPONSIBILITIES: THE ROLE OF THE STATE

Human rights are designed to protect human dignity (Waldron, 2009). The concept of human dignity is an old ethical idea that has at its centre the claim that every human being has intrinsic worth and is equal in this respect (Sulmasy, 2007). Initially, it was accepted that individuals' level of dignity varied according to their social status, with peasants considered inferior to nobles or clergy. However, with the event of modern liberal thought in the 17<sup>th</sup> century, a sea change in meaning was discernible. Rather than high value being exclusively associated with individuals of elevated social rank, all human beings were regarded as if they were aristocrats or royalty. This shift in the meaning of the term *dignity* in modern times and its close link with the concept of rights is nicely expressed by Waldron (2009, p.2):

Dignity, we are told, was once tied up with rank: the dignity of a king was not the same as the dignity of bishop and neither of them was the same as the dignity of a professor. If our modern conception of human dignity retains any scintilla of its ancient and historical connection with rank- and I think it does: I think it expresses the idea of the high and equal rank of every human person- ...Dignity is intimately connected with the idea of rights as the ground of rights, and the content of certain rights, and perhaps even the form and structural character of rights.

Because of their inherent dignity, human beings are assumed to possess equal moral status and are, therefore, expected to receive due consideration in matters that directly affect their core interests. If we all matter equally, it is incumbent on each of us to think about how our actions are likely to affect the people around us, both close and distant. The possibility of their experiencing unjustified harm as a consequence of our actions should function as a red flag and prompt us to reflect on how or

if we should proceed with our planned course of action (Driver, 2006). Furthermore, the equal moral standing of each person within a community means that every person is entitled to make specific claims against other members of the moral community and, in turn, is expected to acknowledge his or her obligations to others' respective legitimate claims. These claims will concern the goods they are entitled to as members of the community, especially ones that are regarded as essential for securing their core interests and needs.

A human right is a claim right held by individuals in virtue of the fact that they are human beings and, as stated above, reflect human dignity (Griffin, 2008). Human rights are not tied to a particular social class, professional group, cultural collective, racial group, gender or any other exclusive category. Individuals hold human rights simply because they are members of the human race and, as such, are considered to be entitled to a life characterised by a certain level of dignity. Such a life ultimately is based on the capacity and opportunity to form a conception of a worthwhile life and the chance to realise this conception without undue opposition from other people.

The dignity of human life is thought by rights theorists to reside in individuals' ability to make fundamental life choices for themselves and the satisfaction of basic human needs enabling them to live at least minimally worthwhile lives. In order to do this, it is necessary that certain wellbeing and freedom goods are available to people (Gewirth, 1998; Griffin, 2008; Miller, 2007). According to theorists, human rights are grounded by reference to personhood or need considerations rather than moral facts or truths that are evident within the fabric of the world (Gewirth, 1996; Griffin, 2008). What they mean by this is that the concept of agency and the capacity and opportunities to form and pursue important life goals (with a reasonable chance of success) depend on individuals' ability to evaluate their goals and conception of a good life and formulate a plan to achieve them. It also depends on their possessing basic psychological and physical wellbeing required to function as an effective embodied person in the world as it exists (i.e., Gewirth, 1998; Griffin, 2008).

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Human rights do not exhaust the moral arena and only protect the internal and external conditions necessary for a minimally worthwhile life. In essence, the claim is that the core requirements of personhood and agency constitute these basic conditions and ought to be vigorously defended by the state and its citizens.

A major ethical strength of a human rights perspective is that it acknowledges the essential entitlements, and the protection of these core interests, of all human beings in the world (Connolly & Ward, 2008; Griffin, 2008; Parekh, 2006). While people are profoundly shaped by their culture, the combination of biologically based needs and shared living conditions entails that all human beings have certain interests in common. The function of human rights is to protect the necessary conditions for a minimally worthwhile life. This means ensuring that each person has the capabilities to realise their goals concerning the kind of life they would like to live and possess certain wellbeing goods (e.g., education, health care, adequate living conditions, freedom from physical pain etc.).

The conception of human rights presented in this paper is sensitive to social and cultural differences. The notions of freedom and wellbeing and the various goods that constitute them legitimately vary according to local conceptions and norms (Wong, 2006). For example, in one culture, education may involve secular, scientific schooling while in another it may also involve instruction in traditional cultural beliefs and practices. In other words, rights to the core values of freedom and wellbeing are shaped somewhat by local interpretations of the component goods. Of course, common human needs and interests derived from a shared human nature should also be taken into account when considering individuals' claims for the goods of wellbeing. The capabilities necessary to achieve the two conditions of freedom and wellbeing are wide-ranging and depend on the availability of social and cultural resources of one kind or another. There is a danger, however, that indigenous peoples' core interests may be overlooked by workers operating with a culturally saturated conception of rights-based practice. It is a strength of our approach that what constitutes the goods of wellbeing and freedom

(constituents of human dignity) are likely to vary from culture to culture. This places considerable responsibility on practitioners to make sure they understand what specific conceptions of wellbeing and freedom are relevant for individuals from different cultural groups.

In line with the above conception of human rights, Dworkin (1970, p.13) argued the importance of governments protecting the freedom of its citizens based on the familiar idea of political equality:

...weaker members of a political community are entitled to the same concern and respect of their government as the more powerful members have secured for themselves, so that if some men [sic] have freedom of decision whatever the effect on the general good, then all men must have the same freedom.

Rights are essentially to do with fairness. The duty of the government is to support equity, fair treatment and other rights necessary to protect a person's human dignity. It must be acknowledged that because human rights are simply mechanisms for protecting human dignity and the wellbeing and freedom components entailed by this fundamental moral idea, they can be subverted by political groups. One advantage of viewing human rights as moral rights is that it becomes possible to criticise existing political and social institutions if their norms and legalisation fail to reflect the intrinsic worth of all people. In other words, human rights related legalisation and social norms may in fact fail to reflect the moral notions of human dignity. It is important to look beyond the rhetoric and ask whether the practices justified by human rights ideas demonstrate respect for the value of all persons and not simply those favoured by virtue of their class, gender, age or occupation.

According to Theis (2004, p. 3) the state also has a duty to "respect, protect and fulfil rights". In respecting the rights of its citizens, Theis argues that state laws, policies, programmes and practices should not violate human rights or interfere with the individual's pursuit of their rights. The state should also protect rights by preventing rights violation by others. In fulfilling rights, the state is expected

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to take positive action to frame rights in law, policy and practice. Whilst the state cannot be expected to be responsible for everything, Theis (2004, p. 3) argues that the state nevertheless:

...has an obligation to create the conditions that enable other duty bearers, such as parents, private sector, local organisations, donors and international institutions, to fulfil their responsibilities.

This is an inclusive approach to fostering rights-based initiatives through the formation of duty-bearer alliances around a common vision and goals.

That the vast majority of countries have become signatories to the United Nations Convention on the Rights of the Child (UNCROC) is an indication of the commitment that state parties have to the furthering of children's rights. Conventions are treaties endorsed by states (or organisations) acting together (Veerman, 1992). Unlike declarations, which are not considered to be binding documents, conventions carry specific obligations, and ratifying implies that the state must take active steps to meet those expectations. In ratifying a convention, the state therefore accepts its obligations. While declarations are considered "soft" international law, conventions are considered to be "hard" international law. In becoming a signatory to UNCROC, therefore, a state makes an important commitment to meet its expectations under the convention and subjects itself to criticism if it does not comply.

This said, the relationship between law, policy and practice in the human services is a complex one. It is not always clear how enabling current laws and policies are for practitioners wanting to utilise a rights-based approach (Williams, 2004).

## CHALLENGES WHEN EMBEDDING RIGHTS-BASED IDEAS

There is no question that in recent years a growing recognition of rights-based issues has spurred governments to develop initiatives that are more culturally responsive and meet the particular needs of disadvantaged communities. Human service systems develop in response to a unique set of social and cultural conditions. Because of this,

responses with respect to law, policy and practice can vary considerably. Arguing from a child welfare perspective, Hetherington (2002) identifies three important factors that influence the functioning of service systems: structures, professional ideology and culture.

Structural systems provide the mechanisms through which services are delivered. These may be organised at a central or regional governmental level or they may be provided by local nongovernment systems. The structural system influences both the way in which interventions occur and the thinking behind them. How structural systems fit together is also important. For example, in England, the call for a "whole-of-government" approach, providing more integrated systems of welfare, health and education, if successful, will influence the ways in which child protection work will evolve as cross-sectoral relationships develop and are sustained.

Legal and policy frameworks contribute importantly to the structural system and influence levels of state intervention. How the law provides for human need clearly influences the way in which practice is undertaken. For example, the introduction of the Children, Young Persons and their Families Act (1989) in Aotearoa New Zealand has had the effect of changing the ways in which children and families are responded to by reinforcing greater family decision-making and signalling less state intervention into family life (Connolly, 1999). Equally, the introduction of the Children's Act (England and Wales) in the same year provided a platform for partnership work with families. In Australia, the principles of UNCROC have influenced the development of new law. For example, Victoria's Children, Youth and Families Act 2005 formally recognises child wellbeing as a community concern in line with Article 30 of the convention (Sheehan 2009).

At the same time, how human services are developed is also influenced by professional ideology. Practitioners have theories that guide their practice and influence their decision-making. Professional ideology shapes practice and influences intervention pathways. For example, the adoption of a strengths-based perspective has introduced a particular flavour to human service practices that



In the centre of the continuum we are likely to see practice more or less influenced by the two poles. While generally more strongly located toward the professional power-based practice pole, the client-infused model nevertheless has elements of client involvement, but this is largely determined by the professional. Here we are more likely to see the professional deciding if, when and how the client might be involved in the process.

The professionally-infused model, while having more elements of the purer human rights-based approach, nevertheless has greater professional involvement at critical decision-making times. It can reflect a rights-based orientation in which the client clearly influences professional involvement, but the emphasis is more strongly on partnership rather than client empowerment. This is an important distinction, the significance of which is reinforced by Banks (2006, p. 116) when she discusses the notion of “democratic professionalism”:

Democratic professionalism entails giving more power to service users in the context of the professional relationship, but the focus is on the professional as the one giving the power. So although the service user may be given more rights and be referred to as a ‘partner’ ... it could be argued that it is still the professional that is in control.

Democratic professionalism can be seen as an attempt to become more responsive to client needs and interests, ensuring that they have opportunities to participate, but nevertheless retaining some elements of control. In many respects, it comes down to the level of tolerance a system may have with respect to positioning along the practice continuum. Some will be able to tolerate, encourage or mandate greater levels of rights-based practice, some less. Yet in some ways, regardless of what mandate the system provides, Banks argues that “while laws, policies and procedures can lay the ground rules for service users’ rights, they are meaningless if not developed alongside the commitment of agencies and workers to give support and resources for service users to exercise their rights” (2006, p. 117).

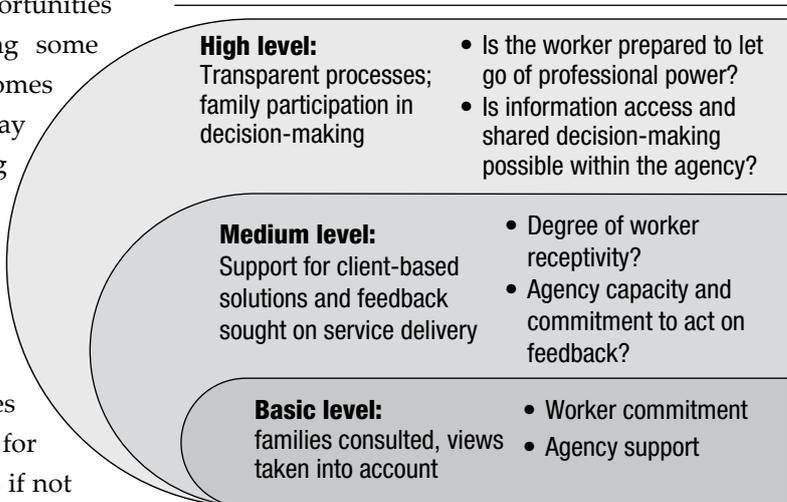
Because practice generally responds to circumstance, it would be unlikely for practice to be consistently at one point along the continuum or fully up one end or the other. Practice is fluid and can shift along the continuum over time depending on circumstance and levels of reciprocal trust between worker and client.

## COMMITMENT TO RIGHTS-BASED PRACTICE

Practitioners and organisations are likely to have differing degrees of commitment to client empowerment and client rights of participation and self-determination. Influenced by Shier (2001), Figure 2 provides a useful way of visualising levels of commitment to rights-based ideals.

At the most basic level of commitment to the ideal of client participation, families are consulted and their views are taken into account. This requires both worker and agency commitment. Is the practitioner ready to listen and consult? Does the agency support consultation? At the medium level of client participation, practice supports client-based solutions and there is a context in which client feedback is sought and acted upon. As with the basic level, in order to commit to this kind of practice, the worker essentially needs to believe in it. Does the practitioner have confidence that clients can be

**Figure 2.** Levels of client participation and rights-based practice<sup>a</sup>.



a Based on H. Shier, 2001, Pathways to participation: Openings, opportunities and obligations. *Children and Society*, 15, 107-117.

trusted to develop good solutions? Is the worker receptive to seeking and acting upon feedback? With respect to the agency, is there a commitment to support such practice? In many respects, it does not really matter how many service-user feedback forms are completed; unless the practitioner and the agency are receptive, the feedback will not contribute constructively to the improvement of services.

High levels of client participation and commitment to rights-based ideals is evidenced by transparent processes and greater participation in decision-making. A higher level of participation marks the transition from indirect involvement in decision-making (consultation, contribution and feedback) to direct participation. It reflects a shift in the power relationships and the need for professionals to examine whether they are able to commit to a set of core values that may be at odds with previous professional experience. They may need to ask themselves whether they are ready to embrace client involvement in decision-making. At this level, the service design of the organisation—its practice frameworks and service model—are seen to support practitioner commitment, actively reducing structural and ideological barriers that hinder the practice application of rights-based ideals.

In conceptualising these levels of commitment to client participation and rights-based ideals, we do not want to suggest that these are necessarily linear, hierarchical or, indeed, comprehensive. As with our earlier continuum discussion (Figure 1), practice inevitably fluctuates over time and is subject to

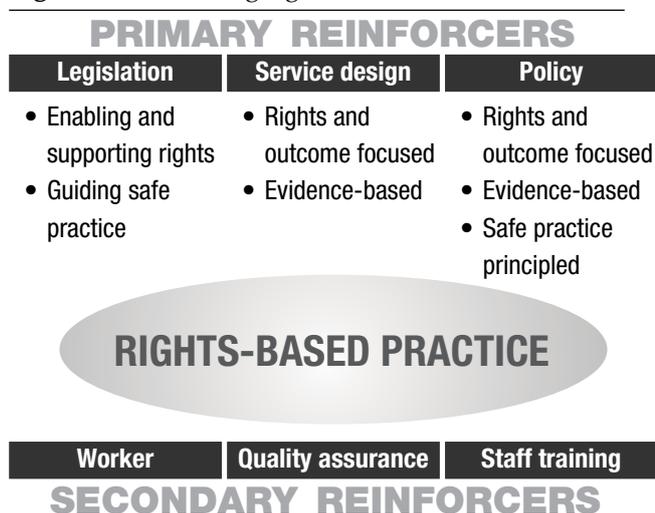
unique tensions and dilemmas. The distinctions between the levels of participation shown in Figure 2 are both generalised and simplified in order to illustrate the way in which practice can be positioned over time.

In conceptualising human rights based practice, we have been struck by the range of factors that can influence the way a practitioner views the rights of clients in the context of service delivery. It is also clear to us that the way a worker practises will be influenced by the professional system within which they work. Service models, frameworks and policies can support rights-based approaches to practice. Professional cultures can adopt human rights theories and values that will influence the way in which a professional system and the practitioners working within it perceive the rights of the people they work with. Human rights that are enshrined in legislation can also influence practice, although law can inevitably be interpreted in ways that can be supportive of rights-based ideals or be subverted by competing interests. We believe it is important to bring together the elements of practice, policy and law in an integrated conceptual framework that will provide the broad-ranging reinforcements that we consider essential to the embedding and maintenance of rights-based practice.

### CREATING AN INTEGRATED FRAMEWORK TO SUPPORT RIGHTS-BASED IDEAS

When looking to integrate rights-based practice ideas, focusing on discrete elements of a human service is unlikely to have the kind of impact needed to strengthen rights-based practice overall. Focusing on practitioners' views alone, for example, will be insufficient to further human rights based practice without rights-based ideas being reinforced by other elements of the service, such as service design, policy and legislation. Nor is it likely that law, policy or the practice system alone can provide sufficient reinforcement to embed rights-based ideas. To successfully integrate these ideas in practice, we believe that it is necessary to bring together the potential influence of each of these components in order to mutually reinforce a coherent vision within which rights-based practice will have the chance to flourish.

**Figure 3.** Reinforcing rights-based ideas.



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There are times when practitioners struggle to appreciate the purpose of policies, partly because they can be developed as ad hoc responses to external pressure. Such developments do not always resonate with the way practitioners view and experience the world in which they work. Indeed, some policies are perceived to be obstacles to good practice; in the way they have been interpreted, they may actually be so. Conversely, policy analysts and legal professionals may be concerned about the way in which practice can evolve in the absence of clear policy guidelines and/or research evidence of what works well.

We contend that applying a coherent human rights perspective to service design, policy development and legislative review as opportunities occur has the potential to strongly influence good client outcomes. In our view, the more focused the practitioner on human rights, the more likely it is that an environment will be created which fosters positive change. We therefore see a focus on rights-based ideas, including those that impact on the relationship between clients and practitioners, as central to achieving good outcomes: “meeting their different self-defined needs in the way they, ensured full knowledge, support and choice, prefer” (Beresford, cited in Smith, 2005, p.102).

Human beings have the right to realise their full potential and to experience the best outcomes that they can for themselves and their families. Linking human rights to outcomes encourages practitioners to think about how practice influences the people they work with in the longer term and how nurturing human agency has the potential to support good outcomes. This means that practitioners need to support and, at times, scaffold people’s agency efforts to live a “good life” in accordance with their cherished goals and values and, in doing so, become healthy and thriving members of a society in which they feel valued and connected. Building practice frameworks that are rights-based and outcome-focused (Connolly, 2007; Ward & Connolly, 2008) will reinforce practice behaviours that are consistent with a rights-based perspective. When policy and guidelines are developed or reviewed, this provides an opportunity to embed relevant human rights-based principles, such as inclusion and participation,

in practice fields that will further reinforce human rights-based practice. Finally, when a revision of the relevant legislation occurs, the human rights principles in international treaties, such as the United Nations Convention on the Rights of the Child or the United Nations Conventions on the Rights of Persons with Disabilities, need to be incorporated into the legislation of those countries that have ratified the particular treaty. The inclusion of specific human rights in the relevant legislation will reinforce the importance of rights-based practice as practitioners work with clients, and it will also influence the development of policies and guidelines.

If we conceptualise these three elements (service design, policy and statutory provision) as key factors that influence practice and all three reflect rights-based ideas in an integrated way, they will mutually reinforce rights-based practice. As such, they are primary reinforcers (see Figure 3).

A strategy that involves developing systems that mutually reinforce critical ideas will be more likely to have the depth of influence required to shift practitioners toward human rights based practice and ensure its endurance over time. However, these are not the only important reinforcers. As practice develops around a coherent set of rights-based ideas, it becomes important to reinforce this through other systemic processes, such as supervision, quality assurance/improvement and training. These secondary reinforcers can also play a critical role when marshalled toward a collective rights-based vision and purpose.

## CONCLUSIONS

Rights-based approaches are concerned with everyone’s rights. They do not privilege one person’s rights over another—for example, a parent’s rights over their children’s rights. In our view, human rights are ethical scaffolds that connect the different strands of human life in ways that respect the integrity of persons and the need for social justice. Rights are protective capsules that function to safeguard the essential conditions for agency, freedom and wellbeing. They are constructs that can exist only in supportive political, social and personal networks where human dignity is valued and the life of each

individual is treasured. Human rights remind us that we all require scaffolding by the efforts of others at one time or another in our lives and that an effective way to create a healthy community is to attend to the needs of the individuals that comprise it. Rights-based practice is simply another entrance into a world where the interests of clients are viewed as pivotal and the task of practitioners is to help them to create a space where their lives can be lived in ways that reflect both their deep commitments and momentary concerns.

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