Needs or rights? A challenge to the discourse of special education

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Abstract: It is nearly thirty years since the *Special Educational Needs: Report of the Committee of Enquiry into the Education of Handicapped Children and Young People (The Warnock Report)* (DES, 1978) introduced the phrase 'special educational needs' into the UK education system. The argument here is for the abandonment of the *special needs* discourse, claiming that it has, in fact, led to exclusionary practices within education. Building on the work of early years educators in Reggio Emilia schools in Northern Italy, we advocate for the adoption of the phrase 'educational rights' and suggest that the positive impact of such a linguistic turn would be significant for the lives of children currently described as having 'special educational needs'.

Introduction

Nearly thirty years ago, the language of 'special educational needs' became common currency with the UK education system (DES, 1978). This represented a key shift in attitudes to the education of significant numbers of children. The Warnock Report (DES, 1978) suggested that 20% of children would, at some time in their school career, experience individual difficulties which were described as 'special educational needs' (DES, 1978). The term was intended to refer to a broad range of children and, as a result, brought children previously described as 'handicapped' into the mainstream education agenda. The terminology of 'special educational needs' was broadly welcomed in the 1970s and is the

dominant discourse used in education today. However, over the past thirty years the term 'special educational needs' has increasingly come to be seen as problematic. For instance, Tomlinson (1985, cited Skidmore, 2004:5) argues that the terminology of special educational needs still 'masks a practice of stratification which continues to determine children's educational careers by assigning to them an identity defined by an administrative label'. Indeed, the language of 'special educational needs' within current policy and legislation continues to locate the 'problem' within the child. Building on the work of early years educators in the Reggio Emilia schools in Northern Italy, we advocate for the abandonment of the phrase 'special educational needs' and for the adoption of the phrase 'educational rights'. We suggest that the impact of such a linguistic turn would be significant for the lives of all children, and, in particular, for those currently described as having 'special educational needs.'

The power of language

The focus here is an exploration of the use of language in education. This is essential because of the power that language has to construct experience (Foucault 1973; Burman and Parker, 1993). In the education system, language is able to create positive and negative images of children which, in turn, impact on the policy and practice of education (Corbett, 1996). Indeed, an overview of the development of the use of language in special education policy demonstrates the power of language over the lives of children.

Historical overview of the language of special education

At the end of the second world war, the 1944 Education Act (HMSO, 1944) created eleven categories of 'handicap' which included 'the educationally subnormal', and 'delicate' as well

as 'blind', 'deaf' and 'physically handicapped' pupils. A number of children were deemed to have such 'severe' impairments that they were described as 'ineducable' and were not, therefore, included in the 1944 Act.   It was not until the 1970 Education (Handicapped Children) Act that 'ineducable' children ceased to be the sole responsibility of the health service, and were brought within the services of Local Education Authorities (LEAs). The 1970s was a period of change in attitudes to 'handicapped' children and pressure grew for a committee of enquiry into their education (Evans and Varma, 1990). The result of this pressure was the creation of the Warnock Committee in 1974 to examine the educational provision for 'handicapped' children in England, Scotland, and Wales.

Crucially, the report, which followed the committee's enquiry (DES, 1978), rejected the eleven categories of 'handicap' in the 1944 Act. The Warnock Report (HMSO, 1978) adopted, instead, the term 'special educational needs' to describe all children who may have 'individual' educational needs. Using this definition, the Report suggested that 20% of children were likely to need 'special educational' provision of some kind at some time during their school careers. This change in the use of language coincided with a significant recommendation for change in educational practice - that provision for special education should 'wherever possible' occur within mainstream settings (DES, 1978). However, it was not until 1994 that the Warnock committee's commitment to education within mainstream settings was translated into the Government's support for inclusive education. In 1994, the UK Government signed up to the Salamanca Statement, drawn up by United Nations Educational, Science and Cultural Organisation (UNESCO), which called upon all Governments to 'adopt as a matter of law or policy the principle of inclusive education, enrolling all children in regular schools, unless there are compelling reasons for doing otherwise' (UNESCO, 1994, cited in DfES, 2001a:1).

The recommendations from Warnock's Committee of Enquiry influenced the 1981 Education Act (HMSO, 1981). For the first time, the 1981 Act gave parents the right to be involved in the process of assessing their child. The 1981 Act also adopted the language of 'special needs' and saw the creation of 'statements of special educational needs', a legal contract between parents and local education authorities, in which the child's 'needs' and the 'special provision' to meet those needs were documented. The language of 'special needs' and the practice of statements of special needs endured so that the 1993 Education Act saw the introduction of *The Code of Practice for the Assessment and Identification of Special Educational Needs* (DfEE, 1994).

The Education Act 1993 (HMSO, 1993) required the Secretary of State to issue a *Code of Practice for the Assessment and Identification of Special Educational Needs* (DfEE, 1994). Practical guidance was given to LEAs and the governing bodies of all maintained schools about their responsibilities for all children with 'special educational needs'. *The Code of Practice* (1994) identifies eight areas of need:

learning difficulties

specific learning difficulties

speech and language difficulties

emotional and behavioural difficulties

sensory impairments (hearing)

sensory impairments (visual)

medical conditions

The language of the 1994 *Code of Practice* is in stark contrast to the language of the 1944 Education Act. However, in 2001, a revision of the *Code of Practice* replaced the original

code. Here the eight areas of need identified in the 1994 *Code of Practice* were replaced by only four:

cognitive and learning

communication and interaction

behavioural, emotional and social development

sensory and/or physical.

Despite the reduction in the number of categories of need, the focus of the *2001 Code of Practice* (which remains the current guidance) is still on individual children's needs, rather than on barriers to children's learning. The impact of changes to the way in which disability and special needs have been conceptualised within the academic community seem to have had little impact on the current *Code of Practice*.

De-constructing special educational needs

It seems that the term 'special educational needs' has maintained a focus in education on individual children's difficulties or within-child factors. At times, has meant that the child's background, temperament and the parenting they receive have been scrutinised, and insufficient attention has been given to the day-to-day operation of the school and the barriers to all children's learning and inclusion (Solity, 1992). Yet, over the last twenty years, within disability studies, academics have challenged models of disability which focus on individual deficits and the social model of disability has begun to have an impact on the lives of disabled people (Swain et al., 2003; Thomas, 2004).

From a social model perspective, it is not the effects of their impairments that disables people but 'discrimination and prejudice' (Shakespeare, 1992, cited Swain and French, 2000: 571). The barriers experienced by disabled people 'permeate every aspect of the physical and social environment' (Swain et al., 2003: 138). Proponents of the social model argue that it is largely the medical establishment and other professions who pathologise individuals, by defining them, through a variety of negative and disempowering labels, such as, 'different', 'deviant', 'abnormal' 'invalid' or 'special'. Society then denies disabled people equality through a variety of practices. These include denying access to employment and thereby making disabled people dependent on charity (Barnes, 2000), preventing physical access to social spaces and not recognising non spoken systems of communicating. In education children and young people are disabled through the exclusionary practices of segregated schooling or by being labelled 'special needs'. In order for disability to be eliminated, the social model calls for an integrated approach, by service providers, to identifying and removing the barriers to inclusion and enabling people with impairments to have control over their own lives (Campbell, 2002). The empowerment and politicisation of disabled people is a defining principle of the social model (Oliver, 1997; Swain et al., 2003) with disabled and non-disabled people working together to achieve change (Goodley, 2001).

The social model shifts the 'problem' of disability away from the individual and into the collective responsibility of society as a whole (Tregaskis, 2002). Swain and French (2000) working from a social model perspective, have sought to challenge the assumption that the experience of being impaired is always and necessarily tragic proposing an 'affirmation' model of disability. Moreover, disabled people have demonstrated in their writing that living with impairment can give fresh perspectives and enable lives which are interesting, positive

and empowering (Swain and French, 2000). The affirmation model enables disabled people to assert their positive identities by actively rejecting dominant values of 'normality' (ibid.)

This rejection of individualised models of disability and the adoption of an affirmation model of disability challenges the deficit discourses reflected in the definition of 'special educational needs'. The current policy and legislation states that:

> Children have special educational needs if **they have a**
>
> **learning difficulty** which calls for special educational
>
> provision to be made for them. Children have a learning
>
> difficulty if **they:**
>
> **have a significantly greater difficulty in learning** than the
>
> majority of children of the same age; or
>
> **have a disability which prevents or hinders them** from
>
> making use of educational facilities of a kind generally
>
> provided for children of the same age in schools within the
>
> area of the local education authority
>
> are under compulsory school age and fall within the definition
>
> at (a) or (b) above or would do so if special educational
>
> provision was not made for them.
>
> (Section 312, HMSO, Education Act, 1996 **bold** our emphasis).

The language of current policy which focuses on children who are 'special' and in 'need' emphasises individual deficits and, therefore, plays a part in constructing and sustaining exclusionary practices.

Research (Cole, 2004; Hodge, 2006; Runswick-Cole, 2007) continues to show that, within schools, practices operate that exclude pupils described as having 'special educational needs'. Indeed, the term 'special educational needs' can be seen to contribute to the exclusion of children so labelled as they are 'othered' (Rorty, 1989) by professionals and, in turn, by children who see 'the special needs' as different and deficient. The authors, who have both worked in schools and universities, have regularly heard children described by teachers and teaching assistants as 'the special needs.' For example, 'we're taking the 'special needs' to the supermarket tomorrow'. We have also heard this language adopted by children within schools who were overheard to ask another child 'is your brother a special need?'. It is not surprising that this is the language of the classroom and the playground as this is also the language adopted in the popular press. An article in *The Times* newspaper (The Times, 2007) described how summer born children can be 'wrongly classed as special needs.' The book *Balderdash and Piffle* (Games, 2007) which accompanies the BBC television series of the same name, includes the term 'special needs' in the chapter entitled 'Put-downs and insults.' 'Special needs' is sandwiched in between 'plonker' and 'Joey' a term used in the 1980's to described disabled people following Joey Deacon's appearance on a children's television programme *Blue Peter.* The evidence from the classroom, the playground and from popular culture suggests that the term 'special needs' cannot be seen as benign or neutral. The term 'special needs' contributes to the loss of a child's identity behind the veil of a syndrome or condition. Just as the Warnock Report in 1978 rejected the language of the 1940s and the classification of children by their handicap, thirty years later it seems timely to consider rejecting the term 'special educational needs' as out dated and exclusionary language. Having rejected the term 'special educational needs', it may be that

the work of early educators in Reggio Emilia in Italy offers a way forward and, perhaps, an alternative.

Lessons from Reggio Emilia

The Reggio Emilia philosophy and approach to early childhood education evolved within a system of municipal infant-toddler centres and pre-schools in Reggio Emilia, in Northern Italy. Parents, who started the schools in the 1940s, continue to participate fully in the life of the school in order to ensure the schools reflect the values of the community. From the beginning, Reggio Emilia schools were guided by the late Loris Malaguzzi, a young teacher, who directed the energies of parents and teachers in the development of an education based on relationships (Edwards et al., 1993). The Reggio Emilia approach draws upon the work of early childhood psychologists and philosophers, including Dewey, Piaget, Vygotsky, Garner and Bruner, in conjunction with extensive experience. However, supporters of the Reggio Approach do not claim that it is either childhood method or a set curriculum, rather it is a set of community-constructed values (ibid).

Significantly, the pre-schools in Reggio Emilia operated inclusive practices in education before it became law in Italy in 1971 (Palsha, 2002 cited in Vakil et al. 2003). Fundamental to the Reggio approach is the relationship between the child, the teacher and the knowledge to be learned (ibid.) All children are viewed as having the ability to construct knowledge, and, crucially here, as having rights. The Reggio approach draws on the concepts of children's rights as described within the United Nations Convention on the Rights of the Child (1989 cited in Philips, 2001). The United Nation's convention groups children's rights under four

categories: prevention; provision; protection and participation. It is the right to participation which the Reggio approach would see as crucial for the inclusion of all children (ibid.).

As a result of the rights based approach, children in Reggio schools have 'special rights' not 'special needs'. In contrast to the system of pupils' Individual Education Plans (IEPs) in England, Reggio school pupils have a 'Declaration of Intent' which includes ideas and materials to be used for learning as well as suggestions for how the work is to be carried out (ibid). Individualised targets are set without reference to normative standards in the early years (Phillips, 2001). Whereas in England, the individual education plan has been seen as necessary only for pupils 'with special educational needs', the Reggio approach emphasises the value of documentation of all children's experiences and learning assuming a multi-dimensional view of intelligence focusing on the child's strengths (Gardner, 1983). The Reggio Emilia approach highlights *The Hundred Languages of Children* (Edwards et al, 1993) so that children are encouraged to draw, sculpt, paint, dramatise or write to demonstrate their understanding. The Reggio approach stresses the value and strengths of all learners and celebrates a breadth of learning styles. In Reggio schools, documentation is collected, not only to inform practitioners about children's learning, but to allow practitioners to reflect on their own practice.

The concept of 'special educational rights' is key to constructing an inclusive educational environment. The 'Declaration of Intent' shifts the focus onto what can be done to facilitate children's learning, away from a focus on an individual child's perceived deficits. Valuing multiple intelligence (Gardner, 1983; Edwards et al 1993) and giving practitioners time to reflect on their own practice are key to the schools' inclusive approach. The use of the term special rights, not needs, is consistent with the Reggio approach to valuing all children,

(Philips, 2001) The Reggio Emilia experience leads us to consider what the impact of the adoption of a rights based discourse might be on the special education system in England.

Educational rights – more than a discursive turn

Reggio educators have been keen to stress that the Reggio approach cannot be simply transplanted into another culture and that the context of education is key (Nurse, 2001). We argue that, in England, the word 'special' has also been used to maintain a deficit or medical discourse in education (Philips, 2001). So we suggest that the language of 'need' and the term 'special' be rejected in favour of the term 'educational rights'. The discussion of inclusive practice in Reggio Emilia schools (above) reveals that inclusive practice is about more than the adoption of a rights based discourse, however, it is worth considering for a moment what the impact would be on the English education system if the term 'special educational needs' was replaced by the phrase 'educational rights'. The consequence of children having 'educational rights' would be wide-ranging. The *Code of Practice for the Identification and Assessment of Special Educational Needs* would become *The Code of Practice for the Affirmation of Educational Rights*. Parents would find themselves campaigning for their children's rights (not needs) to be met at the Educational Rights and Disability Tribunal, not the Special Educational Needs and Disability Tribunal (SENDisT). .

 A brief review of the impact of a rights base discourse on the language of the policies and systems of special education suggests that a change in the use of language may impact on the policy and practice of education. Claiming 'educational rights' may be seen as a big statement and some may question whether the word 'right' here is being used appropriately.

Rights discourses

The idea that political morality and social choice can be based wholly or partly on some sort of account of the rights of individuals is familiar. Theories of rights can be found in the work of John Locke and Thomas Paine as well as in the work of Jean-Jacques Rousseau and John Stuart Mill (Waldron, 1985) However, the idea that there might be human rights valid for all peoples in all times and places is controversial and has been challenged by the claim that to assert something as a right is no more than an expression of emotion (ibid). There is a sense in which the language of rights has been manipulated by political groups. Nevertheless, the use of rights based language has been used successfully to challenge exclusionary practices. The disabled people's movement has drawn heavily on a rights based discourse. Indeed the development of a disability rights movement has had benefits for disabled people in the form of anti-discrimination legislation and opportunities to participate in mainstream life in general (Shakespeare, 2006). A rights discourse is also evident in international law, not only has the United Nations adopted a Convention on the Rights of the Child (UN, 1989), but on December 13, 2006, the United Nations General Assembly adopted the Convention on the Rights of Persons with Disabilties. In education, rights based discourses have also played their part, as the Centre for the Study of Inclusive Education claims inclusive education is a 'human right' (CSIE, 2002). Indeed, the United Nations' Educational, Scientific and Cultural Organisation (UNESCO) (2007) has invoked a Human Rights Action Plan which suggests that:
should this have a bullet point?Educational policies should promote a rights-based approach

- Policy implementation should be consistent and regularly monitored;

- The learning environment should enable the practice of human rights in the whole school community;

- Teaching and learning should be holistic and reflect human rights values;

- Education and training of school personnel should allow them to transmit human rights values.

(UNESCO, 2007)

Despite the philosophical difficulties of a rights based discourse, we suggest that by asserting 'educational rights', not 'special educational needs' this may prove to be a powerful tool to support all children in their education.

Conclusion

Thirty years on, it seems that the language of special educational needs is in need of review. The abandonment of the eleven categories of handicap in the Warnock Report was a key change which was allied to the shift in policy that 'wherever possible' children should be educated in mainstream schools. Yet, the term 'special educational needs' has come to sustain and construct exclusionary practices within education. The focus on individual needs ignores the contribution of the social model of disability and the focus on the removal of barriers to learning and participation. Here we offer an alternative rights based discourse, and although we acknowledge that a change in language alone cannot change practice

(Beresford, 2005), the experiences of the disabled people's movement suggest that an 'educational rights' discourse could enhance the provision and practice of education.

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