

# The Principal's Governance of Inclusion and the Requirements of the Disability Discrimination Legislation: Are they Worlds Apart?

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The clearest manifestations of a society's spirit and organization are its juridicial rules and its educational programme. (Alain Touraine, 2000, p. 265)

## Abstract

The *Disability Discrimination Act* 1992 (Cth) or *DDA* was passed in Australia over a decade ago. The *DDA* is a statute which significantly impinges on decisions that are made in school settings about complex situations that relate to disability issues. As such, principals in schools have had a long period of time to become familiar with the requirements of the *DDA* and to incorporate these requirements into the governance of inclusion in schools. In a study called 'Principals perspectives on inclusion and the law' conducted by Keeffe in 2003, principals in schools strongly suggested that they regarded the *DDA* as extremely important. However, they also suggested that they never or rarely referred to the *DDA* for administrative guidance in making lawful decisions about disability issues. At the same time, an analysis of recent case law in disability discrimination shows that interpretations made by principals in schools of the requirements of the *DDA* are becoming increasingly unreliable. Clearly, there are issues of discordance in translating the requirements of the *DDA* into administrative actions in school settings. This paper provides an exploratory framework that clarifies the systemic functions of the *DDA* and describes how the disability discrimination legislation impinges on the way that principals in schools make decisions about the lawful governance of inclusion.

This article introduces the concepts of lifeworld and systems world as proposed by Habermas (1987). The concepts of the lifeworld of the principal in school governance and the systems world of the *DDA* provide an exploratory framework to critically analyse the relationship between the disability discrimination legislation and how it impinges on the way that principals make decisions about inclusion in schools. Explanations for possible discordance between the principal's lifeworld and the systems world of the disability discrimination are also proposed.

## Introduction

A comprehensive analysis of disability discrimination case law in Australia clearly shows that disability discrimination in schools occurs at the administrative level of school governance (Keeffe, 2003). A vast amount of information about the competing influences that impinge on the way that principals in schools make decisions about complex situations that relate to disability issues in schools is carefully scrutinised and recorded in each case of disability discrimination. Even so, this valuable information and the requirements of the *Disability Discrimination Act* 1992 (Cth), or *DDA*, are not effective in reducing or eliminating the incidence of disability discrimination in schools (Flynn, 1997). It is suggested in this article, that there is discordance

between the systemic and strategic requirements of the *DDA* and the cultural contexts of the lifeworld of the principal governing inclusion in school settings.

This article applies a conceptual framework proposed by Habermas (1987) to explain the discordance between the requirements of the *DDA* and the way that principals make decisions about inclusion in schools. First, the principal's lifeworld is described as the complex network of personal contexts from which all communications, interactions and decisions are made about inclusion. According to Habermas (1987), each person interacts within a uniquely familiar lifeworld from which all experiences in life are conceptualised. Second, the strategic function of the systems world is examined. In contrast to the inherent familiarity of the lifeworld, the systems world is external and imposed. The legal system, in particular the *DDA*, is an example of the systems world. In this paper, the strategic function of disability discrimination legislation is considered as a guide to social action, such as the way that principals in schools make decisions about the inclusion of students with disabilities in all aspects of the school curriculum. As such, compliance with the legislation ensures the maintenance and progress of ethical standards and behaviours that relate to disability discrimination within social structures such as schools. Finally, the discordance between the principal's lifeworld and the systems world of the *DDA* is seen to contribute to increasing rates of litigation on the grounds of disability discrimination. It is proposed in this paper that the systemic requirements of the *DDA* do not translate into discrimination free administrative actions in schools and do not provide guidance for principals in the management of complex issues that relate to disability.

## **Lifeworld of the Principal**

Habermas claims the lifeworld is: 'represented by a culturally transmitted and linguistically organized stock of interpretive patterns' (1987, p.124). The lifeworld includes the realm of cultural experiences and communicative interactions that are essentially knowable and inherently familiar. These cultural experiences and communicative interactions are the basis from which all life experiences are conceived and interpreted. From a phenomenological perspective Schutz and Luckman (cited in Habermas, 1987, p.131) describe the features of the lifeworld as: 'the unquestioned ground of everything given in my experience and the unquestionable frame in which all the problems I have to deal with are located'. An inclusive school, for example, regularly transmits cultural values that are responsive to disability issues. The language of dignity and respect is also clearly outlined in policy documents and communication patterns between all stakeholders. The culture and language of the inclusive school contribute to provide the contexts and resources from which the principal and all stakeholders understand complex situations that relate to inclusion.

Habermas refers to the lifeworld as an intersubjective framework in which subjective, objective and social issues or contexts have already been significantly interpreted. Interpreted subjective, objective and social contexts scaffold our understanding of complex, new situations (Habermas, 1987, p.125). Subjective contexts for the principal governing inclusion involve challenging and understanding cultural influences such as values, attitudes and beliefs, particularly as all stakeholders interpret these subjective contexts. Subjective interpretations are reviewed according to the objective and social issues that also impinge on a situation. Objective contexts in the principal's lifeworld may include such issues as resources, safety, educational programmes and staff qualifications. In the social context the principal, parents, students, staff and all stakeholders have interpersonal relationships that also impinge on the interpretation of the subjective and objective contexts.

The subjective contexts of values, expectations, interpretations of a situation and possible action plans belong to the internal world of each person, in particular the principal in the school and the parent of the student who has a disability. In an ideal situation, communicative actions between the principal and the parent, for example, aim to reach a shared consensus about the definition of the situation. Objective and social contexts from the external world also impinge on the communications between the principal and the parent as part of a domain of relevant contexts from which shared understandings are negotiated. The success, or otherwise, of the communicative interactions inform the inclusive culture of the school so that progressively more complex issues may be addressed or understood within the horizons of the lifeworld.

The horizons of the lifeworld flex and move as we push the boundaries of our understanding of complex issues. As new perspectives in a situation are raised from such diverse contexts such as various action plans, creative dialogues or material limitations the boundaries or horizons of the lifeworld are identified and extended to interpret the new perspectives. In other circumstances the horizons of the lifeworld may shrink, particularly when situations are predictable and less problematic or when options considered for action are reduced. Familiar or predictable situations are those that have been substantively interpreted and incorporated or rejected within the language and cultural perspectives of the lifeworld. Whether familiar or complex and different, the culture and language in the lifeworld make it possible for each person to intersubjectively share their understandings of a situation with the aim of reaching consensus.

From the perspective of the principal managing inclusion in the school, the lifeworld consists of a complex web of interactions and experiences. The principal intersubjectively shares culture and communication with all stakeholders and gains a mutual understanding of the expectations and experiences of everyone involved in the context of a situation. Stakeholders discuss, argue and clarify different perspectives until shared understandings are reached about subjective, objective or social contexts. The management of inclusion, like all other issues within the school and the principal's lifeworld, is therefore a dialogic experience in which speech acts are verified or rejected through validity claims and counter claims.

Validity claims are used by all stakeholders to challenge the authenticity or truthfulness of the stock of cultural knowledge in the lifeworld. The principal in a school, for example, may access validity claims to settle disagreements, resolve issues, clarify contexts, identify expectations, make decisions, formulate opinions or explore values. Habermas claims that validity claims contribute in varying degrees to the shared understanding that develops when an issue is raised (1987, p. 120). The process of sharing understandings, however, is by no means a neat or linear progression from understanding a situation to reaching consensus. Instead, proposing, challenging and validating speech acts for each person in each situation requires co-operation, an ability to view situations from another's perspective, a willingness to reach a shared understanding and background knowledge of the cultural expectations and strategic influences on the situation.

The process of communicative action or working towards consensual and shared understandings that relate to the interpretation of a given situation is a recurring test of boundaries and validity claims. Situations are clarified as speakers and listeners define and redefine their understanding through dialogue. Habermas explains that this is a process of defining the boundaries of the lifeworld and aligning them with personal perspectives such as values and beliefs. Cycles of argumentation that are characteristic of the dynamic and vital process of reaching consensus ensure that all perspectives are considered. In this way all stakeholders have a mutual need for understanding so that the options for action in each situation may be most relevant and effective for everyone concerned.

In terms of the governance of inclusion, principals in schools empower parents, students and staff to share and discuss understandings about issues that relate to disability. Informed by the subjective, objective and social contexts of issues that are raised by all stakeholders the principal is in a position to identify and reduce the barriers to collaboration and effective communicative action. In the process, the value-laden assumptions that lead to stereotyping and unlawful decisions will also be reduced. As the school culture becomes sensitised to the complex issues that are associated with disability, the stock of cultural knowledge that the school accesses to understand diverse situations expands. Ultimately, the action plans of all participants are harmonised and the foundations for social change are established.

Governance in an inclusive school setting is based on the lifeworld qualities of collaboration, cooperation, moral reasoning and shared understandings. Some authors suggest that the enculturation of schools to become disability sensitive and discrimination free involves the implementation of a democratic style of governance (Sergiovanni, 1991; Skrtic & Sailor, 1996). Problem solving through collaboration in the democratic governance of an inclusive educational setting requires a high level of moral reasoning to understand the perspectives of all stakeholders and as such, cooperation, interdependence and shared responsibilities are emphasized (Slee, 2001). Situations become problematic in democratic, inclusive school governance as issues are raised that are new or different to the previously accepted body of knowledge and culture. Discordant situations that are raised by new and complex situations in the lifeworld are resolved by challenging the validity claims on which beliefs are based through communicative actions such as dialogue, collaboration, argumentation and shared understandings.

This section described the inherently familiar lifeworld and highlighted the integral importance of language and culture in reaching shared understandings of complex and diverse social situations particularly as they relate to disability issues and the needs of all stakeholders. As the interactions within society become more sophisticated, however, formal and strategic structures are established that are not based on the social interactions of lifeworld actors. In the next part of this paper, the validity of the belief that ‘the lifeworld remains the subsystem that defines the pattern of the social system as a whole’ (Habermas, 1987, p. 154) is challenged by the strategic influence of the systems world of the law.

## **Systems World of the Disability Discrimination Legislation**

The systems world is characterised by strategic functions that are imposed on the personalised and intuitive experiences within the lifeworld. The law, in particular the *DDA* is an example of a systemic structure within society in which the legislation strategically imposes expectations for ethical and professional behaviours on principals in schools in the area of disability discrimination. Obedience to the requirements of the objectives of the *DDA* are sanctioned by compliance clauses in the legislation that are based on broad social norms rather than collaborated, shared understandings such as those within the lifeworld. This section describes the formation and function of the systems world to show the characteristics that differentiate the lifeworld of the principal in a school from the systems world of the *DDA*. Habermas describes the differentiation process of lifeworlds and of system worlds as colonisation. The process of differentiation, the importance of social reintegration of the differential aspects of the two worlds and the discordance of colonisation are also discussed.

Habermas argues that, historically, systems such as the law were part of the lifeworld of every person (1987, p. 157). Boundaries between systems world and lifeworlds in tribal societies,

for example, are more likely to be established through cultural experiences such as kinship requirements and rules of marriage than formal systemic structures (1987, p. 175). As societies expand through complexity and pluralisation, however, social integration becomes more difficult to achieve. Systems such as the legal system eventually form and organise around the political and socially integrative force of the state organisations, primarily to facilitate and supervise transactions of power and exchange (Habermas, 1987, pp.119-152). As transactions become more complex, systems such as the legal system gradually become more exclusive, specialised and differentiated from the lifeworld. Each stage of differentiation of the systems world results in an increased capacity of the system to integrate more complex or ambiguous transactions (Habermas, 1987, pp.153-197).

Gradually the systems world uncouples or separates from the lifeworld as the horizons of the lifeworld are no longer able to contain increasingly complex systemic requirements. The legal system, for example, becomes distanced from the intuitive knowledge of the lifeworld of the principal in a school. Legal processes are particularly required to orchestrate exchanges of power or money. In the process, they objectify aspects of the lifeworld that previously relied on communicative understandings. Habermas suggests that the law: ‘develops into an external force, imposed from without, to such an extent that modern compulsory law, sanctioned by the state, becomes an institution detached from the ethical motivations of the legal person and dependent upon abstract obedience to the law. This development is part of the differentiation of the lifeworld’ (Habermas, 1987, p. 174).

Figure 2: The differentiation of the Lifeworld and the Systems world

<b>The Lifeworld</b>	<b>The Systems World</b>
The principal in an inclusive school setting	<i>The Disability Discrimination Act 1992 (Cth)</i>
Intuitive	Strategic
Personal	Imposed
Internal	External
Intersubjective	Objective
Moral reasoning	Obedience/Compliance
Collaboration/cooperation	Competition
Shared understandings	Social norms
Power with	Power over
Reintegration	Colonisation
<i>Systems world has to be anchored in the intuitive lifeworld to facilitate social integration, cohesion, change and cultural reproduction</i>	

*Table developed in conjunction with Ed.D. Thesis: Keeffe, (2003) ‘Principals’ perspectives on Inclusion and the Law’ (unpublished)*

It is important to note that the decoupling of the system of the law does not diminish the organisational power and logic of the lifeworld. On the contrary, each level of differentiation of the system requires a corresponding maturity within the lifeworld to rationalise these changes. Habermas equates levels of moral reasoning with the differentiation of legal concepts from the lifeworld and explains how higher levels of moral reasoning are an indication of social progress

from colonisation to the reintegration of social consensus back into the lifeworld. Gradually, for example, the intent of the disability discrimination legislation is internalised to the extent that lawful, moral reasoning occurs consistently by the principal within the lifeworld governance of inclusion.

## **Anchoring Disability Discrimination Legislation in Democratic, Inclusive Governance**

A degree of social integration is essential if the law is to postulate order in social action. To do this Habermas (1987) concedes that the systems world of the law must be anchored within the lifeworld and that interactions between the two must overcome the structural differentiations described above. When the systems world of the law colonises the lifeworld it acts as a formal and objective requirement rather than an intersubjective, dialogic part of the lifeworld. Because of the discordance between the lifeworld and the systems world, the requirements of the systems world do not translate directly into administrative action in the lifeworld. Instead, systems world requirements are translated through policy documents and procedural recommendations. In the case of principals' governance of inclusion in school settings, colonisation results in a distanced attitude or lack of familiarity with the *DDA* and an increased reliance on policies and procedures that relate directly to administrative actions. It is suggested here, that colonisation creates discordance between the systems world of the law and the lifeworld of the principal on a number of different levels. Discordance, in turn, creates difficulties in the interpretation of the requirements of the *DDA* and barriers to the democratic governance of inclusion in schools.

At the level of interpretation, for example, discordance between the requirements of the *DDA* and interpretations made by principals in democratic, inclusive school settings can be seen in the objective statements in the *DDA* that relate to direct discrimination of a student with a disability (*DDA*, section 5.1). In these statements, the term 'less favourable treatment' as used to describe a key legal element of direct discrimination. In this instance, an element of systemic competition that requires a comparative analysis of the discriminatory situation is introduced. As such, the treatment of those students who do and those who do not have a disability is compared in the interpretation of the legislation in case law. In effect, this process emphasises disability as the factor causing differential treatment and reinforces the sense of 'otherness' that forms the foundation of stereotypical attitudes and beliefs (Minow, 1990). It is ironic that investigations about compliance with the *DDA* should condone differential treatment as an integral part of the systemic requirements of the legislation rather than encourage a more collaborative problem-solving model for the enculturation of schools in which all students are free from discrimination.

Lifeworld and systems world discordance from colonisation is also evident at the level of implementation when the principal in the school must translate the requirements of the *DDA* into administrative actions. The *DDA* clearly states in section 22(1) and 22(2) that student with disabilities should not be treated less favourably in the areas of enrolment or participation. To achieve this aim and the higher objective of requiring that schools act as discrimination free role models for the remainder of society, procedural protocols for natural justice and collaboration are required. These fundamental processes of communicative action are not required or identified as a priority within the legislation. The strategic requirements of the *DDA* do not provide the administrative guidance for school principals to implement collaborative decision-making. The communicative needs of the lifeworld are subordinated to the restricted ethical requirements of the legislation. It has been stated already that this encourages unreliable and inconsistent decisions

based on obedience and compliance rather than decisions that are based on a higher level of moral reasoning that involves a collaborative understanding of the complexity of disability issues.

At still another level, lifeworld and systems world discordance occurs when people in the lifeworld act strategically. In this instance, the principal in the school will impose outcomes from decisions made without collaboration. Principals from traditional school governance structures, for example, believe they have the right to make decisions according to their own interests and it is acceptable to rely on obedience and compliance from all stakeholders. In contexts such as these, Habermas (1996) suggests that it is the increasing incidence of strategic actions within the lifeworld that legitimises the role of the law. The replication of discriminatory structures that have existed in schools for many decades needs a strategic influence such as the *DDA* to change social patterns of behaviour.

## Conclusion

In summary, this article applied Habermas's theories of lifeworld and systems world to analyse the relationship between principals and the law in the context of the governance of inclusion in school settings and the requirements of the *DDA*. The theory of communicative action was also described to explain social consensus and collaborative processes that occur in the lifeworld. The importance of the process of collaboration in reaching shared understandings about complex issues that relate to disability was emphasised. The process of reaching consensus is particularly important when shared understandings contribute to the cultural knowledge that the school can access to resolve future dilemmas. It was suggested that together, culture and language in the school provided a valuable resource base from which the principal could resolve complex issues and this was illustrated in a proposed lifeworld model.

The systems world that includes the *DDA* was described as distinct from the lifeworld and strategic in influence. The systems world lacks the intuitive, collaborative consensus of the lifeworld. Instead, the systems world relies on obedience and compliance from people in the lifeworld. The differential characteristics of the lifeworld and systems world were compared and applied to the context of the governance of inclusion in schools. Explanations were also proposed for the discordance that occurs when the systems world re-enters the sphere of influence within the lifeworld. It was suggested that inclusive governance in schools required more administrative guidance from the *DDA* on collaborative processes required to reach consensual understandings of disability issues. It was also suggested that traditional governance structures in schools that rely on strategic action to influence decisions also need the requirements of the *DDA* for compliance and obedience in socially integrating the principles of disability discrimination.

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