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Moving from the Implicit to the Explicit: 'Spiritual Rights' and the United Nations Convention on the Rights of Persons with Disabilities

Russell Whiting and Sándor Gurbai

Abstract

This article considers spiritual rights in relation to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). It notes that unlike in other legally binding UN treaties spiritual rights is not a term covered in this convention. The purpose of the article is to explore how that exclusion happened, what it means, what lies behind it and also to suggest one way of considering how the convention might have been enriched by explicitly including spiritual rights. Firstly, the article discusses the use of the term spiritual rights. It goes on to analyse how spiritual rights are recognized in some UN treaties and not others. The article then examines the *travaux préparatoires* of the convention and studies how spiritual rights were excluded after an extended period of debate between delegates. The article challenges the view of some delegates that if spiritual rights is included in other conventions that should be sufficient. It uses the Christian doctrine of incarnation to explore what might be distinctive about spiritual rights for people with disabilities. Boros and Vanier's interpretations of the doctrine are briefly considered before a fuller exploration of the "Disabled God" incarnationalism of the theologian Nancy Eiesland, who was in fact involved in the drafting of UNCRPD. The idea of the Disabled God is also shown to be meaningful outside of a Christian context with an example from Shintoism. The article concludes that whilst spiritual rights is certainly a contested term, its omission from the UNCRPD is to be lamented.

Keywords

UNCRPD, Spiritual Rights, Disability Rights, Incarnationalism, Nancy Eiesland, Shintoism

**Moving from the Implicit to the Explicit: 'Spiritual Rights' and the United Nations
Convention on the Rights of Persons with Disabilities**

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Introduction

On April 9th 2010 *The Scotsman* newspaper published an obituary of the theologian Nancy L. Eiesland. It stated:

For ten years, she consulted with the United Nations, helping develop its Convention on the Rights and Dignity of Persons with Disabilities, which was enacted last year. It describes the disabled as "subjects" with rights, rather than "objects" of charity. It explicitly endorses spiritual rights for the disabled.

Certainly the shift from people with disabilities being considered objects to them claiming their rights as subjects and from substituted decision-making (guardianship-type systems) to supported decision-making is the central achievement of the convention, and commentators have been keen to point to Article 12 where the legal ramifications of this move are made explicit (Gurbai 2014). It is also clear that this shift is one that Eiesland had campaigned for and had written about in theological terms for many years. In her book *The Disabled God* she writes about uncovering the power of a minority group:

Understanding individual experiences in terms of a community or group makes possible the move away from object to subject and the liberatory voice, that is 'a way of speaking that is no longer determined by one's status as object'. Facilitating this kind of community identification and awareness is the first step towards empowerment (Eiesland, 1994, 82 citing hooks, 1989).

Here it can clearly be seen that a concept developed in theology (alongside other disciplines certainly such as disability studies) has subsequently been applied in international law.

However, where the obituary is not correct is that in fact the concept of spiritual rights is not mentioned at all in the convention itself. The only place where religion appears listed is in the preamble (United National General Assembly UNGA 2006). The absence of religion or spirituality as a concept from this convention makes it anomalous in relation to other recent

UN conventions. It also means that any work that Eiesland did in the drafting had only an implicit effect. As will be shown, a fuller appreciation of Eiesland's theological position, as expounded in her book *The Disabled God*, offers a much clearer understanding of why spiritual rights should have been included in the convention and what could have been done in terms of the enrichment of the convention's catch-all phrase "all human rights" (UNGA 2006, article 1) if they had been explicitly included.

This article will reflect on the relation between spiritual rights and international law and will provide a detailed account of what actually happened in the drafting process of the convention, how it was that spirituality and religion were left out. It will then consider what that omission means in terms of contemporary interpretations of the place of spirituality and religion in public life. This will involve picking up and reapplying the work of Eiesland and other theologians and at least one other faith tradition in a particular consideration of spiritual rights and their value in the context of disability rights.

Spiritual Rights in International Law

The term 'spiritual rights' is not used in international law and in the context of this article this concept is related to both spirituality and religion. Although there are numerous definitions of religion and spirituality, and there are several approaches regarding how these two concepts relate to each other, for many people being spiritual is incompatible with being religious. This conviction is well described by the slogan 'spiritual but not religious.' The difference between spiritual and religious may mean that "the word *spiritual* gradually came to be associated with the private realm of thought and experience while the word *religious* came to be connected with the public realm of membership in religious institutions, participation in formal rituals, and adherence to official denominational doctrines" (Fuller 2001,5).

It is also important to point out that religion and spirituality are not evidently diametrically opposed: "Spirituality can and often does occur within the context of religion, but it also may not" (Hill et al. 2000, 70). These categories may be reflected by the phrases 'spiritual and religious,' and 'religious but not spiritual.' Furthermore, according to certain approaches, both religion and spirituality can be characterized as dynamic processes interconnected with social and personal experiences (Zinnbauer et al. 1999, 912) and neither terminology can be seen as good or bad.

Based on these considerations, the concept of 'spiritual rights' which includes, *inter alia*, the right of the child to spiritual development and the right to freedom of religion, seems correct to be employed in this article. The enjoyment and exercise of spiritual rights are important at both personal and social levels and practically it includes, *inter alia*, the following attributes:

- (1) Freedom to adopt, change or renounce a religion or belief (UNGA 1948, article 18; UNGA 1966, article 18(1); UNGA 1981, article 1(1); HRC 1993, paragraphs 3 & 5);
- (2) Freedom from coercion (UNGA 1948, article 18; UNGA 1966, article 18(2); UNGA 1981, article 1(2); HRC 1993, paragraph 5);
- (3) The right to manifest one's religion or belief (UNGA 1966, articles 18(1) & (3); UNGA 1981, articles 1(1) & (3); HRC 1993, paragraph 4).

The latter element covers many aspects including the freedom to worship; protection of religious sites; display of religious symbols; the freedom to observe days of rest and to celebrate holidays and ceremonies; the freedom to train, appoint, elect or designate by succession appropriate leaders; the right of parents to ensure the religious and moral education of their children; the freedom to communicate in matters of religion and belief at the national and international levels (Cf. Jahangir 2007, paragraphs 10-22).

Although at an international level legal measures had provided all people with spiritual rights, persons with disabilities often did not enjoy them. People with disabilities could not exercise many of those rights, which were easily available to individuals without disabilities.

In order to bring the 'invisible citizens' out of the shadows, the UN Convention on the Rights of Persons with Disabilities (CRPD) explicitly spells out in the very first article that:

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity (UNGA 2006, article 1).

Interestingly, the UN Convention on the Rights of the Child (CRC) does specifically mention the "cultural and spiritual development" of the disabled child (UNGA 1989, article 23(3)) and the spiritual development of children in general is repeatedly raised, but such a phrase does not appear anywhere in the CRPD. There is a specific article dealing with children with disabilities (UNGA 2006, article 7) but their right to spiritual development is not addressed.

The broad term of freedom of religion is explicitly addressed in core articles of many United Nations treaties, for example in Article 18 of the International Covenant on Civil and Political Rights (ICCPR), and Article 5.d.vii. of the International Convention on the Elimination of All Forms of Racial Discrimination, but the CRPD seems to have missed that this right is recognized as necessary for persons with disabilities.

The CRC can serve as a positive example of the inclusion of spiritual rights into a legally binding UN Convention. On the basis of Article 14 of the CRC not only children have their right to practice spiritual rights, but also parents have rights and duties to guide their children in these matters.

Although religious communities offer support for the CRC concerning many ideas, they also disagree with it in certain topics such as the perceived emphasis in the Convention on the child's right to the freedom of religion. The root cause of this criticism is that, according to many religious leaders, the Convention places a greater importance on individual rights than on family unity (Coward - Cook 1996, 1-10).

The UN Committee on the Rights of the Child addressed these concerns and underlined in its General Comment No. 7 that on the one hand parental guidance shall be

given "in a child-centred way, through dialogue and example, in ways that enhance young children's capacities to exercise their rights, including [...] their right to freedom of thought, conscience and religion" (UN Committee on the Rights of the Child 2005, paragraph 17) and on the other hand parental and family roles shall be respected (passive element), parents and families shall be supported (active element) in fulfilling their responsibilities by States (paragraphs 18-21).

In sum, the explicitly expressed important roles of persons concerned, support persons including family members and the State in relation to spiritual rights, might have been a good example for the disability rights convention to follow.

The CRPD is not the only UN treaty that does not address religion. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also fails to put spiritual rights on the list of provisions aiming to guarantee women the exercise and enjoyment of human rights and fundamental freedoms on an equal basis with men. One might argue that human rights protected under international law, e.g. in the ICCPR, are applicable equally for men and women, and this protection shall cover spiritual rights. Thus, there is no need to explicitly guarantee these rights for women. This is an argument that was also used during the negotiations of the CRPD in order to leave out spiritual rights from the disability rights convention.

Inclusion of spiritual rights in the CEDAW would have been important for women and girls because in certain circumstances a woman's individual right to religious freedom conflicts with community religious freedom (Scolnicov 2007, 571). In other words, there may be a clearly tangible tension between women's rights and community based religious rights, customs, and culture that hamper not only the realisation of the rights defined in CEDAW but women's individual spiritual rights as well (Brandt - Kaplan 1995-1996, 109).

Individual spiritual rights mean for women to have the possibility to enjoy and exercise all aspects of these rights by being and treated as equal members of a religious community. This is the very essence that is missing from CEDAW even if its Article 5 obliges States to:

take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women (UNGA 1979, article 5(a)).

As a form of remedy to the absence of spiritual rights in the CEDAW, in 2000 the Human Rights Committee adopted its General Comment No. 28 on equality of rights between men and women (HRC 2000), in which it is highlighted that:

States parties must take measures to ensure that freedom of thought, conscience and religion, and the freedom to adopt the religion or belief of one's choice – including the freedom to change religion or belief and to express one's religion or belief – will be guaranteed and protected in law and in practice for both men and women, on the same terms and without discrimination. These freedoms protected by article 18 [of the ICCPR] [...] may not be relied upon to justify discrimination against women by reference to freedom of thought, conscience and religion (paragraph 21).

Even though the omission of spiritual rights from CEDAW later had to be rectified with such a general comment, this did not lead on the drafters of the UNCPRD taking full cognizance of such rights in the final version of that convention. The next section will look at how these rights appeared in the *travaux préparatoires* of the CRPD and how they were finally left out of the catalogue of civil, political, economic, social and cultural rights of the disability rights convention.

Spiritual Rights in the UN Convention on the Rights of Persons with Disabilities¹

Shortly before Christmas in 2001, the General Assembly of the United Nations adopted its resolution 56/168 in which a long-awaited decision was made “to establish an Ad Hoc Committee [...] to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities, based on the holistic approach in the work done in the fields of social development, human rights and non-discrimination...” (UNGA 2001, paragraph 1). One of the core documents of the First Session of the Ad Hoc Committee² was a working paper on a disability rights convention developed by Mexico. Although this draft convention clearly stated that its objective was to “recognize, guarantee, promote, and protect the rights of persons with disabilities” (Mexico 2002, article 1(a)) and to “achieve their full participation in economic, social, cultural, civil, and political life, under conditions of equality” (article 1(c)), freedom of religion was not addressed and ‘religion’ was mentioned only in the preamble (paragraph (c)) as one of the prohibited grounds of discrimination. The right of the child to spiritual development was not spelled out either; moreover, children were mentioned only in the context of “quality medical attention within state healthcare systems” (article 13).

At its Second Session,³ the Ad Hoc Committee set up a Working Group in order to compile all contributions coming from States and other key actors and to prepare a draft text of the disability rights convention (Cf. UNGA 2003, paragraph 3). The Working Group met from 5 to 16 January 2004 and considered, *inter alia*, some papers dealing with spiritual rights. Although both North Korea and South Korea are State parties to the CRC, which

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² The First Session of the Ad Hoc Committee took place from 29 July to 9 August 2002.

³ The Second Session of the Ad Hoc Committee took place from 16 to 27 June 2003.

clearly protects the right of the child to spiritual development, South Korea expressed concerns about the use of the term 'spiritual development' in the disability rights convention (Landmine Survivors Network 2004a). The Working Group text (WG 2004) formed the basis of negotiations and was first considered by the Ad Hoc Committee during its Third Session.⁴ Relying on the contributions one could imagine that the Working Group text might have contained the freedom of religion either in a separate article, or under the article dealing with the freedom of expression or in an article focusing, *inter alia*, on culture. However, freedom of religion was not mentioned at all in the Working Group text. Religion was still included as a prohibited ground for discrimination in the preamble and in the article dealing with equality and non-discrimination. The draft article 16 of the Working Group text reflected on the rights of children with disabilities and especially on the "child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development" (WG 2004, article 16(4)).

During the Third Session, Kenya, the Holy See, Uganda, Namibia, and the Philippines suggested broadening the scope of the draft article 24 and not to focus only on cultural life, recreation, leisure and sport but on religion as well (Ad Hoc Committee, 2004). Kenya went further and proposed a draft paragraph:

States Parties recognize the fundamental right of persons with disabilities to practise a religion of their choice and shall take all appropriate measures to ensure that persons with disabilities:

- a. enjoy the opportunity to develop their spirituality and practise their faith;
- b. have access to houses of worship, shrines and sites of religious importance;
- c. can belong to a community of believers and participate fully in the life of the congregation and in the rites, ceremonies and sacraments that are part of worship;
- d. have access to appropriate religious education and receive instruction in the format that best suits their needs;
- e. will be protected from religious abuse, exploitation and coercion (Kenya 2004).

Australian NGOs were also concerned that there was no reference in draft Article 24 to sites of religious significance (Australian NGOs 2004).

⁴ The Third Session of the Ad Hoc Committee took place from 24 May to 4 June 2004.

The Fourth Session⁵ of the Ad Hoc Committee brought interesting proposals. According to the Landmine Survivors Network, “many countries supported inclusion of religious rights in the Convention during the Third Session” (Landmine Survivors Network 2004b), so, for the Fourth Session, the Network submitted a draft paragraph built on a synthesis of previous proposals regarding the right to participation in religious life and highlighted, *inter alia*, the States Parties’ obligation to “encourage partnership with organizations of disabled persons in developing measures for equal participation in religious activities” (Landmine Survivors Network 2004b). The wording of the Network’s draft text reflected Article 18 of the Universal Declaration of Human Rights, Article 18 of the International Covenant on Civil and Political Rights, paragraphs 4-5 of the General Comment No. 22 of the UN Human Rights Committee, Article 1 of the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion and Belief, Rule 12 of the UN Standard Rules, and Article 23(3) of the CRC.

While the Fifth Session⁶ did not table new elements regarding spiritual rights, the Sixth Session⁷ of the Ad Hoc Committee did include relevant conversations. Kenya made a proposal to the draft Article 24 on participation in cultural life, recreation, leisure and sport and suggested adding a new provision:

States parties recognize the fundamental right of persons with disabilities to freedom of thought, conscience and to religious and spiritual practice of their choice (Rehabilitation International 2005).

Serbia and Montenegro welcomed this new draft provision on religion but suggested it be considered in a separate article. Mexico, Brazil, Cameroon and Costa Rica pointed out that references to religion would be more appropriate in Article 13, which covers freedom of expression. The EU supported Mexico’s proposal and highlighted that it was more appropriate

⁵ The Fourth Session of the Ad Hoc Committee took place from 23 August to 3 September 2004.

⁶ The Fifth Session of the Ad Hoc Committee took place from 24 January to 4 February 2005.

⁷ The Sixth Session of the Ad Hoc Committee took place from 1 to 12 August 2005.

not to talk about a right here but rather about a freedom in order to avoid interference from the state. Sudan supported the Kenyan proposal to include religion in Article 24 and pointed out that practising one's faith is not a freedom but a right.

Australia rejected Kenya's new proposal and considered religion to be "*already adequately covered for all people in the ICCPR [Articles] 18 and 27*" (Rehabilitation International 2005). Qatar and Yemen offered the same opinion. China also stated that religion did not need to be covered since it is *sufficiently addressed by other International Conventions*. Russia concurred. Russia, China and North Korea do not have a strong record on religious freedom in their own country (US Department of State 2013). It is possibly not surprising therefore that these countries objected to the inclusion of spiritual rights and they will very possibly have had their own internal reasons for objecting. So what appears to be an assertion about people with disabilities is arguably connected to something else entirely – for example spiritual rights in China would have political implications in the region of Tibet and spiritual rights in Russia could complicate relations with minority religious groups. Oman underlined that *religion was a personal issue, thus not required to be covered in Article 24* (Rehabilitation International 2005).

New Zealand acknowledged the good intention of Kenya's new draft paragraph on religion but highlighted that *it could create confusion regarding the different roles of the State, civil society and the individual*. However, New Zealand, supported by Canada (Canada 2005), tried to convince the Ad Hoc Committee to include at least a very short and, we have to admit, very weak sentence in the draft Article 24 on participation in cultural life, recreation, leisure and sport. According to the proposal:

States Parties shall encourage measures for participation by persons with disabilities in the religious life of their communities on an equal basis with others (New Zealand 2005).

There are countries where it is not so clear in relation to their own internal situation why they objected to spiritual rights being included in the convention and it may well be that for these countries the diplomatic process was more convoluted. For example some states may have given priority to gains in other areas, possibly such as reproductive rights about which there was much heated debate (Ad Hoc Committee 2005, 2006). It would not be right in this context to speculate further on this, however.

The International Disability Caucus (IDC), a network of organisations of persons with disabilities from global, regional and national levels and allied non-governmental organisations, which was a key player in the negotiation of the CRPD, submitted a draft article 24 entitled 'Participation in Cultural life and Religion' to the Ad Hoc Committee during the Sixth Session. This proposal followed the Kenyan draft Article 24, which was presented at the Third Session and only minor changes were introduced (IDC 2005). According to the informal daily summary of discussion at the Sixth Session on 10 August 2005, the Chair concluded that "adding religion was *partly supported*, some suggested to place it elsewhere, for example in Article 13, and some opposed to the inclusion" (Rehabilitation International 2005 emphasis added). The official Report of the Ad Hoc Committee testifies that the Chairman summarised the right to religious life related debate in a way according to which:

[t]here was a proposal to include a provision on participation in religious life in draft article 24 or elsewhere in the text. The *general feeling of the room, however, was not to include* such a provision in this article (Ad Hoc Committee 2005, paragraph 134 emphasis added).

Regarding the right of the child to spiritual development, during the Sixth Session Argentina suggested deleting the paragraph which contained the right of the child to spiritual development under the draft Article 16 dealing with the rights of the child (Argentina 2005). After reconsidering how children with disabilities might be included in the convention (Ad Hoc Committee 2005, paragraphs 27-29), reference to the spiritual development of children

had disappeared from the draft text by the end of the Sixth Session of the Ad Hoc Committee. Something very similar happened to the freedom of religion and the right to religious life, which, at the Seventh Session,⁸ could not be found any longer either in the Article dealing with participation in cultural life, recreation, leisure and sport, or in the Article focusing on freedom of expression and opinion, or indeed elsewhere. At its Eighth session⁹ the Ad Hoc Committee adopted the draft text of the disability rights convention, which after linguistic revision was sent to the General Assembly. On 13 December 2006 the Plenary of the General Assembly adopted the Convention on the Rights of Persons with Disabilities and the optional protocol. Although the adoption of the CRPD is a great victory of and for persons with and without disabilities, the spiritual rights of persons with disabilities lost out in the (battle)field of human rights.

The public objections, whether or not related to other underlying factors, are interesting enough in themselves in that they reveal a particular interpretation of spiritual rights and the concepts of religion and spirituality by some of the states involved in the drafting process. To recap, the objections were: firstly, spiritual rights are covered in other conventions and therefore are not necessary in this one; secondly, religion is personal and therefore private and not a matter for the convention; lastly, religion or spirituality should not be discussed as a right as that can create confusion regarding the different roles of the state, civil society and the individual. What these objections all have in common is a basic idea that spirituality and religion are topics that are not appropriate for inclusion in the explication of the rights and obligations of the CRPD. In the following section one particular objection – that spiritual rights are covered in other conventions and therefore are not necessary in this one will be discussed in terms of sets of ideas about theology or the meaning of faith that may be particular to people with disabilities. Eiesland notes:

⁸ The Seventh Session of the Ad Hoc Committee took place from 16 January to 3 February 2006.

⁹ The Eight Session of the Ad Hoc Committee took place from 14 to 25 August 2006.

Disability has never been religiously neutral, but shot through with theological significance (Eiesland, 1994, 69).

In the following section a Christian interpretation of the doctrine of incarnation is presented followed by a demonstration of how its explication as the disabled God by Eiesland brings together disability rights and spiritual rights. Using Christian doctrine in this way is not at all to claim it as the only route to spiritual rights but it does offer a structure and a form of language that can be used to argue for such rights. As shall also be demonstrated below the disabled God also features in other faiths.

Incarnationalism and the Disabled God

At its most essential the Christian doctrine of the incarnation states that God chose to intervene in the material world in becoming a human being, Jesus of Nazareth. The implications of this doctrine are that if God became fully human, then necessarily within all human beings there is intrinsically a connection or potential connection with the divine. These implications are expounded most famously in the verses in the New Testament where Jesus refers to clothing the naked, feeding the hungry, caring for the sick, visiting the prisoner, and helping the stranger:

Truly I say to you as you did it to the least of my brethren, so you did it to me.
(Matthew ch.25 v.40).

After the Second World War there was a group of Christian humanist theologians, a number of whom were Jesuits, who took up this doctrine as a response to the recent events of history and used it as the foundation of their theology. One of their number, Ladislaus Boros, entitled a book *Meeting God in Man* and noted:

Only God could be so human. After this we cannot conceive of anything human that cannot be applied to God himself, apart from sin. In Christ God became softened into human charm and goodness (Boros, 1968, ix).

This is a God cognizant not only of strength but also of weakness and failure. Such Christian humanist incarnationalism emphasizes homogeneity and sameness – that all people may be

Christ incarnated in the world. Later however, such homogeneity was in its turn criticised not least by feminist theologians. Chopp (1989) criticises theologians who seek to create a common human experience as in reality seeking a conservative social consensus and she argues instead for an emphasis on specificity and difference. This is clearly not an argument against incarnationism however, just against a narrow and conservative interpretation.

One further interpretation of the doctrine of the incarnation relevant in this context was advanced by Jean Vanier, the founder of the L'Arche movement, which runs small-scale residential homes for people with intellectual disabilities. Vanier in a distinctive series of theological and autobiographical texts recognized people with intellectual disabilities as being a presence of Christ – not messengers of Christ, but actually as his incarnation in the sense that God hides himself in the poor. Vanier does this in his books in a very personal way, showing how individuals he was originally caring for had then been, within these communities, Christ to him (Vanier, 2003). But despite this role reversal, with Vanier being served rather than serving there is inevitably still something in Vanier's work of him being the advocate speaking for persons as objects rather than the subjects lifting up their own voices (Cf. Wells 2010, 149).

Eiesland, in contrast, just by the very fact of her own identity as a person with a disability, speaks with the authority of experience on this topic. Eiesland presents Jesus Christ himself as disabled. She writes about his wounds as disabilities obtained through torture and considers that they mean that "full personhood is fully compatible with the experience of disability" (Eiesland, 1994, 100). She also goes further with her own epiphanic vision of God:

For me epiphanies come all too infrequently to be shrugged off as unbelievable... But my epiphany bore little resemblance to the God I was expecting or the God of my dreams. I saw God in a sip-puff wheelchair, that is the chair used mostly by quadriplegics enabling them to maneuver by blowing and sucking on a strawlike device. Not an omnipotent, self-sufficient God, but neither a pitiable suffering servant. In this moment I beheld God as a survivor, unpitied and forthright. I recognized the

incarnate Christ in the image of those judged 'not feasible', 'unemployable' with 'questionable quality of life.' Here was God for me. (Eiesland, 1994, 89)

This disabled God in a sip-puff wheelchair is an important vision, making the deepest connection yet between incarnational theology and disability rights and spiritual rights. God in this vision is not omnipotent but they (not necessarily male or female either) are also not an object of pity or charity - rather they are an independent, ambulant subject. This vision shows how Eiesland conceived the move from object to subject for people with disabilities, which is such an important keystone of the convention, as deeply bound up in her theological interpretation of personal identity, which placed a particular vision of the incarnation at its centre.

The "Leech Child" Hiroku – The Disabled God in Shintoism

The section above has sought to demonstrate how Eiesland's theology of the disabled God helps to join together the topic of spiritual rights and disability rights and to show what is missing if one assumes that the spiritual rights of people with disabilities are well enough included in other conventions that address the rights of those whom Eiesland tellingly describes as the "temporarily abled." But the wider purpose has not at all been to argue for a particular faith or a particular vision. Indeed the concept of the disabled God is not confined to Christianity. Stevens in her recent account of *Disability in Japan* writes:

Congenital disability is explicitly present in the creation myths of Shinto. The first gendered deities, Izanagi and Izanami, ... created the Japanese Islands. After they created the lands they also created a number of gods to be lords of the universe. ... Next they produced the Leech Child ... The term Leech Child probably alluded to the useless (or absent) limbs that prevented the child standing upright.... "The Leech Child survived his abandonment [by his parents] and later evolved into Ebisu, the god of the sea. Though now limbed, he is still somewhat physically impaired and deaf. Ebisu is considered one of the Seven deities of Happiness and brings good luck to those who honour him. ... Today Ebisu is written with characters meaning 'blessing' and 'longevity' and he is portrayed as a deity who is pleasant and cheerful... (Stevens, 2013, 25, 26)

There are faith traditions that insist on their God being perfect (Miles, 1995, 51) but in this case Ebisa's disabilities do not prevent him being worshipped as a god of happiness and as such he is an interesting point of comparison with Eiesland's work, emerging from another tradition entirely. There is not as yet however a comparable push by the disability rights movement in Japan to claim their spiritual rights through worship of Ebisa.

The Voice of the Community

Miles (1995) commented that an individual rights agenda, which he characterized as part of a Western ethos, may not be openly welcomed within the eastern religious traditions. In emphasising the importance of spiritual rights for disability rights it is important to be aware of these sensitivities. It is relevant and pertinent therefore to end by returning to Eiesland and emphasising that her theology is not focused on the individual but rather the wider community. The claim made by the Omani delegate to the UNCRPD dialogue that religion is personal would be completely anathema to Eiesland. For Eiesland religion is primarily a communal and public matter. She claims that the experiences of oppression of people with disabilities were often to do with being individualised and atomised and that the power of their own community experience was not recognized. Excluding the concept of spiritual or religious rights from the convention means an important element of "the liberatory voice" has been silenced. As already noted, the International Disabilities Caucus, an umbrella group seeking to represent the views of people with disabilities in the convention, made a concerted attempt to include spiritual rights in the convention. However, real politiqué, led to the opportunity being missed to add spiritual rights to other human rights for people with disabilities. In fact, the opportunity was thrown away.

Conclusion

It is completely anomalous that a situation has emerged whereby spiritual rights are recognized in some UN conventions and not others. The exclusion of spiritual rights from the UN Convention on the Rights of Persons with Disabilities has some deep-seated implications. To involve theologians, religious leaders and groups in the consultation process and to then almost completely exclude religion and spirituality from the convention itself appears a perverse outcome. It is also clear that campaigning disability rights organisations wished to see spiritual rights included and they were ultimately ignored.

This article has focused on the work of Nancy Eiesland and has sought to make explicit the implications of her theology for spiritual rights and disability rights. It has used theological concepts such as incarnationalism, which are obviously part of the language of Christianity, but the main point has been not to emphasize a particular faith tradition but to show that spiritual rights have considerable and distinctive value in the context of disability rights. A definition of "all human rights" that wishes to highlight the dignity of individuals can be significantly enhanced and strengthened if spiritual rights are also recognized.

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