

Theories of Disablement

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In the United States and in other OECD countries, the majority of disabled people live in poverty. Disabled people also tend to be outside the labor market, and have attained fewer educational credentials than their non-disabled counterparts.[1] The social model of disability stands for the proposition that it is structural barriers that lie at the root of most of the problems faced by disabled people: a lack of wheelchair ramps, lack of accessible technology that would enable blind people and others such as those with learning disabilities to work efficiently, a lack of sign language interpretation that would enable communication, and a lack of appropriate attendant services that would provide assistance with activities of daily living such as bathing, dressing and toileting, inflexible work schedules and rules that make many jobs impossible for disabled people.

The focus of the social model is on removing barriers.[2] It is embodied in the vibrant but largely ignored social movements from below, such as militants in ADAPT who fought first for accessible public transportation and more recently for effective attendant services. The social model is also embodied to some degree in legislation such as the *Americans with Disabilities Act* and its equivalents in many other countries which require a duty to accommodate disabled people up to the point of undue hardship. A powerful overview of these social movements is provided in the late Frieda Zames and Doris Zames Fleischer's excellent *The Disability Rights Movement*. The second edition of this book is available from Temple University Press.[3]

The social model sharply contrasts with the medical model, which focuses almost exclusively on ameliorating impairment through a cure, medical intervention, and raising money through degrading telethons, such as the notorious Jerry Lewis telethon, that have been repeatedly protested by many in the disability rights community.[4] Early work such as Erving Goffman's *Stigma: Notes on the Management of Spoiled Identity* drew attention to the problems faced by disabled people in social interactions, famously observing "there is only one complete unblushing male in America, a young married, white, urban, northern, heterosexual Protestant father of college education, of good complexion, weight and height and a recent record in sports"[5] even as Goffman wrongly assumed that disability inevitably spoils identity.[6]

The focus of my presentation will be on the impact of neoliberalism on disabled people. What do I mean by neoliberalism? The drastic reduction of welfare, the expansion of workfare, and changing the nature of work away from well-paying full-time—or what some might call Fordist—jobs to the flexible labor market where precarious jobs are much more common: part-time or temporary post-Fordist jobs, often without decent benefits.[7] There is also the expansion of overtime work without overtime pay, which is oppressive to everyone, but may be particularly challenging for many disabled people. There has been a drastic paradigm shift to the notion that a person outside the labor market should accept *any* job regardless of working conditions, hours or salary.[8] This marks a sharp departure from the Keynesian welfare state consensus which, for what the French called *les trente années glorieuses*—thirty glorious years after the end of the Second World War—one saw full employment, strong unions and the widespread availability of full-time well paid jobs, for many even if not all.[9] Even then, however, the majority of disabled people across the OECD countries already tended to be outside the labor market. And, as Chris J. Ford observed in his *New Politics* article on neoliberalism and disability rights, as the welfare state is slashed in Britain and other countries there has been an increase in disability harassment: disabled people are increasingly being blamed as malingerers.[10] Ford eloquently describes how Peter Greener, a man with multiple sclerosis in Hebburn, was falsely the subject of abuse on a benefit hotline by a neighbour.

Across Europe, as the economic crisis deepens, these incidents are likely to become more severe.[11] This does not mark a disappearance of the state as in some Randian fantasy; the state is very much with us, but is focused on a different set of priorities: not regulation of wealth redistribution as in Keynesian times of progressive taxation but reregulation of labor markets to maximize profitability. The state is to act as an enabler of the capitalist class by enforcing property and contract laws.[12]

So how did we get here, neoliberal America in 2012? The British scholar Colin Barnes and earlier the American academic Deborah Stone have observed that with industrialization and urbanization, one saw the conflation of work with paid employment. Whereas some disabled people were able to make contributions in feudal times when labor time and the pace of work were less relevant, with the rise of commodification of labor and factories, disabled people were classified into two categories: those who were able to work and those who were not.[13] Those who were not, after the passage of the English Poor Laws including the amendments in 1834, increasingly were regarded as a burden on the economy, a perception that persists to this very day.[14] This was by no means a stable category; who was classified as disabled varied depending on the state of the economy, the state of the labor movement and the state of the class struggle.[15] The huge growth of heavy capital industries such as iron, steel and the railways in the late nineteenth century resulted in a much higher level of physical fitness and dexterity as a prerequisite for employment and a concomitant increase in the institutionalization of those now deemed unable to work.[16]

Eugenics, influenced by thinkers such as Galton, sought to classify disabled people and had systemic biases against disabled people of colour and gays and lesbians in particular.[17] Many disabled people were placed in institutional settings where physical and sexual abuse, including sterilization abuse, was widespread.[18] Hence the notorious US Supreme Court case, *Buck v. Bell* in which Justice Holmes notoriously remarked "three generations of imbeciles is enough," and found that the state of Virginia did not act improperly in sterilizing the purportedly "feeble-minded" woman, Carrie Buck.[19] Sterilization laws were on the books in many states, in two Canadian provinces, and beyond, leading to the disgraceful sterilization of many tens of thousands of people, disproportionately working class and racialized.[20]

Immigration policies typically excluded people with disabilities; in fact, the disabled are prohibited from immigrating to Canada to this very day.[21] Yet the classification system which became commonplace in areas such as workers compensation schemes, was entirely arbitrary. As Deborah Stone recounts, "even a defender of the idea of objective measurement of impairment as Kessler stated: "To summarize, it is important to understand that the entire pension scheme and disability rating scheme are pure fiction if we feel that the rating table expresses in a scientific way the economic, or psychological or physical effects of these express in a scientific way the economic, or psychological or physical effects of these injuries." [22]

The 1960s sparked many social movements that challenged the status quo including the African American civil rights movements, movements for Latinos, women, gays and lesbians, the student movement and many others. It is not surprising, then, that disability rights found the 1960s to be a congenial time and that the Rolling Quads, a group of disabled college students, emerged in Berkeley to mobilize for rights and independent living through political activism.[23] a movement that grew rapidly with the return of radicalized disabled veterans from Vietnam.[24]

The high point of the 1970s resurgence of disability liberation politics was the remarkable San Francisco occupation that occurred in conjunction with protests aimed at forcing the release of regulations pursuant to s. 504 of the Rehabilitation Act of 1973. The regulations were to outline how it was illegal for federal agencies, contractors, or public universities to discriminate on the basis of handicap. They had been delayed by previous administrations, but there had been an expectation

that the incoming Carter Administration would fulfill its promise to issue the regulations. When it became obvious that the Democratic Party policy makers were stalling and wanted to substantially modify the regulations to permit continued segregation in education and other areas of public life, disability rights activists mobilized in nine cities across the United States. In Washington, 300 demonstrators occupied the offices of the Health, Education and Welfare (HEW) Secretary for some 28 hours despite the cutting of the office's telephone lines by authorities and the refusal to permit food to get through to the protestors. While most of the demonstrations ended fairly quickly, in San Francisco, the movement took on a truly extraordinary trajectory. There, disability rights activists occupied the HEW federal building for 25 days, culminating in total victory: the issuing of the regulations without any amendments.[25]

Shifting to the postfordist world of today, one pressing problem, as first Karen Soldatic and Helen Meekosha have cogently noted is the fact that the state often coopts radical social movements, including disability rights movements, through funding and "partnerships," where the radicalism is thereby defused.[26] This highlights the importance of autonomous disability rights movements from below are not beholden to anyone except their own members. This is particularly important for racialized disabled people and disabled women who are much more likely to face labor market barriers.

A second problem is that "individual responsibility" has become the governing morality and this mantra blames those who are marginalized for their own poverty, even though their poverty is due to structural barriers in the labor market.[27] Vocational training programs or volunteering as a way of making contacts put the onus on the disabled person; moreover, there is often no position available at the end of the training.[28] Vocational training only makes sense in a context where employment opportunities are tangible. This is accompanied by the monitoring of disabled people by caseworkers authorized to sanction them, which can lead to people losing their benefits for minor and technical breaches of regulations.[29] This issue received considerable coverage recently during the Paralympic Games in England, where a French multinational company called Atos, which was a sponsor of the Games, sparked protests because it was also shamefully administering "fitness to work" tests to disabled people receiving benefits. Atos had a 100 million pounds a year contract to complete this task. This is at a time when some 500,000 disabled people in Britain are scheduled to have their disability benefits cut.[30]

A third issue is how does one effectively assure accommodations in a world where many individuals are in short term contracts, and employers in the service sector and elsewhere are increasingly focused on minute by minute profitability, and turnover is high—with a large pool of replacement labor readily available.[31] A short rest break that might have once been a feasible accommodation now becomes undue hardship. In the United States, the first 18 years of Title I of the Americans with Disabilities Act, which concerns employment, was marred by an unreasonably narrow definition of disability by the courts. This meant that millions of Americans who clearly had disabilities were not covered. This did not change until Congress amended the law in 2008 to provide a broader definition of disability.[32]

Technical doctrines such as the "mitigating measures" doctrine prevented the coverage of disabled people who took medications for high blood pressure, epilepsy, diabetes, or severe hearing loss. They were not necessarily regarded as disabled; they had to be evaluated for eligibility after they applied mitigating measures such as assistive devices or medication. Courts in the United States have found all kinds of people with disabilities to not qualify as disabled under this narrow jurisprudence, often ignoring the EEOC guidelines in their rulings. [33] Even countries such as Canada, which have always had a broad definition of disability, have not seen a big jump in labor market participation by disabled people. The vast majority of ADA employment complaints prior to 2008 failed, giving ADA Title I plaintiffs one of the least successful records in the federal courts.[34]

This history points to real problems in relying exclusively on law as a tool for social transformation, which is the focus of some activists. Samuel Bagenstos, the former Principal Deputy Assistant Attorney General of the United States, has pointed out that the backers of the Americans with Disabilities Act employed a kind of individualist libertarian argument in favor of the ADA, thus encouraging Republican lawmakers to frame the issue of disability rights as one of removing people from the welfare rolls through employment: "In official reports, in congressional hearings, on the floor of Congress, and in the popular press, supporters of the proposed ADA argued that the statute was necessary to reduce the high societal cost of dependency: that people with disabilities were drawing public assistance instead of working, and that a regime of "reasonable accommodations" could move people with disabilities off of the public assistance rolls and into the workforce in a way that would ultimately save the nation money. This argument was asserted by individuals with disabilities who urged passage of the ADA, by the bill's major sponsors, and by President George H.W. Bush himself.

In short, the ADA was sold to a significant extent as a means of welfare reform."[35] Samuel Bagenstos correctly suggests that this lies in the fact that the notion of Independent Living which has been one of the core concepts of the disability rights movement has a libertarian tinge. Instead, we need to challenge the notion of "independence," a motif that runs very deep in US history, to argue for a more balanced conception of interdependence.

So how do we draw a balance sheet for the ADA as a tool for social transformation? It is important for those of us on the left not to sneer too much. It is evident that a rights-based approach may be able to secure gains in physical access to services. The emergence of a vibrant disability pride or what some are increasingly referring to as disability culture, speaking of the experiences and barriers faced by disabled people and usually coated with a heavy dose of postmodern philosophy, may enrich the American social fabric.[36] However, for leftists, it is clear that a disability rights movement that takes a class analysis seriously must grapple with the intense unemployment and poverty experienced by a majority of disabled people. A strong case can be made that this challenge ultimately strengthens the socialist case for a radical democratization of the economy.

The full inclusion of disabled people into society would shatter the link between self-worth and full-time employment that has been predominant in capitalist societies since the Industrial Revolution. It would also open the door to the possibility of coalition-building with others such as single mothers and welfare recipients who also are punished by the arbitrary value placed on working a standard job and might ultimately permit a greater understanding of how labor is commodified under capitalism; this understanding can strengthen working class consciousness and mobilization as a whole. Others, such as Sunny Taylor, author of "The Right Not to Work," in *Monthly Review* in 2004, have begun to question the politics of valuing people by their work.[37]

Nevertheless, leftists who focus exclusively on transformation in the economic sphere would do well to remember that wheelchair access to government offices, public schools, universities and private businesses is clearly far superior in the United States than in Canada, many social democratic European countries, or Australia, despite the broadly retrograde character of U.S. economic life. Still, one can hope for far more and for that one has to look at building social movements and grassroots organizing.

On a closing note, I want to mention that one often unexplored area is the vast number of leftists who have had disabilities, but whose disabilities have been almost totally ignored. An egregious example is the Italian Marxist Antonio Gramsci, whom Anne Finger discusses in the *New Politics* symposium;[38] it includes the anti-war American socialist Randolph Bourne of the early 20th century[39] as well as E.T. Kingsley (1856-1929), a double amputee who ran twice for the House of

Representatives for the DeLeonist Socialist Labor Party in California before moving permanently to Canada in 1902, where he went on to edit the *Western Clarion* and became a leader of the Socialist Party of Canada. I am writing, with Benjamin Isitt, a biography of Kingsley under contract for University of British Columbia Press. Attention to disabled leftists of the past can deepen our understanding of disability rights struggles today.

Notes

1. See Armantine M. Smith, "Persons with Disabilities as a Social and Economic Underclass" (2002-2003) 12 *Kansas Journal of Law and Public Policy* 13 at 21 for a summary of the data in the 2000 NOD/Harris Survey and the 2000 CPS. More recent statistics paint a similar picture. See "Poverty in the United States: A Snapshot", available online (accessed October 10, 2012).
2. For canonical accounts of the social model, see Michael Oliver, *The Politics of Disablement* (London: Macmillan, 1990) Colin Barnes, Mike Oliver & Len Barton, eds., *Disability Studies Today* (Cambridge: Polity Press, 2002); and Gary L. Albrecht, Katherine D. Seelman & Michael Bury, eds., *Handbook of Disability Studies* (Thousand Oaks, California: Sage, 2001).
3. Doris Z. Fleischer & Frieda Zames, *The Disability Rights Movement: From Charity to Confrontation*, 2nd ed. (Philadelphia: Temple University Press, 2011).
4. For a critique of telethons, see Paul K. Longmore, "Conspicuous Contribution and American Cultural Dilemmas: Telethon Rituals of Cleansing and Renewal" in David Mitchell & Sharon Snyder, eds., *The Body and Physical Difference: Discourses of Disability* (Ann Arbor: University of Michigan, 1997).
5. Erving Goffman, *Stigma: Notes on the Management of Spoiled Identity* (New York: Simon & Schuster, 1963), 128.
6. See *ibid.*, ch. 2. Disability theorists, in contrast, would see disability as having at least the potential to make a positive contribution to identity.
7. See Alan Roulstone, "Disabling Pasts, Enabling Futures? How Does the Changing Nature of Capitalism Impact on the Disabled Worker and Jobseeker?" (2002) 17 *Disability & Society* 627 at 629.
8. Karen Soldatic and Helen Meekosha, "Disability and Neoliberal State Formations" in Nick Watson, Alan Roulstone and Carol Thomas, eds., *Routledge Handbook of Disability Studies* (London: Routledge, 2012), 195 at 200.
9. For a good overview, see Luc Boltanski and Eve Chiapello, *The New Spirit of Capitalism* trans. Gregory Elliott (London: Verso, 2005).
10. See Ford, *supra* note 7.
11. *Ibid.*
12. Judy Fudge and Brenda Cossman, "Introduction: Privatization, Law and the Challenge to Feminism" in Brenda Cossman and Judy Fudge, eds., *Privatization, Law and the Challenge to Feminism* (Toronto: University of Toronto Press, 2002) 3 at 19.
13. Colin Barnes, *Disabled people in Britain and Discrimination: A Case for Anti-discrimination Legislation* (London: Hurst & Co.) at 15; Deborah A. Stone, *The Disabled State* (Philadelphia: Temple University Press, 1984) at 24.
14. Soldatic and Meekosha, *supra* note 12 at 199.
15. Barnes, *supra* note 17 at 15.
16. *Ibid.* at 18.
17. For a good account, see Beth A. Ferri and David Connor, *Reading Resistance: Discourses of Exclusion in Desegregation and Inclusion Debates* (New York: Peter Lang, 2006).
18. Joseph P. Shapiro, *No Pity: People with Disabilities Forging a New Civil Rights Movement* (New York: Random House, 1993) at 237-39; Dick Sobsey, *Violence and Abuse in the Lives of*

People with Disabilities: The End of Silence Acceptance? (Baltimore: Paul H. Brookes Publishing Co., 1994) at 94-96.

19. **Buck v. Bell** 274 U.S. 200 (1927).
20. For an American account, see Marta Russell, *Beyond Ramps: Disability at the End of the Social Contract* (Monroe, Maine: Common Courage Press, 1998) at 46-47, 61. For the Canadian policies on sterilization, see Timothy Caulfield and Gerald Robertson, "Eugenic Policies in Alberta: From the Systematic to the Systemic?" (1996) 35 *Alberta Law Review* 59; Dianne Pothier, "Appendix: Legal Developments in the Supreme Court of Canada Regarding Disability" in Dianne Pothier and Richard Devlin, eds., *Critical Disability Theory: Essays in Philosophy, Politics, Policy and Law* (Vancouver: University of British Columbia Press, 2006) 305 at 307.
21. See Fiona A. Miller, "Making Citizens, Banishing Immigrants: The Discipline of Deportation Investigations, 1908-1913" (2000) 7:1 *Left History* 62 at 67, 83
22. Stone, *supra* note 17 at 116.
23. James I. Charlton, *Nothing About Us Without Us: Disability Oppression and Empowerment* (Berkeley: University of California Press, 1998), pp. 131-136.
24. Shapiro, *supra* note 22 at 57-58.
25. *Ibid.* at pp. 64-69.
26. Soldatic and Meekosha, *supra* note 12 at 197.
27. *Ibid.* at 198.
28. Alan Roulstone, "Disabled People, Work and Employment: A Global Perspective" in Watson, Roulstone, and Thomas, *supra* note 12, 211 at 213-14.
29. Soldatic and Meekosha, *supra* note 12 at 203.
30. Esther Addley, "Paralympic Sponsor Atos Hit by Protests" (August 31, 2012), *The Guardian* (accessed October 11, 2012); Patrick Butler, "Benefit Cuts: Atos in the Frame to Deliver New Disability Tests" (April 23, 2012), *The Guardian* (accessed October 11, 2012).
31. Robert Wilton, "Working at the Margins: Disabled People and the Growth of Precarious Employment" in Pothier and Devlin, *supra* note 24, 129.
32. Jeannette Cox, "Crossroads and Signposts: The ADA Amendments Act of 2008" (2010) 85 *Indiana Law Journal* 187 at 199-202.
33. *Ibid.* at 200-02.
34. Ruth Colker, "The Americans with Disabilities Act: A Windfall for Defendants" (1999) 34 *Harvard Civil Rights-Civil Liberties Law Review* 99 at 99-100.
35. Samuel R. Bagenstos, "The Americans with Disabilities Act as Welfare Reform" (2003) 44 *William and Mary Law Review* 921 at 926-27.
36. See, e.g., Tobin Siebers, *Disability Aesthetics* (Ann Arbor: University of Michigan Press, 2010).
37. Sunny Taylor, "The Right Not to Work: Power and Disability" (2004) 55 *Monthly Review* 30 at 30-44.
38. Finger, *supra* note 8.
39. Christopher Phelps, "The Radicalism of Randolph Bourne" (2007) 21 *Socialism & Democracy* (accessed October 11, 2012).

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