

Disablism Reflected in Law and Policy: The Social Construction and Perpetuation of Prejudice
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Abstract: There are widespread historical and cultural analyses of the problems associated with racism, sexism, classism, and other types of prejudice; however, there is a paucity on disablism. As with other prejudices, an examination of the origins and perpetuation of disablism is controversial because it is cloaked in narrow legal and policy analyses of the historical and cultural documentation on the notion of disability. There has been little systematic research on disablism and typically it has been misrepresented as a health, economic, technical, or safety issue rather than prejudice. In the United States, the Americans with Disabilities Act of 1990 (ADA) was signed into law with the assumption that it would provide equal accommodations for disabled people. In this paper, we examine the institutions of education and the workplace to analyze how “equal accommodations” under such policies pose some serious and problematic political processes and consequences in shaping disability rights. Our analysis suggests that from an international perspective most disability policies remain rooted in a narrow medical model, despite evidence of attempts to construct politics of diversity and self definition.

Key Words: diversity, disablism, politics

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Introduction

On July 26, 1990, President George H.W. Bush signed into law the Americans with Disabilities Act of 1990 (ADA), which was touted as the most progressive piece of American legislation since the Civil Rights Act of 1964. Although the ADA is often hailed as a revolutionary landmark, the emancipation proclamation for the American disability community, the foundation for this law originated from a problematic process of shaping disability identity and the perception of what it means to be disabled.

Although there is little discourse on disablism, the Greater London Authority Act of 1999 (GLA) on Disability formally accepted disablism as a social phenomenon and a form of societal oppression towards disability similar to racism or sexism. Along with their recognition of laws such as the ADA, this discourse from a British authority is among the few authorities that recognize the importance of eradicating such prejudice. Increasingly, disabled individuals resonate to the problems of disablism and some scholars are trying to eradicate the rarely subtle, deep negative impact of such prejudice.

Disablism promotes the concept that disabled individuals are inferior to others, which not only unconsciously shapes the identities of disabled individuals, but also permeates the apparatus of existing political disability processes (Gillinson, Miller, & Parker, 2004). The concept of disablism increasingly is useful in international research because it helps us examine its connection with the roots of other forms of prejudice such as racism, sexism, and classism. Moreover, the roots of this specific prejudice require more systematic analyses and explications, otherwise, public policy solutions probably will continue to be partial or subject to numerous forms of backlash. Human rights groups, such as the European Union’s Human Rights and

Democratisation Policy, continue to grapple with such problems (UN Commission on Human Rights (2004); Human Rights of People with Disabilities, 2004).

In the recent past, people with disabilities, also termed “disabled people” in popular culture, were defined and “treated” for the most part on the basis of their physiological condition. They were usually identified as not having the ability to function normally and efficiently in education and the workplace. As the ADA of 1990 began to be implemented, there was initially a small shift from a physiological perception to a more cultural view of being disabled. This law, and related ones in the U.S., however, continue to define disability from a medical model in shaping the prerequisites of being disabled (Lauderdale, 2003). Additionally, the ADA “reproduces the medical definition by defining it as an inability to perform a ‘normal’ life activity” (Donoghue, 2003, p. 202-203). The ADA, as a political process, was created for the purpose of measuring basic accommodations to ensure “equal opportunity” in our society. This law also confirmed old notions of disability and related accommodations to shape the identity of what it means to be disabled. The ADA became embedded in our social fabric by shaping and normalizing specific identities, attitudes, opinions, and behaviors.

Although the ADA was an important legal victory for the disabled community, especially in terms of creating more awareness of the various issues of disability, the effect of the ADA has been in many ways, to perpetuate a medical model that continues to neglect the complex sociocultural aspects of disability (Donoghue, 2003; Jolly, 2003). Perhaps the clearest replication of the medical model can be seen in states’ continued adherence to policies that promote institutional over community-based services for disabled individuals. These policies reinforce disablism by isolating those with disabilities from society at large and forcing dependence on the state for even basic services (O’Brien, 2004).

Semantics and Political Processes of Disablism

Typically, disabled people are defined and treated as a homogenous group by most societies, which usually leads to critical problems with legislation and the implementation of laws and policies (Martin, 2002). The ADA, for example, originates from a calculated analytical process called *rationalized* legal reasoning that results in “the lack of required, legally, correct rules, methodologies, or results...[and] is in part of a function of the limits of language and interpretation which are subjective” (Kairys, 1998, p. 5). Scotch (2001) explains how Section 504 of the Rehabilitation Act of 1974 formed a foundation for its successor legislation, the ADA, and developed largely out of a process of legislative and political maneuvering. Its passage primarily was the result of intense political negotiation rather than activism by advocates for the disabled. United States policy has consistently attempted to rationalize the ADA “objectively,” without respect to diversity.

Despite the disabled-positive rhetoric surrounding the legislation (GLA) in London, the Disability Discrimination Act of 1995 (DDA) in the United Kingdom shares the same neglect of diversity as the ADA in the U.S. by ignoring the diverse gifts of ostensibly disabled people and trying to normalize differences in the home, at school, and the workplace. Stevens (2002, p. 782) notes that “progressive” civil-rights laws “will not necessarily solve social problems” and suggests that the DDA is subject to similar problems as the ADA, including the failure of British policy to eradicate “psychological barriers.” Critics of the DDA argue, for example, that not enough conditions that contribute to disability are covered under the auspices of the Act, enabling employers to avoid liability for workplace-related disabilities and providing few outlets

for coverage for the mentally ill.

Further, and perhaps more importantly, both the DDA and the ADA treat the disabled individual as the “cause” of disablement rather than society as a whole (Barnes, 1996). For example, the ADA and the DDA do not separate disability from the individual. Legal definitions proffered by these acts focus on the “functional attributes” of disabled people rather than acknowledging the fact that stigma and societal attitudes are the major reasons for discrimination against the disabled in the workplace and otherwise (Hahn, 2000). The conception of an individual as “disabled” becomes the fault of the individual rather than the result of a societal structure that fails to recognize diversity.

The origins of classifying and examining disability in education and the workplace have been conducted through an anthropocentric and narrow scientific examination. Education and workplace definitions neglect diverse disabled cultures and homogenize a disability identity where values, heritage, and history are simplified and normalized. In *The Life of the Law*, Nader (2002) refers to anthropocentric notions of the law as the culturally-biased approach of gathering information by not incorporating diversity and ignoring historical conflicts. The definition of disability and the formal apparatus defining and accommodating disabled people is perceived as a “social problem made by trained experts who may depart quite substantially from public perceptions of social problems” (Lauderdale, 2003, p.19). This conundrum further ignores the full socio-cultural implications of disability (Jakubowicz & Meekosha, 2002).

The ADA allows bureaucratic decision-making processes to be created under an ambiguous hierarchical structure of power regulated by rational formal law, in the guise of a “progressive” reform. Determining the varied impacts of the ADA is very difficult. Avoke (2002) suggests, for example, that the absence of legislative and policy frameworks for disability issues in many economically poor countries leads to greater stigmatization (See Avoke, 2002, p. 772 on Ghana). Yet, public policy historically has neglected the diverse cultural identities of disabled people in its attempt to homogenize disability and make policy such as the ADA a calculated process through narrow legal reasoning.

Under the ADA, an individual who has a physical or mental impairment that “substantially limits” one or more of his or her “major life activities” is considered to be “disabled” (42 U.S.C. 12102). Thus, to receive social services pursuant to the ADA, individuals must identify some form of disability. However, many disabled individuals, while in need of the services and protections provided by the ADA, may not themselves identify as “disabled” *per se*. For example, many deaf individuals may identify instead with being part of a deaf “culture” in which being hearing impaired is not perceived as a handicap, but rather a linguistic difference (Barnartt & Scotch, 2002; Lane, 1999).

Thus, the ADA coerces disabled people to be defined and treated as a homogenous group without regard to how they may identify themselves. This is especially true because in order to receive services guaranteed by the ADA, the individual has to acknowledge and accept having a disability regardless of their viewpoint of being disabled. Identity politics of diversity criticize the risky process of law in creating a cauldron in which “inequalities of class, gender, race, age, and disability are brewed into a lethal cocktail” (Humphrey, 1999, p. 175). Similarly, Nader (2000) explains that the “harmonious” process of the law to settle conflicts with norms such as “equal opportunity” and “full accommodations” as “legal values” neglect the cultural identity of being disabled. Narrow attempts to create a “harmonious” law based on unity and conformity often produce problematic definitions that lead to disablism.

We suggest that diversity is a more accurate description of disabled people. They are not

disabled per se, but rather diverse. Diversity here reflects (a) the significant differences in the ranges and depths of individuals who are defined as having some type of disability, (b) their “place,” which includes their socioeconomic status, gender, ethnicity or race, age, and power, and (c) their varying responses to the label of disability, which often depends on interpersonal and structural relations of power.

The Impact of Policies on Education and the Workplace

In education and the workplace, policies such as the ADA supposedly address different levels and forms of disability ranging from deafness, blindness, cognitive disorders, multiple sclerosis, mental retardation, and many other disabilities. The notion is that everyone with these disabilities will receive equal opportunities. Furthermore, such policies attempt to homogenize all disabled people by mainstreaming them into the sea of “normally functional” persons with “equal opportunities,” yet, the laws inadvertently reinforce the “negative attitudes, limited physical access, limited access to communication and/or economical, political, or social resources, and to the rights and privileges of a social group” (Gilson & DePoy, 2004, p.17). Donoghue (2003) reaffirms this problem by explaining how the ADA has marginalized diversity by creating a narrow definition of what it means to be disabled in education and in employment.

In the American system of education, the Individuals with Disabilities Education Act (IDEA) outlines an approach where disabled students historically have been measured, compared, classified, and moved into “special” classrooms away from the general education system. It is as if the exclusive placement of the student in the special classroom is an organizational pathology diagnosed by examining the degree of disability (see, e.g., Winzer, 1993). This social exclusion often results in stigma (see Jahnukainen, 2005, for a comparative analysis).

The student is measured by linguistic and cognitive strengths and weakness formulated from a medical model *ostensibly* to assess the student’s learning abilities. In reality, the student’s educational assessment is not a measure of what the student is capable of accomplishing, but rather what she or he is incapable of accomplishing by “characteriz[ing] the difference in great biological detail” (Lane, 1999, p. 24) with the neglect of any cultural dimension.

Although the IDEA, passed in 1975, amended in 1997 and updated in 2004, requires a detailed explanation for excluding children from the general education classroom, application of the standards set for inclusion in the act is often uneven. Cole, Waldron, and Majd (2004) note, for example, that poor inclusive programs that do not meet students’ needs are frequently implemented (in Baines, et al., 1994; Shanker, 1994-1995; Vaughn & Shumm, 1995). Students often encounter even more difficult problems in educational systems in countries with fewer economic resources than in the United States (see, e.g., Balias and Kiprianos, 2005, regarding Greece).

In the workplace and related economic sectors, the disabled worker is also measured, compared, and classified by their capability to perform efficiently against their counterparts in the workplace. Both the United States and the United Kingdom created policies to spearhead equal opportunity in the workplace, but instead affirmed the government’s economic policy by only partially attempting to make the workplace equally accessible (Jolly, 2003). The field of employment, using questionable rational and calculable processes to provide “equal opportunity” has been able to exploit and control the workforce through linking physiological ability with

being a wageworker. The U.S. Census Bureau (2001) reports that:

“The proportion of individuals 25 to 64 years old with an annual personal income less than \$20,000 was 80.2 percent for those with a severe disability compared with 43.7 percent for those with no disability. When the income measure was household income, 41.8 percent of those with a severe disability, and 13.9 percent of those with no disability, lived in a household with an annual income below \$20,000” (p. 70).

It is not surprising, then, that the employment rate and median annual earnings for individuals 25 to 64 years old by overall disability status and by specific disability categories are also strikingly different. According to the same Household Economic Study by the Census Bureau, individuals with a severe disability had an employment rate of 31.4 percent and median earnings of \$13,272, compared with 82.0 percent and \$20,457 for those with a non-severe disability, and 84.4 percent and \$23,654 to those with no disability.

Congress specifically mandated major goals when enacting the ADA such as ensuring “equal opportunity” in the workplace by claiming to eliminate the arbitrary barriers faced by disabled people. Yet, the disabled employee continues to be classified through their inability to function as a normal wage worker as part of a systematic division of labor. When policies such as the ADA present the disability worker with an ontological “equal opportunity” ideology claiming that he or she will be guaranteed equal chances in the workplace, in reality these laws reproduce and solidify the periphery between realistic solutions and symbolic arbitrary resolutions. For example, as Barnes (1996) notes of the “reasonable accommodations” mandate under the Disability Discrimination Act (DDA) in the United Kingdom, discrimination remains justifiable in those circumstances where the accommodations that employers must make to accommodate disabled workers are deemed to be “unreasonable.” In the U.S., the courts frequently have been unwilling to grant assistance with transportation costs to employees as part of a “reasonable accommodation” under the ADA, although lack of access to transportation is often a major barrier to employment for the disabled (Hahn, 2000).

The increasingly complex division of labor leads to increased interdependency of economics and power, an interdependence that is necessary to develop a stable, predictable, and reliable strategy of welfare and government. The influence of economics on disability policy is crucial in explaining critical interpretations and problems of disability in the workplace (Russell, 2002). Jolly (2003) suggests that economic justice is embedded in identity and culture where:

“The economic and social organization of modern societies are formed through historical and shifting power relations, which disable, render problematic or prevent those with impairments from taking part in activities such as mainstream education, paid work...access to public transport, public buildings and access to information” (p. 511).

Centralization of Power

The portrayal of disability in the ADA becomes important when explaining numerous interpretations of the politics of disability in the workplace and in schools, especially from an international perspective. An underlying social structure prevents many public policies from producing significant impacts. Some of the classic work by Max Weber, based on his comparative research, can be useful in examining these impacts. Changes in the centralization of

power, for example, are critical to different bureaucratic organizations (Weber, 1968; Inverarity et al., 1983; Swedberg, 2000; Oliverio & Lauderdale, 2005). As a society becomes more complex, typically there is an increased centralization of power in bureaucratic organizations guided by the notion of efficiency, reliability, legitimacy of authority, calculability, regulated tasks, and rules for predictability. The bureaucratic organization, then, increasingly has become a calculated and rational set of activities regulated by a multitude of hierarchal agencies (Weber, 1968).

These organizational bureaucracies emerged with authority from what Weber calls a “formal rational” framework of reliable, disciplined, rationalized, specialized, and methodological calculations in education and employment (Inverarity, Lauderdale, & Feld 1983; Swedberg, 2000). This process has resulted in the neglect of diverse disabled cultures, which homogenize the identity of disability as a collective where values, heritage, and history are normalized. Policies such as the ADA allow the bureaucratic decision-making process to be created under an ambiguous, hierarchal structure of power, regulated by rational, formal, explicit law as an ostensible progressive reform. The process contributes to the avoidance of the full sociocultural implications of disability.

In education, students undergo a series of formal “scientific” assessments where they are evaluated, classified, and compared based on the severity and the nature of their disability. Additionally, students “bear the character of abstract norms, which, at least in principle are formed and distinguished from one another by a rigorously formal and rational logical interpretation of meaning” (Weber, 1968, p.789). They are classified through linguistic and cognitive comparisons with their non-disabled counterparts, using blind empiricism as a tool to provide accommodations by primarily using only empirical correlations. Thus, policies increasingly operate through a formal rationalized process that creates partial accommodations for disabled people; by doing so, they neglect essential sociocultural factors. The educational system, through most policies, homogenizes all of the diverse heritages, histories, languages, and modalities of each disabled student into a monolithic idea that each individual will receive an equal education. The marginalization of the diversity of disabled students provides the educational system with predictable, consistent, and rationalized methodological calculations of processes at the expense of diversity.

In the workplace, disabled employees are classified through their inability to function as normal wage workers, without consideration of the social barriers involved in the workplace. Disability policy provides the worker with:

“[An] arbitrary combination of professional assessment, paternalistic welfare, and compulsory employment...categorization as capable or incapable to work; deserving or undeserving. They are experiencing increasing insecurity, pressure to conform, a heightened sense of powerlessness and of being under the attack” (Beresford & Holden, 2000, p. 983).

Beresford and Holden also point out from a global perspective that the categorization and classification of disabled people illustrates the increased specialization of social policy in constructing the role of the disabled person. These bureaucratic policy-making decisions allow the development of a stable, predictable, and reliable strategy of welfare and government in the name of disability policy (Jolly, 2003). This political process also forms a hierarchal structure, bureaucratic discipline, and centralization of power because of increasingly complex labor in the

workplace and educational institutions (Weber, 1968). It is a crucial Weberian process that provides an interpretation of what it means to be disabled and how to accommodate disabled people in both the workplace and in education.

A Brief Examination of Normalizing Judgment

The impact of many historical definitions and reactions to diverse people lingers. The emergence of eugenics, for example, in the late nineteenth and early twentieth centuries in most countries, legitimated the institutionalized confinement and explicit biological stigmatization of a myriad of people. They were labeled with negative biological terms as a method to isolate them from the general population. They were confined in homes, asylums, schools, and hospitals. The solution to difference was “segregation of all the ‘defective’ classes, the ‘great neuropathic family,’ as one expert called them, ‘the insane, the epileptics, feeble-minded, the neurotic tramps, criminals, paupers, blind, deaf, and consumptive’”(Longmore, 2003, p. 46). The eugenics movement emerged as popular ideology and by 1930 more than half the States in the United States adopted sterilization laws. Disabled people were involuntarily sterilized in a pseudo-scientific effort to prevent the births of disabled offspring. There were systematic attempts to abolish the disability community because it was perceived as a social and economic burden to society, which prompted most policy-makers to stigmatize and isolate people with so-called disabilities. Social organization, through stigmatization and institutionalization, shaped and solidified the psychological/medical perspective of disability.

The exclusion of sociocultural factors in diverse subjects is legitimized and regulated by medical definitions. Intervention then becomes social control that “seeks to limit, modify, regulate, isolate, or eliminate deviant behavior with medical means” (Conrad & Schneider, 1992, p. 29). Political processes further homogenize the construction of disability as the medical model becomes the dominant paradigm, in part, because of the benefits of “speaking” in medical and health terms (Lauderdale, 2003). These politicalized scientific processes in various types of governmental agencies and bureaucratic organizations contribute to the creation of disabled people as objective subjects (Tremain, 2005).

Over thirty years ago, Michel Foucault (1975), in *Discipline and Punish*, explained how individuals are created through the examination of docile bodies as a scientific construct and through techniques of normalizing judgment. The confinement of docile bodies, which excludes and denies access to power and privilege, includes not simply a focus upon the body, but also the scientific power to describe the physical body as a target for the exercise of power. Thus, social constructions of disabled students and workers are broken down into a series of formal “scientific” processes where they are evaluated, classified, compared, and examined based on the severity and the nature of their disability.

This examination makes it possible, through the apparatus of writing, to document “the constitution of the individual as a describable, analyzable object...to maintain him in his individual features, in his particular evolution, in his own aptitudes or abilities, under the gaze of a permanent corpus of knowledge” (Foucault, 1995, p. 190; Oliverio & Lauderdale, 2005). Thus, the examination of bodies is a form of explicit power through the “corpus of knowledge” and it is the regulation of knowledge that reinforces the political outcome of this particular power (Tremain, 2005). Each disabled individual is a case that may be measured, classified, categorized, homogenized and normalized. A criterion, for example, is used to measure difference in people creating a facade of diversity. In reality, the one criterion that is measured

makes real the homogeneity perspective under which so-called disabled people are viewed, judged and set apart (Brown, 2003). The power of normalization through examination “imposes homogeneity; but it [also] individualizes by making it possible to measure gaps, to determine levels, to fix specialties, and to render the differences useful by fitting them one to another” (Foucault 1995, p.184).

In education and in the workplace, a disabled person is examined as a case that can become a commodity, which can be classified, repaired, and recorded. Historically, governmental agencies and bureaucratic organizations exercise their power and knowledge via ostensible scientific processes by using medical terminology, symptoms, “equal opportunity” solutions, and anti-discrimination rhetoric. Empirical examination by these agencies as “experts” further affirms their scientific control. The classification and normalization of disabled people becomes a necessity within intellectual, social, and economic frameworks (Foucault, 1995).

The biological and cultural identity of the diverse disabled individual is pulled apart. The body as a social and historical construct is oblivious and docile. By using disciplinary techniques of biology as the powerful, scientific language of normalizing judgment and examining the body, disability becomes devoid of history and culture (Lane, 1999). This process makes it efficient, predictable, and rational for public policy to be presented in its idealized form, which would provide “equal opportunity” in education and the workplace, yet, without appropriate sociocultural consideration. The process is partially a result of trying to formally employ the legal system, namely, in the workplace and education, while attempting to use “accurate” empirical and scientific conclusions. In addition, most policy is being explicated as a legal concept as if people are universal, homogenous, and normalized without respect to diversity.

Conclusion

The impact of science and law on public policy throughout this paper is understood as, in part, a political process that produces problematic consequences for the disabled person. We focus here upon only two examples from the institutions of education and the workplace. The political process of what it means to be disabled and how to accommodate people by laws such as the ADA can be understood as an ideological system of normalization. Social and political relations develop classifications for intellectual, social, and pathological functioning of disability. Thus, this process allows the ontological creation of disability and its problematic identity in education and in the workplace.

Policy has relied on an anthropocentric Western framework of law to define disability and its place in society. By using a medical approach to rationalize the legality of accommodating disabled people in society, public policy centralizes disability through historical and cultural rejection. Disability, therefore, needs to be addressed globally, historically, and culturally if we want to understand and alter the “dynamics and change in the government of disability and in the process of economics and power” (Jolly, 2003, p. 520). We need to know how power, knowledge, and economics are historically instrumental in politics, and how they shape disablism in our society, namely, in education and employment. Policies can be understood heuristically as a doctrine, a form of law, implemented to control the “disabled “society through the creation of scientific constructs. These constructs are used to create and examine docile bodies and to normalize judgments that unfortunately prevent disabled people from receiving full

accommodations and equal opportunity in education and the workplace. Diversity is ignored or becomes suppressed as deviant (Brown, 2003; Lauderdale, 2003).

Future Study

Policy for persons with disabilities remains fragmented. Millions of dollars have been spent in recent years on social welfare, vocational rehabilitation, and employment programs that often have led to the marginalization of diverse people (Thomas & Lauderdale, 1988; Lauderdale, 2003; Switzer, 2003). The disability movement has fought to regain autonomy of sociocultural values by attempting to eliminate the medical model and reveal why the means to an end are deeply important. Even something that on first glance appears simple, such as a charity telethon to raise funds for “disabled” people, for example, can segregate them and label them as deviant (Brown, 2003). Future research can explore why diversity is a more accurate description of disabled people than simply labeling them as a heterogeneous group (see Jakubowicz and Meekosha, 2002, for various definitions and labels in Australia and Western Europe). Diversity would include, at least, the significant differences in the ranges and depths of individuals who are defined as having some type of disability, and their place in society, which includes their socioeconomic status, gender, ethnicity, race and age.

Different forms of science are accelerating faster than ethical debate and policymaking. As long as pseudo-science continues to be a dominant part of the politics of disability, there will be more deviance designations in bureaucratic organizations to contain, regulate, and (re)shape disablism with the continuing neglect of diversity. The application of pseudo-science to measure and normalize, via disablism, will continue to destabilize the much needed self-determination of the international disability community. An important step now is to promote research that explains why disability policy requires a sociocultural model with the inclusion of diversity.

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