

Review

Disabling Barriers: Social Movements, Disability History and the Law ed. Ravi Malhotra and Benjamin Isitt

UBC Press \$32.95

The two editors of this valuable new addition to the small but growing literature on the law, history and politics of disability in Canada is most welcome. The editors themselves pay homage to the late and lamented Dianne Pothier who, with her Dalhousie Law School colleague Richard Devlin, co-edited the ground-breaking *Disability: Critical Disability Theory: Essays in Philosophy, Politics, Policy and Law*, to which this book proves a worthy successor.

The editors of the new volume are an eclectic mix of the Associate Dean of Law at the University of Ottawa and a historian/municipal politician. Most of the essays in the collection have a strong historical flavour, which was missing in the Pothier-Devlin book, which had more of a policy focus.

The articles in the book, which focus on employment related issues, point out that the labour market in a capitalist economy has never been inclusive of persons with disabilities. Mark Leier in his chapter speaks of “capitalism that is predatory and exploitative”. In his Forward Bryan Palmer states succinctly “capitalism disables”. Dustin Galer points out that overwhelmingly favourable employer attitudes can improve employment opportunities, such as those of employers towards disabled veterans returning from WWII. However, he goes on to demonstrate that efforts to change employer attitudes outside such exceptional circumstances have generally failed, or even backfired and made employment prospects worse.

Recent research by Professors Pettinichio and Maroto, from the University of Toronto and Calgary respectively, have once again confirmed that attitude altering campaigns, human rights legislation and systemic legislation such as the Americans with Disabilities Act, have alone or together had little or no impact on the disturbingly high unemployment rates amongst virtually all segments of the disabled community.

Megan Rusciano contributes an interesting analysis of the application of human rights principles to government sponsored “sheltered employment” in the case of Garrie v Janus Joan Inc. 2014 HRTO 272. This case follows in a long line of earlier ARCH cases establishing that EI, ESIB and ESA legislation all apply to sheltered employment. The fact remains that sheltered

employment is disappearing across the country, rather than being expanded to provide meaningful employment opportunities, so it will be playing a reduced rather than an expanded role in alleviating the unemployment crisis documented by Pettinchio and Maroto.

Odelia Bay proposes a solution to the dismissal of persons with chronic disabilities attempting to be “warrior litigators” in the hostile environment of private law firms. She reaches for the bracing tonic of the ultra strength accommodations provided for those experiencing discrimination in their workplaces on the basis of family status. Citing the recent Federal Court of Appeal cases of *Jonstone/Seeley*, in which *bakerlaw* was involved, she points out that employers were shocked to find they were required to accommodate their employees’ childcare responsibilities, which they could not address themselves. The argument demonstrates the creativity one has to come to expect from warrior litigators by suggesting self-care should be accommodated on a par with the care of others. Unfortunately when dealing with chronic care requirements, the expectation, according to the logic of these cases, would be that the person bears ultimate responsibility for accommodating themselves.

Despite the many thoughtful, cutting-edge and creative efforts of the book’s contributors, I remain of the view that a paper written in 1991 about the sheltered employment system in Sweden and the “grant-levy” system in Germany have the most to tell us about employment for persons with severe disabilities upon whom the labour market has turned its back. See [Baker-David-Sweden-and-Germany-compared-December-11-1991-Learning-from-the-best\[1\].pdf-Adobe Reader](#).

An unexpected gem in the book is the Chapter “Of Dark Type and Poor Physique”: Law, Immigration Restriction, and Disability in Canada, 1900-1930 by Jen Rinaldi and Jay Dolmage. Their work, tracing the roots of Canada’s immigration policy of excluding persons with disabilities, is both original and scrupulously documented. Despite its title, it examines issues right up to the present, demonstrating the timeless lessons to be learned from the treatment of persons with disabilities by the “eugenics movement” and its ultimate manifestation the “Holocaust” in which innumerable persons with disabilities were put to their deaths. It is disturbing to learn that Hitler drew upon this North American social movement, that held out the prospect of “the improvement of the human race” by eliminating those who were disabled on “biologically inferior”. After Hitler purified the Germanic people by killing all persons with disabilities, he went on to eliminate those of non-heterosexual orientation, gypsies and ultimately the Jews.

Those interested in avoiding such evils in the future would do well to remember the past, starting by reading this chapter. For a broader perspective check out Edwin Black, [War Against the Weak: Eugenics and America's Campaign to Create a Master Race](#), Robert Jay Lifton, [The Nazi Doctors](#), and Susan Evans, [Forgotten Crimes: The Holocaust and People with Disabilities](#).

While we have lost Dianne Pothier, this book suggests we have others who are coming forward to tell us that the history of persons with disabilities matters, and that the invisible hand of the market place will not be handing either a hand up let alone a hand out now or at any time in the foreseeable future. For Canadian's with disabilities, the struggle for justice must continue, but those who follow will have the benefit of knowing about those who went before thanks to a burgeoning literature that has been expanded by the worthy addition of this book.

David Baker

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