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Disability Studies 194

Professor Goodhue

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Capstone Proposal

Introduction:

The Disability Studies Quarterly recently called for papers that answer: "What does Disability Studies have to contribute to the study of madness?" Hopefully, the answers will establish a firm home for Madness Studies in academia outside of the medical model. On this subject, a professor recently told me that madness[1] is a passé field of study within social sciences and humanities. I disagree--the unique phenomenology of mental illness, as a troubling formation of disability identity, is one rich in complexity that I believe has a place in Disability Studies. I want to explore this belief by examining the construction and interpretation of psychiatric disability under the Americans with Disability Act (ADA) and within the social model of disability. To this end, my project considers how stigma, the specificity of psychiatric impairments as unique from physical disabilities and a bifurcated political identity trouble the relevance of these models in construction and practice. I will explore how the models may be expanded to fit the experience of mental illness.

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[1] For the purposes of this paper I will use the term "madness" to refer to the field of studies, "mental illness" to refer to specific phenomenology or stigmatization, and "psychiatric disability" in cases where psychiatric impairments are to be considered disabling.

Jeffery Swanson, et al., found that there are " . . . durable differences in outcomes between cases brought by people with psychiatric disabilities and those brought by people with other disabilities that are not attributable to differences in the legal and factual merits of the cases." (Pg. 99) I will look further into why this is, what it says about the phenomenon of psychiatric disabilities and how they can be better understood to ensure a better outcome. Would a change of words in the letter of the law better serve people with psychiatric disabilities? Does the prevalent stigma of mental illness play a role in how cases play out? Does ignorance exist of what "reasonable accommodations" for people with psychiatric disabilities entails? Is the status of persons with mental illness as disabled, itself questioned? Do internal fractures within the identity politics movement of people with mental illness defy political integrity? Is the civil rights battle for a reason-based model of civic identity a problematic factor? I would like to consider these questions in the context of ADA law in general and certain cases specifically.

Literature review:

The ADA is divided into five titles; the first two are relevant to my study. The first states that businesses must provide "reasonable accommodations" to people with disabilities in all aspects of employment. The second forbids "public entities" from discriminating against people with disabilities. Disability is defined by the ADA as: "A physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment." The majority of disabilities and ameliorations of said disabilities are defined in physical or biological terms.

Jane Byeff Korn, author of, *Crazy (Mental Illness Under the ADA)*, identifies that in the letter of the law, the ADA neglects impairments associated with psychiatric disabilities. Pat Corrigan et al, in *Structural Levels of Mental Illness Stigma And Discrimination,* identifies such

impairments as, lack of concentration, cognitive functioning, or emotional regulation. Elizabeth Donaldson in, *The Corpus of the Madwoman: Toward a Feminist Disability Studies Theory of Embodiment and Mental Illness,* suggests the same. Namely, that physical disability is more easily understood--specific accommodations would bring civil protection whereas in mental disabilities, civil rights protection becomes more abstract and not easily protectable with specific accommodations. Korn suggests three possibilities to remedy the disparity in treatment of people with psychiatric disabilities under the ADA: First, language stressing the uniqueness of a psychiatric impairment, such as the phrase "physical or mental impairment", should be removed from the law. Second, the law should discontinue the listed limit on scope of psychiatric disabilities, (i.e. kleptomania, pedophilia, voyeurism) and third, the ADA law should list psychiatric disabilities as "major life activity impairments". In addition to this, I think that because the stigma is so strong, as is disbelief in mental illness clearly that as an actual phenomenon and/or disability, the ADA should clearly include psychiatric disability in its definition of disability.

Jeffery Swanson et al. establishes in *Justice Disparities: Does the ADA Enforcement System Treat People With Psychiatric Disabilities Fairly*?, that there is a disparity in outcomes of ADA cases between psychiatric and physical disabilities. Plaintiffs with psychiatric disabilities lose more often than their physically disabled counterparts and are significantly less satisfied with case outcomes that do win. The authors state that the disparity is not because the plaintiff's cases are weaker but suggest a perception that the psychiatric plaintiff's stories are perceived as untrustworthy because of stigma within the court. The authors cannot determine if the disparity is related to prejudiced beliefs of lawyers involved in the cases surveyed.

Much has been written about the stigma of psychiatric illness. Goffman's *Stigma: Notes on the management of spoiled identity*, is the seminal work. In *Stigma: An Enigma Demystified*, Coleman reviews Goffman's text in a Disability Studies context. It aims exclusively at physical disability, however there are also many points that can be used in examining psychiatric disability. Korn, author of, *Crazy (Mental Illness Under the ADA,* addresses stigma against people with psychiatric disabilities in ADA cases. In *Structural Levels of Mental Illness Stigma And Discrimination,* Corrigan et al., look at the oppressive prevalence of institutional discrimination against people with psychiatric disabilities.The paper, *The Sympathetic Discriminator: Mental Illness, Hedonic Costs, and the ADA*, by Elizabeth Emens, examines "hedonistic costs", a term the author uses to mean the negative emotions experienced by others in proximity to people experiencing psychiatric distress.

Pat Corrigan et al., believe that there are some civil rights, such as owning a gun, that are reasonable to take from people experiencing psychiatric symptoms. However, he raises the question of what should happen to those people's rights when they are not currently experiencing psychiatric symptoms. This grey area speaks to the liminality of psychiatric illness. Some are chronic, some are periodic and some states are experienced only once in a lifetime (DSM IV). This liminality of symptoms is part of the unique phenomenology of mental illness.

Susan Stefan's article, *The Search for Political Identity by People with Psychiatric Diagnoses,* explores the difficulty of establishing the identities of people with disabilities, psychiatric in particular, and two groups of people with psychiatric disabilities: the discreditable (those who are able to, or want to pass) and the discredited (those who do not want to or can't). These two groups fracture the political identity of people with mental illnesses, resulting in a problematic milieu in which to understand and fight discrimination within the group of "people

with mental illness". Along with this, anti-psychiatry and madness advocates often argue that mental illness does not exist as such and that evidence for biologically-based psychiatric illnesses is questionable. (*The Myth of Mental Illness* by Thomas Szas, *A Mad Fight: Psychiatry and Disability Activism* by Bradley Lewis)

Methodology & Methods:

I will gather data for my study from Disability Studies, Madness Studies and psychology and law scholarship. I will then analyze, synthesize and theorize from my conclusions.

Disability Studies Relatedness:

Disability Studies asks how disability has been defined across time and culture. I will address how the contemporary U.S. Congress has defined disability through the ADA. Disability Studies asks how social ideologies shape the meaning of disability. I will examine how stigma, political identity and the specificity of psychiatric impairments affect the treatment of psychiatric disability in the courts. Disability Studies offers a unique social theory on how to open public space to people with disabilities. I will explore how social and psychic space may be opened with the hope of extending the relevance of this model more fully to people with psychiatric disabilities. Through this study I hope to establish a stronger and more enduring overlap between Madness Studies and Disability Studies.