

ABLEISM AT WORK

The UN Convention on the Rights of Persons with Disabilities promotes ability equality, but this is not reflected in national laws. Australia, Canada, Ireland, the United Kingdom and the United States all have one thing in common: regulatory frameworks that treat workers with psychosocial disabilities less favourably than workers with either physical or sensory disabilities. Whether it be denying anti-discrimination protection to people with episodic disabilities, addictions, or other psychological impairments, failing to make reasonable accommodations/adjustments for workers with psychosocial disabilities, or denying them workers compensation or occupational health and safety protections, regulatory interventions embed inequalities. Ableism, sanism and prejudice are expressly stated in laws, reflected in judgments and perpetuated by workplace practices.

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Ableism at Work

DISABLEMENT AND HIERARCHIES OF
IMPAIRMENT

PAUL DAVID HARPUR
University of Queensland



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Foreword

The United Nations *Convention on the Rights of Persons with Disabilities* ('CRPD') has swept in a new disability human rights paradigm.¹ As exemplified in the CRPD Committee's General Comment on equality and non-discrimination,² there is a concordant global and normative shift towards 'ability equality'.

Dr Paul Harpur's important treatment in this book nonetheless underscores that the CRPD's normative shift is leaving many workers with psychosocial disabilities behind. Although workplace laws and practices generally are becoming more supportive and accommodating of persons with mobility, physical, and sensory disabilities, particularly driven by new technologies, regulatory frameworks historically and today disproportionately exclude those who disclose psychosocial disabilities.

Discrimination against people with psychosocial disabilities is no accident.³ Harpur shows how such exclusion has been long enshrined in laws and policies, supported in judicial rulings and perpetuated by workplace practices across jurisdictions.

But Harpur breaks new ground in his analysis of how inequalities are experienced in work relationships depending upon the type of impairment. The presence of such socially constructed hierarchies of impairments, with psychosocial disabilities occupying the bottom rung, operate within systems

¹ UN Convention on the Rights of Persons with Disabilities, Opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008).

² Committee on the Rights of Persons with Disabilities, General Comment No. 6 (2018) on equality and non-discrimination, 19th sess, UN Doc CRPD/C/GC/6 (9 March 2018), 70.

³ Larry M. Logue and Peter Blanck, *Heavy Laden: Union Veterans, Psychological Illness, and Suicide* (2018) Cambridge University Press.

affecting employment, such as for workers compensation,⁴ veterans seeking compensation for disablement,⁵ access to digital and online services,⁶ and in supports in decision-making.⁷

This book advances an important means for understanding and addressing disablement on the basis of psychosocial impairment. It does this by analysing how the presence of ‘hierarchies of impairments’ in workplace laws, policies, and practices distort the impact of ability diversity, often creating and sustaining discrimination where indeed no such inequalities need exist.

Harpur considers the emerging international law norms established by the *CRPD* to critique the role that psychosocial ableism has on the law of work globally. He understands that even though some workplace regulatory interventions actively seek to promote ability equality at work, they also may perversely perpetuate prejudice and stigma experienced by workers with psychosocial disabilities.

We see the challenges confronting workers with psychosocial disabilities are neither limited to one jurisdiction nor even time period. Harpur’s comprehensive analysis of international law norms using comparative analysis of the operation of hierarchies of impairments in Australia, Canada, Ireland, the United Kingdom and United States, offers an illuminating and concerning message. The message is that prejudice, and devaluing of workers, is strongly influenced by the type of impairments they have, and particularly so for persons with psychosocial disabilities.

Harpur’s treatment is separated into three parts. The early chapters analyse how international law posits and develops norms to promote the human rights paradigm and oppose the presence of hierarchies of impairments at work. These chapters consider questions pertaining at the intersection of the global labour movement, such as by the International Labour Organization, with legal jurisprudence and structures, for example as set forth in the *CRPD* and by its Committee on the Rights of Persons with Disabilities.

Harpur then turns towards reconciling the important debate on how labour markets generally may support persons with disabilities to work. This discussion considers timely opportunities and questions, such as involving

⁴ Paul Harpur, Ursula Connolly and Peter Blanck, ‘Socially Constructed Hierarchies of Impairments at Work: Example of the Australian and Irish Workers’ Access to Compensation for Injuries’ (2017) 27 *Journal of Occupational Rehabilitation* 4, 50.

⁵ Peter Blanck, ‘Civil War Pensions and Disability’ (2001) 62 *Ohio State Law Review* 109.

⁶ Peter Blanck, *eQuality: The Struggle for Web Accessibility by Persons with Cognitive Disabilities* (2014) Cambridge University Press.

⁷ Dilip V. Jeste, et al., ‘Supported Decision Making in Serious Mental Illness’ (2018) 81 *Psychiatry*, 28.

disability self-employment on the one hand, and segregated sheltered work on the other.

The middle chapters take the international law norms that have been prior unpacked and apply them to domestic anti-discrimination regimes in Australia, Canada, Ireland, the United Kingdom and United States. Across these venues, Harpur analyses the particular situation of workers with psychosocial disabilities. The core theme here is how these workers' capacity to access anti-discrimination law protections is substantially limited, often only by 'value judgments' made as to the worthiness of certain impairment types.

Yet, even in those cases where workers with psychosocial disabilities may access anti-discrimination protections, Harpur brings us back to the irrational and unwavering prejudice that too often severs the capacity of workers with psychosocial disabilities to benefit from reasonable accommodations and adjustment laws designed towards integration and equality.

The final chapters provide an in-depth review of the operation of these ability and anti-psychosocial hierarchies as operating in state laws that focus on regulating work and the employment relationship. We understand from Harpur's concerning analysis how the unfair mix of occupational safety and health laws, and bullying and anti-discrimination laws, produce and perpetuate discriminatory outcomes.

I have been fortunate indeed in prior work to collaborate with Harpur, examining the ways in which workers' compensation and negligence laws serve to devalue the importance of psychosocial disabilities.⁸ But this book goes well beyond that initial foray. Here, Harpur writes a definitive treatment of how the deep-seated stigma surrounding psychosocial disabilities is engrained in our workplace structures and laws. We understand the pervasive problem of ableism as particularly facing workers with psychosocial disabilities is not confined to one jurisdiction, a single country, or a unidimensional aspect of workplace law and policy.

Thus, the 'hierarchy of impairment' harshly penalises workers with psychosocial disabilities, who experience greater inequalities than those with other more obvious disabilities. That this unequal treatment is engrained in workplace norms helps us understand the depth of injustice caused by this bigotry.⁹

Harpur's treatment recognises the importance of a transdisciplinary approach to the understanding of discrimination. The consideration of disability policies and practices across the disciplines – law, economics, psychology – and international and national comparisons, makes this book relevant

⁸ Harpur, Connolly and Blanck, 'Socially Constructed Hierarchies of Impairments at Work', 50.

⁹ Peter Blanck, *Disability Law and Policy* (2020) Foundation Press.

to lawyers, policymakers, disability rights practitioners, human resource professionals, and those in the social sciences. By illuminating the presence and operation of impairment hierarchies ‘at work’, Harpur provides a needed roadmap of how to identify and redress these inequalities, at bottom caused by prejudice, stigma, and erroneous assumptions.

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Acknowledgements

CONCEPT

The seed for this monograph started with a coffee with Ursula Connolly and myself in 2016 while I was an International Visiting Fellow, Centre for Disability Law and Policy, Institute for Lifecourse & Society, National University of Ireland, Galway. Ursula and I compared notes on how workers with mental injuries were treated between our respective home jurisdictions of Australia and Ireland. We started writing these thoughts down and I discussed them further with the towering intellect of Professor Peter Blanck while I was visiting with him a few weeks later at the Burton Blatt Institute, Syracuse University, New York. When the seed of an idea hit the fertile ground of Professor Blanck an output soon followed: Paul Harpur, Ursula Connolly and Peter Blanck, ‘Socially Constructed Hierarchies of Impairments at Work: Example of the Australian and Irish Workers’ Access to Compensation for Injuries’ (2017) 27 *Journal of Occupational Rehabilitation* 4, 507.

This paper stimulated my academic interest and I have expanded on it theoretically and legally to produce this monograph. I am academically and personally grateful to Peter and Ursula.

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I would also like to express my appreciation for the members of the University of Queensland Disability Inclusion Group (UQ DIG). UQ DIG is a group formed under the UQ Disability Action Plan to advise the Pro-Vice-Chancellor, and where appropriate the University Senate Committee for Equity, Diversity and the Status of Women, on strategic issues, initiatives and achievements relating to disability inclusion, and is active in advancing disability inclusion at a strategic level across the university. My involvement as chair of the UQ DIG has enabled me to work closely with a number of amazing people who have joined me in the struggle for ability equality. I would like to acknowledge in particular:

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