The ADA on the Road: Disability Rights in Germany

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This paper examines the impact of a "disability rights model" on the emerging disability rights movement in Germany. Traditional German disability politics and activism are based on the expansion of welfare and special needs provisions rather than on equal rights and integration. Inspired by the 1990 Americans with Disability Act, German activists adopted a disability rights model and successfully worked toward the passage of a constitutional equality amendment in 1994 and ant-discrimination legislation in 2002. Using the literature on rights mobilization, this paper argues that German disability activists use rights talk to both support and contest culturally specific approaches to disability rights, equal treatment, and the role of the state in guaranteeing welfare rights. The globalization of disability rights should not be viewed as an imposition of American norms but as a more complex process of adaptation and cultural transformation that involves constructing locally legitimate approaches to disability rights with an American import.

A CHAIR IS A WHEELCHAIR

Ein Stuhl
Genau besehen
Ein Stuhl ist ein Stuhl ist ein
Rollstuhl
Ein Urteil ist ein Urteil ist ein

Katharina C. Heyer received her Ph.D. in Political Science from the University of Hawai'i in 2002. This paper is based on dissertation fieldwork conducted in Germany in the summer of 1999. I am grateful to the German disability rights activists and social workers who generously granted me interviews. This paper also benefited from the advice of Jon Goldberg-Hiller, Neal Milner, Kathy Ferguson, Laura Beth Nielsen, and Avi Soifer. Please direct all comments to Katharina Heyer, Dept. of Political Science, University of Hawai'i, 2424 Maile Way, Honolulu, HI 96822, heyer@hawaii.edu.

0897-6546/02/2704-723$01.00

Vorurteil
Eine Behinderung ist eine Behinderung ist eine
staatlich geförderte Massnahme.[1]

A chair
looking carefully
A chair is a chair is a
wheelchair
A judgment is a judgment is a
mis-judgment (prejudice)
A disability is a disability is a
State-sponsored measure.

This poem circulated in German disability circles in the fall of 1997 as an expression of outrage against Germany's Federal Constitutional Court's October 29 ruling that disabled students do not have a right to an integrated education and may be forced to attend a special school for disabled children (*Bundesverfassungsgericht*, 8 October 1997). The case involved a 13-year-old girl who successfully attended an integrated school until the fourth grade. She is paraplegic and received special education in some subjects, but in all others she was fully integrated. When she prepared to transfer to a new school for her next level of schooling (as is the custom in Germany), the new school's administration ruled that the existing teaching personnel could not meet her needs and that therefore it was in the girl's best interest to attend a separate school for students with disabilities. The court sided with the school. Ruling that as long as the reasons are pressing and concern either the ability of the personnel or the best interest of the child, a school would be acting in accordance with the law in making such judgments.

This judgment came at a time when the German disability movement was fully mobilized, empowered by a recent constitutional equality amendment and working toward a comprehensive disability antidiscrimination law. This "resegregation case" (*De-Integrationsurteil*), as it became known in movement circles, was seen as an example of both how much further the movement still had to go and how little the constitutional equality amendment was protecting their basic civil rights. Activists saw the court to be delivering a clear message: When a school is ill equipped to educate a student with a disability—be it due to financial constraints or lack of trained teachers—the school can order a transfer to a special school (ISL 1997).

"This decision is as incomprehensible to us as a potential decision relegitimizing physical punishment in schools for the sake of administrative ease. We cannot have our basic rights denied for financial or organizational

1. Unpublished poem by Tanja Muster, English translation is mine.

reasons," argued Andreas Jürgens, legal expert for the German Independent Living movement, ISL, in a press release.[2] Despite the constitutional antidiscrimination mandate, children with disabilities could not claim their integrated education as a basic civil right if it could be trumped this easily by a school's administrative needs. It was high time for a comprehensive disability equality law, based on the model provided by the 1990 Americans with Disabilities Act.

This paper examines the struggle for disability equality legislation in Germany, beginning with the politics surrounding the constitutional amendment. In 1994, the German *Bundestag* amended article 3 of its Basic Law to read, "nobody may be discriminated against on the basis of disability." This expansion of the constitutional antidiscrimination clause came after extensive lobbying by disability groups demanding that disability be added as a protected category, along with race, gender, and national origin. The intellectual model for this lobbying effort, as well as the current effort to pass an equality law, was the ADA and the political organizing of the American disability rights movement, both of which play a powerful role in the political imagination of German disability activists.

The politics surrounding the 1994 amendment symbolizes a perceptual and organizational transformation of the German disability movement. Theoretically, it is a shift from the medical model and its emphasis on rehabilitation and welfare toward the social model of disability—which focuses on civil rights, social discrimination, and stigma. Politically, the constitutional amendment represents a milestone for the German disability movement, turning it into what disability rights scholar Theresia Degener calls Germany's "last civil rights movement" (1996).[3] It politicized and energized the German movement, setting it on a course away from traditional welfare politics and toward a mobilization of rights, equal treatment, and demands for antidiscrimination legislation.

MOBILIZING GERMAN DISABILITY RIGHTS

Using the American literature on rights mobilization, this paper analyzes the ways American-style rights discourse has been imported into the German setting. I argue that the new emphasis on rights allows the German disability movement to define disability as a category of positive identity and pride, generate a political movement, mobilize public support, and frame disability discrimination as a civil rights issue. At the same time however, the U.S.-inspired disability rights discourse falls on very different soil

2. Available at www.behinderte.de/bvg/bvg-isl.htm.

3. Borrowing the term from Diane Driedger's study (1989) of the origins of the international disability rights movement.

in Germany, with radically different approaches to disability politics, the role of the state, and the use of the law as a tool for social change. American disability rights discourse is based on a civil rights framework that has no parallels in the German setting. Moreover, American disability rights legislation—most prominently the ADA, which serves as a model for German legal reform efforts—is based on limited notions of equality that do not resonate with the more progressive guarantees of the German welfare system. Nonetheless, the German movement has deliberately turned to rights-based activism and the political promises it holds: transforming objects of charity and welfare into equal citizens. This paper asks two basic questions: How did the U.S.-based disability rights model travel to Germany, and how did it transform the German disability movement while becoming transformed itself?

I begin with a summary of German disability policy in light of the contrast between rights and welfare models in the disability policy literature. The German policy against which activists are mobilizing is based on a difference model, which institutes a separate and "parallel track" of welfare institutions for people with disabilities. I then examine the development of German disability activism from a focus on welfare and special needs to a focus on equal rights and antidiscrimination. I trace the events leading up to the constitutional amendment and discuss its impact, using the *Aktion Grundgesetz* media campaign as a case study. The paper concludes with a discussion of the recent passage of a "disability equalizing law" and discusses the implications of an emerging rights talk for the German disability movement.

GERMAN DISABILITY POLICY: THE PARALLEL TRACK

The disability policy literature contrasts two basic policy models: a traditional social welfare model prominent in most civil law countries and originating in Western Europe, and a civil right model originating in the United States that is now prominent in most common law countries.[4] The welfare model is based on what disability theory calls a medical model, which focuses on individualized cures, treatment, and rehabilitation for what are considered ailments and abnormalities, at the expense of seeing people with disabilities as a political group with a history of discrimination (Oliver 1990). Translated into policy, the welfare model follows a difference or separate-treatment doctrine, providing for the different needs of people with disabilities in segregated settings, such as special schools, sheltered workshops, or nursing homes. These social institutions are created as a sepa-

4. Canada, Australia, Great Britain, New Zealand, Israel, India, and South Africa.

rate and parallel track that provides income and services for people with disabilities, apart from the welfare institutions that serve the nondisabled. The assumption here is that rather than making mainstream institutions accessible, the needs of people with disabilities are better served in separate facilities that can be constructed to meet very specialized needs.

This parallel track has proven to be the established policy choice in most industrialized countries—until the rise of the more recent rights model—primarily because it does not threaten existing institutions. It permits welfare states to continue ignoring disability needs as equal to those of other welfare needs, knowing that these will be served in separate institutions. The exclusion of people with disabilities is not seen as discriminatory, but as a natural outcome of their medical limitations. In fact, many nondisabled policymakers see the welfare model as generous and desirable, and as a sign of welfare progress. They are especially proud of the employment quota as a sign of progressive labor policy, of which Germany is a prominent example. On the whole, most European welfare states have established generous social security and rehabilitation provisions that allow people with disabilities to live comfortable, albeit separate, lives (Waddington 1994).

The civil rights model evolved as a critique of the social welfare model. It has its intellectual home in the disability rights movement in Great Britain (Oliver 1996) and its political home in that of the United States (Scotch 2001). Its principal aim is to replace the medical model's focus on the disabled individual with a focus on disabling environments and social structures. Thus, social exclusion is not to be seen as an inevitable consequence of disability. Rather, it is a result of discriminatory attitudes and a history of exclusion from institutions that have failed to adapt to the needs of people with disabilities in the same ways that they routinely adapt to the needs of the majority. Rather than maintaining a parallel track, then, disability policy under a rights model focuses on ways to make social environments accessible and reform social institutions to include people with disabilities. The assumption is that once the nondisabled majority gains increasing contact with their disabled peers, be it through integrated schools, neighborhoods, or the workplace, discriminatory attitudes and fears of the unknown "other" will disappear, prejudices will abate, and the necessity for legal intervention decreases. In policy terms, then, the rights model replaces segregation with integration, and parallel tracks with equal opportunity and antidiscrimination mandates. Consequently, it opposes employment quotas as yet another stigmatized form of special treatment. The primary enforcement tool is the law. Accordingly, people with disabilities are transformed from passive patients and welfare recipients to people with civil rights that are enforceable by law (Silvers, Wasserman, and Mahowald 1998).

Germany falls squarely into the welfare model in its approach to legislating disability rights. German disability policy follows a difference or spe-

cial-treatment doctrine, providing for disability needs in segregated settings, such as special schools, sheltered workshops, or assisted-living centers. This has led to the establishment of one of the most comprehensive and extensive rehabilitation systems in the postwar period, rivaled only by those in Scandinavian countries. The German welfare system offers educational, vocational, and residential services providing cradle-to-grave care for people with disabilities. I will outline the basic characteristics of this system, focusing on employment and education policy.

The Employment Quota

The origins of this social welfare approach lie in the period following Germany's defeat in World War I. Hundreds of thousands of disabled veterans had to be reintegrated into society: The thought of allowing "crippled young heroes begging on street corners" was considered political suicide (Jackson 1993). Yet the German state could no longer afford to pay its generous veterans' pensions, and thus enacted the world's first disability employment quota to place some of the social responsibility in the hands of employers. The 1920 "Law of the Severely Disabled" (*Schwerbeschädigtengesetz*) established a disability quota of 1% for every workplace of 25 or more employees. This law is one of the earliest examples of status protection: The employment quota recognized veterans with disabilities as a protected class whose needs justified significant state power in regulating the workplace. The law passed without much opposition in the National Assembly; to have spoken out against such a measure "was as unpatriotic as to have voted in 1914 against the same war credits that led to the veteran's disability" (Jackson 1993, 429).

Soon after the law was adopted, other European countries followed the German model.[5] The German law became a model of status protection and provided the foundation for the comprehensive and extensive vocational rehabilitation system for which Germany is known today. In 1922, the disability law was amended to protect against dismissal, and these provisions remain in effect to this day: Workers with disabilities may only be fired with special permission from the local disability office (*Hauptfürsorgestelle*).

The disability quota has undergone some transformation, however; after the devastation of the World War II the quota system was reinstituted in West Germany in 1953 to respond to the need for skilled workers during the

5. Austria and France followed in 1920 and 1923, as did Great Britain in 1947, before abolishing them in favor of ADA-style antidiscrimination legislation in 1995. While Denmark, Norway and Sweden are known for their progressive and generous disability politics, they differ from the German model in that they have never enacted a disability quota. They object to the quota system because it entails a system of registration, typically a disability ID card, to give credit to companies that hire disabled workers, which is viewed as discriminatory.

postwar economic boom, and to integrate people with disabilities into the common labor market. The new 1953 law largely resembled its predecessor but added the blind, victims of National Socialism, and those disabled by workplace accidents. These groups were referred to as the "genuinely" disabled, to distinguish them from those who weren't, such as those who were born with disabilities (Fandrey 1990). It wasn't until the 1970s, a decade that saw a growing critical engagement with disability politics, that all types of disabilities were included in the law. The 1974 *Schwerbehindertengesetz* (Law for the Severely Disabled) replaced the 1920 term *Schwerbeschädigte* (severely damaged) with *Schwerbehinderte* (severely disabled) and expanded the employment quota to 6% for all workplaces of 16 employees and more, where it has remained for the next 26 years. It also established a levy system (*Ausgleichsabgabe*) of DM 100 per month per employee not hired (raised to the current amount of DM 200 in 1990), which has funded Germany's extensive vocational rehabilitation system.

The German vocational rehabilitation system has become a model for other European and Asian countries, most prominently for Japan. Yet, it remains highly segregated and continues to isolate people with severe, learning, or developmental disabilities into a vast network of sheltered workshops (*Werkstätten für Behinderte*). Politically, the quota system has been attacked as too weak by unions and disability groups, and as destructive to business by the Conservative coalition and employer organizations. Employers lobbied for a decrease of the employment obligation to a quota of 4% and unsuccessfully attacked the constitutionality of the compensatory levy in 1981.[6] In turn, unions and disability activists have declared the levy as too low to stimulate employment. They argue that as long as it is cheaper for employers to pay the levy than to hire a worker with a disability (who then not only qualifies for additional paid vacations but also enjoys special protections from dismissal), the quota will remain a de facto disability tax for employers rather than an incentive to hire disabled workers. Disability employment statistics support this criticism: From 1982 to 1998 the actual employment rate of disabled workers fell from 5.9% to 3.8%, while unemployment rates doubled (BMA 2000). Recent reform efforts have tried to straddle both criticisms: In October, 2000 the employment quota was lowered to 5%, while the levy payments were adjusted to reflect a company's compliance with the quota. This was in response to record unemployment rates and the government's promise to create 50,000 new jobs for disabled

6. The Federal Constitutional Court ruled the quota to be permissible, arguing that the compensatory levy was a special contribution that was supposed to stimulate employers to law-abiding behavior and to provide compensation between employers.

workers.[7] Should the new quota system fail to provide these jobs, it will revert back to the old quota in 2003.[8]

Special Education

Germany is also known as one of the leaders in the field of special education through its development of a vast system of special education schools (*Sonderschulen*) in the 1950s and 1960s. As Germany began its economic recovery after the war, state and family interests converged to provide special education for children with disabilities. Parents wanted the state to provide genuine educational and job opportunities for their children and formed powerful local lobbies. The state faced a labor shortage and saw the great potential in training semiskilled workers for the booming economy. It established segregated schools, differentiated by disability types, to produce homogenous classrooms, as well as a highly developed system of segregated apprenticeship programs (Heyl 1998).

The *Sonderschulen* continue to operate today as an autonomous system of schools, with special education teachers trained specifically to educate children who fit particular disability categories (learning disability, speech disability, behavior disorder, mental retardation, physical disability, blind or sight impaired, deaf or hearing impaired, sick, and deaf-blind). Postwar reforms thus guaranteed the right to an education for children with disabilities and aided their entry into the job market. For children with severe disabilities, the special schools provided a protected place to learn with highly trained and committed teachers working in relatively small classes.

Yet the establishment of state-sponsored special schools "without critical reflection on the fascist extermination of the handicapped" in the similarly structured *Hilfsschulen* under the Nazi regime sparked a great deal of criticism in the special education community and among parents (Prengel 1993). The stigma of attending a special school remains profound, with the "ghosts of the past" still a major element of the history of segregating children with disabilities in Germany. Parents also lament their children's separation from their nondisabled peers, which, they claim, contributes to lowered expectations and self-image. While parents have fought successful court battles to have their children educated in what is called a "normal school" (*Regelschule*), in so doing they risk forfeiting the disability-specific attention and individualized support that the special schools provide. Critics of the German special education system have called it a *Sonder-zug* (spe-

7. The new levy system works as follows: Those approaching the quota (more than 3% and less than 6%) will have to pay a lower levy (DM 200) than those with a quota of between 2% and 3% (DM 350) or those with less than 2% (DM 500).

8. *Gesetz zur Bekämpfung der Arbeitslosigkeit Schwerbehinderter* (law to fight the unemployment of the severely disabled) of 1 October 2000.

cial train) because each compartment of special treatment is connected to the next, leading from special education to segregated residences to segregated employment. They claim that "families of a child with a disability become a special family in the society, which until now offers nothing other than special arrangements—special Kindergartens, special workshops and special residences as life supports" (Roebke 1988, 28–31).

State sources often refer to the well-cited principle of "as much integration as possible—as many special institutions as necessary" when summarizing special education policy.[9] While emphasizing the educational benefits of integrated learning, especially at a young age, official reports fail to acknowledge integrated education as a civil right and instead defer to "disability-specific needs" and "administrative feasibility." Federal statistics show only 4% of all children with disabilities educated in integrated settings, and only 2% of all children with developmental disabilities attending classes together with their nondisabled peers (BMA 1998, 44). The numbers vary significantly on the state and local levels: Progressive cities such as Berlin show high overall integration rates (45%), with 23% of all former *Sonderschulen* students now attending regular schools. Schleswig-Holstein shows similar progress (20%), whereas the rates in more conservative states like Bavaria and Baden-Württemberg remain next to zero (Rosenberger 1996, 46–47). In comparison, the European Union rate is 25%, with countries like Denmark leading with an integration rate of 95%. In comparison to other European countries, then, the integration of people with disabilities is progressing very slowly in Germany and has provided one of the primary goals fueling German disability activism (Murray-Seegert 1989).

The dilemma of educating children with disabilities in an integrated setting while paying attention to their special needs recalls Martha Minow's "dilemma of difference" (1990). Minow's analysis points to how difficult it is for disenfranchised groups to make equal treatment claims while simultaneously protecting their right to be different. In many ways, the German movement has already encountered this dilemma, particularly in its struggle for integrated education. For example, Barbara Sherman Heyl's study of grassroots activism in the special education field shows how parents divided their activism between either the improvement of the segregated *Sonderschulen* system or its abolition in favor of integrated schools. Parents had lobbied successfully for many improvements for the special education system during the 1960s and 1970s. They could "share information, and be a source of support and encouragement to each other as they coped with the social stigma connected with the disability and the *Sonderschulen* label, as well as the common problems that all parents have with raising children and teenagers" (Heyl 1998, 692). But once the integration models took hold in the

9. This principle originated in a 1973 Report on the Special Needs of Disabled Youth by the *Deutsche Bildungsrat*, which first called for a limited form of integrated education.

1970s, many parents decided that the costs of isolation and stigma were too great, and they organized to bypass the segregated school system. Without a legal basis declaring integrated education as a fundamental right, however, this activism relied on the goodwill and budget of local bureaucrats. Heyl's study shows that for a limited time in the 1980s, schools started opening their doors to special education students, without, however, sending along the resources necessary to ensure the students' disability-specific needs. Parents successfully protested administrators' common shortcut of automatically sending children with behavioral or learning difficulties to the *Sonderschule*, an option that has become politically and bureaucratically difficult today. While this has reduced the number of children with the stigmatizing special education label today, it has not guaranteed them adequate resources at the integrated schools they attend.

THE LAST CIVIL RIGHTS MOVEMENT

This section traces the origins of postwar German disability activism, leading to the 1994 constitutional amendment. The origins of this "last civil rights movement" can be found in the early 1970s, reflecting the political spirit of the time. Chancellor Willy Brandt had just been elected with the slogan of "daring more democracy," and both the students' and women's movements were beginning to form their platforms for social justice and progressive change of German society. Inspired by the equality demands of both these movements, people with disabilities were forming their first "clubs of the disabled and their friends" (*CeBeeFs: Clubs Behinderter und ihrer Freunde*) to foster communication and make connections to nondisabled groups. The members of these clubs, meant initially as a way to socialize, soon realized that socializing was difficult in nonaccessible buildings, in pubs without accessible restrooms, and with a public transportation system club members couldn't use. Thus, the first protests against physical barriers and inaccessible public spaces originated there (Heiden 1996b). They soon grew into organized movements with letter-writing campaigns, sit-ins, and demonstrations.

What were these early activists demonstrating against? Until the 1960s, large disability organizations led by nondisabled people, such as the *Lebenshilfe*, a parents' organization, and the *Spastikerverein*, dominated the German disability movement. Politically, two large associations affiliated with the two main parties were key: the SPD-linked *Reichsbund* and the *Vdk (Verein der Kriegsopfer)*, connected with the conservative CDU. Both these associations engaged in traditional politics focusing on the expansion of welfare facilities and protective measures. In the course of the 1960s, disabled members became increasingly dissatisfied with what was perceived as

patronizing attitudes of nondisabled leadership and as a continuous focus on the "parallel track."

The 1970s also witnessed the beginning of the movement by parents to integrate their children who were attending special schools into regular schools. As mentioned above, parents groups had been largely responsible for postwar reforms in special education that created a highly developed system of segregated schools and apprenticeship programs, as well as for legal reforms creating compulsory universal education in the 1960s. A decade later parents organized again, this time forming local working groups to establish programs to allow more regular contact between disabled children and their nondisabled peers, such as during recess, music classes, or on field trips (Heyl 1998, 695). Their lobbying was successful initially because parents limited their advocacy to specific local projects and did not threaten the special education structure. The success of these programs, however, led to more fundamental demands for integrated education, as seen in the experimental projects (*Schulversuche*) in Berlin and Bonn in the 1980s.[10] Thus, the first phase of disability activism during the 1970s successfully fought for benefits and welfare measures, albeit for facilities and services that kept people with disabilities segregated in a separate world.

The UN Year of the Disabled in 1981 and its promise of "full participation and equality" launched the second phase of postwar disability activism. Contrary to the enthusiasm with which this year was greeted by the movement in Japan and other Asian countries (Heyer 2000), in Germany it generated protest and launched what movement activists call their first "paradigm shift" (*Perspektivenwechsel*). Activists were very critical of the UN Year and Decade, viewing its adoption by the government as a form of political posturing belied by the lack of commitment to real reforms. People with disabilities watched as politicians made political promises about the improvement of unemployment, inaccessible public transportation, and social integration, with a lot of public and media attention, only to reduce this level subsequently step by step. They felt that, once again, the discussion marginalized and objectified them as "those who must be integrated" rather than focusing on ways to make the environment more disability friendly (Heiden 1996b, 30).

These protests politicized the movement, and thus, 1981 is remembered not so much as the UN Year but rather as the beginning of the "crip movement" (*Krüppelbewegung*). The movement used the spotlight to talk about human rights violations in institutions and group homes, and the forced sterilization of mentally disabled girls and women. Activists de-

10. This was the beginning of a split in parental activism between those deciding to work within the existing *Sonderschulen* system to ensure the provision of services to their children, and those who began to challenge the special education structure in favor of integration.

manded the right to an integrated education and pointed to the ongoing inaccessibility of public buildings and buses.

The change of government in 1980 meant a turn toward more conservative economic policies. Reductions of state quotas and wage quotas, cuts in social security, and dwindling real wages became parts of a calculated economic and distributive policy. The legislative activism of the 1970s was over. The more general unemployment levels rose, the less interest was shown in employment policies for disabled persons. Political concern for persons with disabilities lost importance in this period and gave way to growing concerns over Germany's increasing unemployment rates.

The conservative government made two basic contributions to disability politics during that time: It established the office of the "disability liaison" (*Behindertenbeauftragter*) and decided to publish a disability report once every five years on the state of disability policies. In 1986, it reformed the 1974 Law for the Severely Disabled to erase some of its stigmatizing terms: the law now categorizes disabilities according to "degree" (*Grad der Behinderung*) rather than by "reduction in work capacity" (*Minderung der Erwerbsfähigkeit*). Benefits are now called a "leveling of disadvantage" (*Nachteilsausgleich*) rather than "privileges" (*Vergünstigung*). While most activists saw this legal reform as a positive measure, they remained critical of the office of the disability liaison, which as a political appointment hardly seemed likely to become a source of advocacy and reforms.[11]

DREAMLAND USA

The 1980s also were a decade during which the influence of the U.S. disability rights movement became quite powerful. German activists followed the activities of their American colleagues very closely, watching the politics surrounding implementation of section 504 of the 1973 Rehabilitation Act, which had mandated full accommodation for all facilities using public funds, and of course, the struggle for the ADA. Many German disability groups traveled to the United States to learn about the movement there and returned full of enthusiasm and optimism about what might be possible with a paradigm shift from charity and dependence to equal rights and self-determination. It is safe to say that all the leading figures in Germany's movement today have made at least one trip to the United States, most commonly to Berkeley, where the American Independent Living

11. The official title of the government liaison is "the representative of the needs of the disabled before the federal government." Activists, however, like to call him the "representative of the needs of the government before the disabled." Criticism of this office intensified when the Schröder government appointed yet another nondisabled person to this office in 1999.

movement originated,[12] and to Oregon, where the People First movement for people with developmental disabilities began.[13]

Returning from their journeys to the United States, German disability activists published a book with the provocative title *Dreamland USA: Between Anti-discrimination and Social Poverty*, which reflects both enthusiasm and envy, but also the beginnings of critical engagement with the American social welfare state (Hermes 1998). In this collection of essays, German disability activists ask,

> Is the United States truly *the* dream country for people with disabilities? More and more of us traveling in a wheelchair or with a cane [*Blindenstock*] return from our trips to the US with glazed eyes, oohing and aahing that life there is so much better for disabled people; because an anti-discrimination law has enabled broad participation for people with disabilities in all areas of public life. (1998, 5)

The siren call of the ADA did not come without reality checks, however. Right from the start the authors of *Dreamland* concede that American laws and conditions cannot simply be transferred from one cultural context to another. They remind us that America has a reputation for little to no state intervention concerning the well-being of its citizens, which translates into poor medical care, joblessness, and poverty. Nonetheless, the reality of an antidiscrimination law is seductive. People with disabilities no longer need to ask or beg for services: They are rights holders, self-confidently demanding respect for and compliance with existing antidiscrimination laws.

The confidence and sense of entitlement afforded to a rights holder, according to the German authors, has also affected the attitudes of the nondisabled population. In the United States, they claim, disability has become a normal aspect of everyday life; it is an equal way of living. Nondisabled Americans hold less disabling stereotypes and fears than their German counterparts because chances are that they went to school with disabled children, or have disabled colleagues at their workplaces. The American self-confidence that the German activists want to take back with them is also evident in language. English language terminology such as "peer counseling," "antidiscrimination," and "independent living" recently found its way into the German movement. Ottmar Miles-Paul now suggests adopting the word "empowerment" because its German translations (*Ermächtigung* or *Befähigung*) sound too passive, apolitical, and well, not empowering enough

12. The notion of independent living (IL) embodies the shift from the medical model, which places decisions about care and welfare provisions in the hands of rehabilitation specialists, to an approach that places control back in the hands of the individual consumer. Rather than spending public funds on nursing homes and institutions, IL advocates argue that social services should go directly to the consumers, who can then hire, fire, and train the attendants necessary to assist them to live self-determined lives (DeJong 1979).

13. Available at http://www.open.org/~people1/people1.htm.

(Miles-Paul 1998, 11). In an earlier publication, Miles-Paul speaks passionately about the transformation he experienced ever since catching the "empowerment virus" while visiting the United States (Miles-Paul 1992).

I have chosen an essay by journalist Sigrid Arnade as an example of this love affair with American disability activism. Arnade begins her essay with a list of common stereotypes Germans hold about the United States (Americans are superficial and naïve; American women wear too much makeup; and the U.S. government lost all credibility during the McCarthy and Vietnam eras) and admits that it took her years to finally take her trip to the "Dreamland." But she concludes her essay with this admission: "I have never experienced a place with as few barriers as here. It's not that I could walk again—that hasn't changed—but I felt less disabled because I *was* less disabled" (Arnade 1998, 77).

Arnade is an avid camper and loves the American National Park system. She describes her sense of freedom at being able to count on accessible toilets wherever she went, even in the parks, out in the wilderness. At one campsite she found an exception, however: The bathroom and shower weren't accessible. Thus, she decided to educate the park ranger about this violation of both section 504 of the 1973 Rehabilitation Act and, of course, the 1990 ADA and determined to pay only half the campsite fees as punishment. The ensuing conversation with the park ranger symbolizes what she describes as the ADA effect: The ranger apologized and reduced her fees, telling her that the park was in the process of becoming accessible, and calling it inexcusable that this beautiful park could not be equally enjoyed by people with disabilities. In this setting, Arnade became a rights holder, strengthened by having the law on her side. Later, she imagines how this conversation would have occurred in Germany: She would have to plead, rather than demand; get angry; and face arguments such as, "but we've already done so much for the disabled; besides, there's just no money" (Arnade 1998, 69).

All the authors in this collection describe a sense of freedom and self-confidence that they take back to Germany with them. They also learn that true change can only occur in coalitions. This realization ushered in the next phase of the German disability movement, prompted by the passage of the ADA in 1990. For the first time, the larger, established disability groups held meetings inviting politicians as well as smaller, more radical groups to discuss the implications of this law. They formed a coalition, the Initiative for Equality of the Disabled (*Initiativkreis Gleichstellung Behinderter;* henceforth, Equality Initiative) with the goal of introducing a similar law in Germany and planning more media work and public consciousness raising. Two other disability groups formed with the sole focus on the law: *Netzwerk Artikel 3* (Network Article 3), focusing on the constitutional amendment, and the *Forum behinderter JuristInnen* (Forum of Disabled Jurists), focusing on

disability rights. That same year, 1990, marked the birth of the German Independent Living movement (*Interessenvertretung Selbstbestimmt Leben*), headed by Miles-Paul after spending a year in training at Berkeley. Two years later, the first national women's network (*Weibernetz*) emerged, pointing to the fact that the experience of disability is gendered.

The Equality Initiative won its first political victory at the 1991 meeting of international rehabilitation experts in Düsseldorf (*REHA Hilfsmesse*), one of the largest conferences in the field. The Initiative used this setting to organize the first roundtable by people with disabilities and representatives from government and industry discussing rehabilitation issues. Planned as a friendly roundtable, activists soon took over the discussion and especially challenged the government liaison to respond to their stories of everyday discrimination, stigma, and unequal opportunities. The result was a document entitled the Call of Düsseldorf (*Düsseldorfer Appell*), signed by more than 130 disability organizations and 10,000 individuals. It outlined detailed demands on how to combat discrimination and ended with a demand for a comprehensive equalizing law (citing the ADA as an example), and for the expansion of Article 3 of Germany's Basic Law. In 1993 the signatures collected were formally handed over to the *Bundestag*'s vice president as a mass petition.

AMENDING THE CONSTITUTION

The timing was perfect. In 1992, prompted by German unification, the *Bundestag* had begun its revision of the German Constitution. Members of the Equality Initiative therefore decided first to focus their energies on the constitutional demand. They pushed for a hearing before the Constitutional Commission, modeling their proposal on the ADA, the antidiscrimination mandate in the state constitution of Brandenburg, and the Canadian Charter. Their public reading before the commission was especially powerful because they represented a tightly knit, unified network of groups, ranging from the usual suspects (the smaller autonomous groups) to the conservative *VdK* and the "war victims association" (*Kriegsopferverband*). This united front convinced even the government liaison, who held his position as a political appointee of the conservative governing coalition, to change his opposition to the constitutional amendment.

A constitutional amendment has to be approved by a two-thirds majority of the constitutional commission. The Social Democratic Party, the Greens, and the PDS were in favor of the amendment; the governing coalition of conservatives and liberals (CDU/CSU/FDP) was not. Indeed, they were not even present at the hearing. The conservative consensus was that the rights of people with disabilities were adequately covered through "the principle of the social welfare state" (BMA 1994, 306) and that the new

Basic Law should not "degenerate into a constitutional shopping catalogue" (Heiden 1996b, 33). The head of the conservative faction, Wolfgang Schäuble, who uses a wheelchair himself, was one of the amendment's staunchest critics.

In preparation for the commission's vote on 17 June 1993, the Equality Initiative expanded their political lobbying by flooding the commission with postcards and signatures, and by staging nationwide demonstrations. Still, the vote in June failed to get a two-thirds majority. Rather than giving up, however, the Equality Initiative used the annual rehabilitation exhibition in Düsseldorf to publicize their proposal and to call attention to the last possibility for adoption: Both Houses of the German Parliament would have to vote on the commission's draft constitution.

Here, again, timing was of the essence. The campaign period for *Bundestag* elections kicked off in May 1994, giving the Initiative another opportunity to question candidates about their stand on equality legislation for people with disabilities. This was the moment, according to many activists, when then-Chancellor Kohl suddenly recognized people with disabilities as potential voters. In an assembly by the *VdK* on 20 May 1994, Kohl surprised everyone by declaring that he, too, favored an antidiscrimination clause in the Basic Law. This forced the ruling coalition to change course. Only six weeks later, on June 30, the new Constitution was adopted almost unanimously (with only three dissenting votes and four abstentions) in the Berlin *Reichstag*. It took two years to fight for a seven-word sentence, "*niemand darf wegen seiner Behinderung benachteiligt werden*." The new Basic Law took effect on 15 November 1994.

Article 3 now reads as follows:

1. All human beings are equal before the law.
2. Men and women have equal rights.
3. There shall be no discrimination based on gender, birth, race, native and social origin, beliefs, religious belief or political opinion. *Nobody shall be discriminated against because of disability*.

The choice of article 3 is significant: When Germany wrote its Basic Law in 1949, it chose article 3 to acknowledge those persecuted during the Nazi regime on the basis of "race, native and social origin, beliefs, religious belief or political opinion" (section 3) and, of course, to enact an ERA (section 2). The absence of disability, even though it had been a category of extermination was painfully evident. The history of Nazi persecution of people with disabilities did not receive serious academic consideration until the

late 1970s.[14] In 1994, disability activists thus felt that finally they had taken their rightful place in section 3.

The constitutional amendment was celebrated as a political victory of an intensive two-year struggle by a movement that had never acted in unison before. It symbolized an important first step toward legitimizing people with disabilities as equal citizens and political subjects, rather than as objects of welfare. The amendment led federal states to adopt similar language into 11 of the 15 state constitutions. Some state constitutions simply repeat the nondiscrimination mandate; others go further and mandate equal treatment.[15] The difference is important because the nondiscrimination mandate cannot account for the more common, indirect forms of discrimination, such as neglecting to provide access.[16]

The constitutional approach—be it as an antidiscrimination or equality mandate—has its limitations, however. It only protects disabled persons against discrimination by state entities and not by private employers or private providers of good and services. It only functions as a "standard of value" in private law (*Wertentscheidung*). Furthermore, constitutional provisions tend to be broad and vague. Neither *disability* nor *discrimination* is defined in any of the constitutional provisions, thus leaving vast discretion to the courts. In fact, right after the celebration of victory in 1994, activists began to argue that principles of equal opportunity and antidiscrimination would only become concrete in a separate antidiscrimination law outlining the kinds of rights that cannot be denied.

ADVERTISING FOR DISABILITY RIGHTS: THE "OPERATION BASIC LAW"

The point, then, was to give the constitutional amendment the political and legal teeth necessary to become an effective tool to combat discrimination. The Equality Initiative decided that the first step toward this goal was to educate the larger population about the presence of the constitutional equality mandate and its implications. A 1994 survey showed that 79% of respondents had never even heard the sentence "nobody shall be

14. Höck 1977; see generally, Rudnick 1985 and Nowak 1998. In the English language literature, see Gallagher 1990; Friedlander 1995; and Lipton 1986.

15. State constitutions that contain either the nondiscrimination or an equality mandate are Baden-Würtemberg, Bayern, Berlin, Bremen, Brandenburg, Meklenburg-Vorpommern, Niedersachsen, Nordrhein-Westfalen, Sachsen, Sachsen-Anhalt, and Thüringen (see Theben 1998).

16. An exception is the way the state government of Bremen used the new constitutional mandate to reform its public transport legislation. The Bremen Public Transport Act states that "the needs of users with mobility problems have to be taken into account in the buying of vehicles and in constructing any kind of traffic, buildings and areas." This has turned the northern city of Bremen into one of Germany's most accessible cities: 75% of its buses and 60% of its trams are accessible. (Oechsner and Heiden 1996).

discriminated against because of disability," and fewer than 10% knew even approximately when it had been added to the Basic Law. The same poll showed that 71% of respondents thought Germany was "not disability friendly" in terms of its public transportation system, employment opportunities, and housing. Finally, only 19% of respondents thought that people with disabilities received some form of equal treatment by their nondisabled peers (Mittler 1997, 20–21).

Based on these sobering facts, Germany's largest and most prominent charity organization, the *Aktion Sorgenkind*, organized an extensive media campaign on the meanings of the nondiscrimination mandate, entitled Operation Basic Law (*Aktion Grundgesetz*). The *Aktion Sorgenkind* (literally Operation Problem Child) was selected because of its background in communications, name recognition, and of course, its vast funds, in case corporate sponsoring fell through (which it did). As the name suggests, this is a classic feel-good charity, banking on images of sweet, disabled children who need your financial support. It began raising money in 1964, initially to support children affected by thalidomide, but then extended its mission to disabled adults. The *Aktion Sorgenkind*'s hugely popular lottery has funneled billions of marks into disability-related projects and enjoys high levels of public support. Disability organizations, however, have rejected the label of "problem child" and openly criticized the organization for its patronizing stance as well as for its exclusive support of sheltered workshops rather than integrated facilities. They have argued that while the organization raises much-needed funds, it does so while creating images of disabled people as helpless, needy, and objects of charity.[17]

Accordingly, many autonomous disability groups initially opposed the *Aktion Sorgenkind*'s leadership in the *Aktion Grundgesetz* project. They feared that the organization's traditional apolitical stance would influence the operation's very political agenda (Mittler and Zierden 1997, 21). After a year of intense negotiations, the *Aktion Sorgenkind* began the largest political campaign ever launched in the disability community. It united more than 90 disability organizations (they have grown to 130 today) in a media campaign to educate the general population about the meaning of the constitutional amendment.

The campaign was limited to two months—October and November of 1997—to heighten the impact of both the variety and the sheer mass of materials flooding the country. Twelve ads appeared in all major German newspapers and magazines, and six billboard ads graced every twelfth billboard in the country (figs. 1–2). Every German television station ran advertisements. Posters, buttons, beer coasters, stickers, and postcards bearing 125

17. The U.S. equivalent to this is the (still ongoing) protest against Jerry Lewis's Telethon, covered brilliantly in the pages of the movement magazine *Disability Rag* (see Shaw 1994).

slogans were disseminated in all neighborhoods (figs. 3–8). Street theater, conferences, community meetings, talk shows, and public demonstrations were held throughout the country.

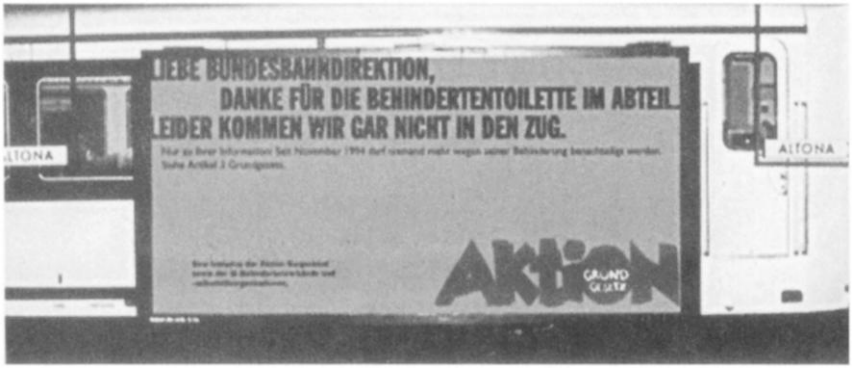
All the materials had the same characteristic look: a bright green background with a few poignant slogans and the characteristic red logo of the *Aktion Sorgenkind*. Like a well-run public relations campaign, organizers knew that name recognition, or in this case, color and logo recognition, would add to the success of the campaign. They wanted the public to start associating what they called the "campaign green" with the sentence "nobody shall be discriminated against because of disability" (Arnade et al. 1997). To heighten the impact of the slogans they also decided against the use of photos or pictures.

The media campaign operated on two levels: a macrolevel via billboards, TV commercials, and advertisements in the public sphere; and a microlevel for every individual via stickers, buttons, and postcards. Billboards were placed in public settings to draw attention to disabling environments. For example, a billboard at a busy intersection declared, "How is a blind person supposed to cross this street?" (fig. 1). A poster in a train compartment addressed the federal transportation bureaucracy directly: "Dear train director, Thank you for the accessible toilet in the compartment. Unfortunately, we can't even get on the train" (fig. 2).

Figure 1.

Activists sent out for packages of multiple buttons, stickers, postcards, and posters that featured a variety of slogans (all created by the membership

Figure 2.



of the disability organizations involved in the campaign). Every participant, disabled or not, could use these materials to draw attention to what organizers called "points of discrimination" in everyday life and make their environment if not disability friendly, then at least aware. All the materials referred to the website of Operation Basic Law (www.aktion-grundgesetz.de), and most of them prominently featured the text of article 3(3) to make it widely known.

Figure 3.

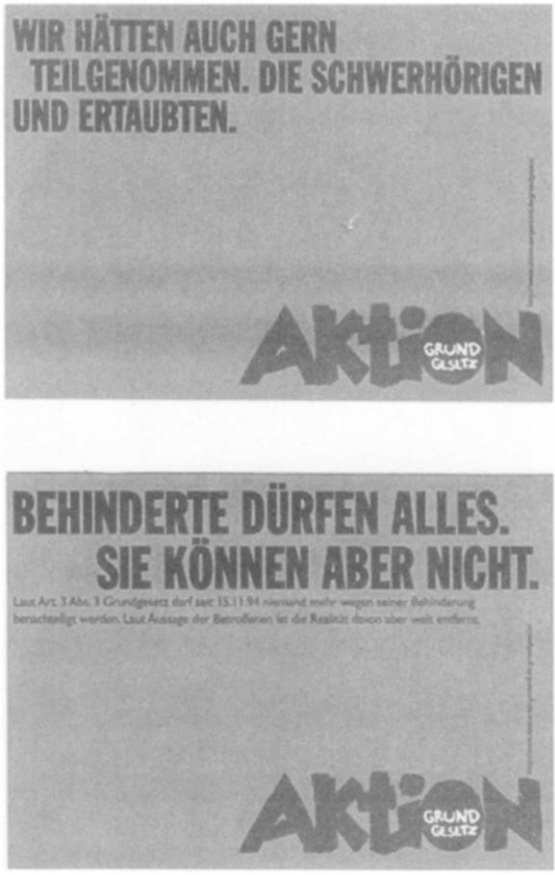
The campaign encouraged participants to liberally distribute materials in their neighborhoods, with only token warnings to stay within the limits of the law. For example, they might point to inaccessible buildings by placing stickers on stairways that said, "Thank you! Your wheelchair users" (fig. 3). Inaccessible public telephone booths were plastered with stickers that said, "Unfortunately, not everybody can use the phone here" (fig. 4). Unfriendly neighbors or salesclerks might find themselves with notes saying, "Why don't you get to know me? You might lose your fears," or "Now you know why we are called 'the disabled'—because people like you disable us."

Figure 4.

When public assemblies, theatres, or movie houses failed to provide sign language interpreters or hearing aids, activists could send them postcards saying, "We would like to have participated, too! The deaf and hard of hearing" (fig. 5). People could sport buttons challenging the viewer with a variety of slogans: "Never seen a person with a disability before?" "Don't stare, think," "I'm fine, what about you?" "The only thing the blind can't do is see." Restaurant guests or beer drinkers in pubs might find their drink sitting on a green coaster, saying on one side, "Dear guest, your chair might be a bit damp. . .(please turn over)," only to read on the other side, "Unfortunately there was no accessible bathroom" (figs. 6–7).

While the postcards, stickers, and buttons used humorous and provocative slogans to jolt the reader into awareness, the posters invited more thoughtful reflection. They featured original quotes from people with disabilities, telling stories about the discriminatory attitudes and stereotypes they face in their every day lives. The stories were authentic, giving the name of the person telling it, and only a few used pseudonyms. The poster

Figure 5.



topics covered the common range of central issues in the disability movement: human rights, self-determination, bioethics, health care, women's issues, integration, invisible disabilities, sign language, and assistive technologies.

I will focus on a few posters as examples. Addressing the issue of dignity, for example, one poster had the prominent title "Human Dignity is Alienable" (*die Würde des Menschen ist Antastbar*), referring to the well-known preamble of the German Constitution stating that human dignity is inalienable. The following three quotes, which also appeared on the poster, placed the topic in perspective:

> They think that I can't think. But not my head is disabled, my body is (Anja Maiwald).
>
> At the nursing home I'm told when to go bed, when to come home, and what to eat. I have no control how I get washed, dressed, or moved (Roman Deserno).

Figure 6.

It makes me mad when movies show those of us who stutter as stupid and clumsy. As if stuttering has anything to do with intelligence (Konrad Schäfers).

Closely related to the topic of dignity, the notion of self-determination and independent living are addressed in a poster with the self-explanatory title "I know what I want." Witness here the fear of self-disclosure in the refusal to give full names.

You can't tell us what to eat or drink, even if we live in a nursing home. (Sven P.)

Despite my Down's Syndrome I can see, hear, walk, and read. I am now learning how to write and do math. Am I disabled? (Bernard Moser, name changed)

When I got an apartment in an assisted living facility in 1986 I felt that I was truly living, for the first time. I was doing things I never thought I could do, things I forgot even existed. (Andrea K.)

Figure 7.

Another poster addressed the subject of prenatal testing for birth defects. This is a heated topic in the disability community, not in reference to abortion rights as it is in the United States, but because of Germany's history of forced sterilization and abortion during the Nazi regime. The text of the following poster, entitled "Mother and Child are Healthy?" shows the stigma of knowingly giving birth to a disabled child rather than choosing abortion.

> It's a boy, severely disabled, the nurse told my mother. Do you even want to see it? (Tillmann Kleinau)
>
> After folks found out that Timo has a disability, nobody came by to congratulate us anymore. Nobody was happy for us—they just felt sorry for us. But having pity robs others of their strength. Instead of receiving their pity I would have loved having their help. (Judith von dall'Ami)
>
> When I cross the street with Leah, a child with Down's Syndrome, I hear them say, but this could have been prevented, it should

have been detected before birth. So I ask myself, yeah, but then what? (Tina Winter)

Another important subject the posters addressed concerned integrated education and employment. Several posters featured the isolation of students ("Why are none of your fellow students disabled?") and workers ("Why don't you have a disabled colleague?") with quotes such as these:

> When I passed the test to advance to the next level school, my father was called into the principal's office. Your daughter poses too much of a burden to the class, they told him. All my girlfriends went to that school. Now I had to go to boarding school for physically disabled girls, far away from my family and friends. (Marita Boos-Waidosch, Mainz)
>
> Nobody thinks a person with a disability can do the job. Even if we prove them wrong, there are a thousand reasons why we can't be hired—they can't build an elevator, the building is too old, the hallways are too narrow for those of us using wheelchairs, they worry that colleagues will feel overwhelmed with a sense of responsibility to help us. I have heard every one of these arguments, and as soon as they saw me in person, I never got the chance to prove myself. (Tilmann Kleinau, Stuttgart)

Another poster addressed the issue of invisible disabilities, a growing topic in the disability rights movement. People with invisible disabilities had to wage a long struggle to become accepted in a movement that, for both political and ideological reasons, relies on a disability identity that is visible. The very ability to "pass" as nondisabled, which allows these people to avoid the more obvious consequences of stigma and public discrimination, also denies them the legitimacy of making disability needs-based claims. This poster is entitled "I have something you don't see," a pun on the German phrase of the "I spy" game.[18] It is important to note that despite the campaign's emphasis on creating positive disability identification and pride, three of the five quotes on this poster come from an American source and that the other two are pseudonyms. Passing as nondisabled remains a powerful alternative for people with invisible disabilities, even as they struggle for acceptance and visibility within the disability community.

> One day I had to give a current events report in school. I stood in front of the class, but couldn't get a word out. I wanted to say, "the," but all that came out of my mouth was "t . . . t . . . t." I broke into tears and went back to my chair, covering my head in shame. (John Scatman, Los Angeles)

18. The German phrase is "*Ich sehe was, was Du nicht siehst.*"

> Why will nobody believe me when I say I have to use the bathroom, I really have to go? It's bad enough having to worry about getting to the bathroom on time when you have Crohn's disease. (Maike Wangenhein, name changed)
>
> When I ask for directions, or how much something costs, I expect a serious response, rather than having the bus driver or salesclerk tell me, "it says so right there." I'm not asking for the fun of it, I'm asking because I can't read. (Hannelore Losen, name changed)

Finally, the special situation of women with disabilities was of great concern to Operation Basic Law, no doubt in part due to the vocal presence of feminists in the autonomous disability groups. A poster with the title "Sex: female (with the word female crossed out)—disabled" sought to address some of the public misconceptions of motherhood, sexuality and disability. Considered asexual beings and unfit mothers, women with disabilities have to fight for the right to be seen as women, while at the same time they must challenge gender stereotypes.

> As a single woman with a disability and a child, I always drew attention. At times it was encouragement, other times it was rejection. My daughter dealt with this on a daily basis. It wasn't easy for her to have a disabled mother. People thought I wasn't capable of giving her the love and care she needed. (Ingrid Schmidt, name changed)
>
> "I can't ask my colleagues to deal with someone like her!" This is how my application for a receptionist job was rejected. (Elke Krinke, Mannheim)
>
> I noticed that I had to assert my wish for a child even in front of my doctor. I had to be careful not to let her talk me into having an abortion. (Vera Marx, Bottrop)

MOBILIZING DISABILITY RIGHTS, GERMAN STYLE

The media campaign represents an innovative form of rights mobilization that not only raised disability awareness in German society but also helped build a new disability movement. To the general public, the posters and other action materials conveyed a very simple but poignant message: Disability rights are not just something the *Bundestag* might declare and bestow in a constitutional amendment. Rather, they impact everyday life activities in important ways. They affect the quality of life of your neighbor, your colleague, your child's best friend, or the woman in the nursing home, with all of whom you avoid eye contact. Disability rights are part of the life stories that people with disabilities will tell, and when they are told as rights stories, they can trigger political change.

Accordingly, the public response to the campaign was overwhelmingly positive. In particular, the elderly reported that they felt their own experiences had been well represented with stories of rights violations in nursing homes and slogans surrounding human dignity. Opinion polls of the general population showed very positive results: 80% of respondents judged the campaign very good, 85% saw it as important, and 87% as necessary (Mittler and Zierden 1997, 23).

Just as important as the campaign's effect on public opinion and awareness, however, was its effect on the members of the participating 90 disability organizations. Perhaps the most powerful lesson concerned the importance of unity between two groups that "used to fight each other all the time," as one participant put it (Jürgen Pauly, Health Ministry, from a meeting in 1999 regarding the impact of the media campaign; quoted in www.aktion-sorgenkind.de). For the first time, the younger, autonomous groups saw the need to work with the more established and conservative networks. In a 1999 meeting on Operation Basic Law's impact, one participant stated, "I noticed a feeling of unity and connection, which made me very optimistic. Rigid organizational structures are finally beginning to break down a bit. I think things will get better, and I credit the Operation" (Johann Kraiter, Active Disabled in Stuttgart).[19] The Operation itself felt the effect of this new political cooperation very profoundly: in June 2000 it announced that it had changed its name to *Aktion Mensch* (Operation Human Being) and would no longer refer to people with disabilities as "problem children."[20]

This new sense of solidarity also led to an examination of internal hierarchies in the movement. As one participant pointed out, "the 'wheelchair users' are always out in front, and the so-called mentally disabled are pushed to the back, never getting the same resources. The Operation Basic Law showed that it is possible for all of us to work together: the wheelchair users, the blind and the mentally disabled. If we keep this up, I think we can build a disability movement that is unique, just like the student movement we had" (Octavio Paz of the Disability Counseling Institute). The hierarchy between the physically and developmentally disabled was, for once, pushed to the background, as, at least according to the movement literature, every group had an equal say in the discussions surrounding the choice of slogans and events.

19. All testimony I cite here regarding the Operation is published at www.aktion-sorgenkind.de.

20. In another testimony to the influence of the U.S. movement, the *Aktion Mensch* used the example of People First language to explain its choice of the term *human being*. See its official statement on the name change at http://www.aktion-mensch.de/wirueberuns/print/namensaenderung.html.

Issues surrounding rights and rights consciousness played a central role in participants' assessment of the campaign's success. Here is participant testimony about the ways the campaign addressed these issues:

> I'm with the self-advocacy movement, so my approach is one that enables people with disabilities to demand their rights and learn how to talk about them in the first place. The Operation helped us do this by providing financial assistance: We could hold meetings and publish pamphlets to educate people about their rights. (Gisela Hermes of bifos, e.V., an independent publishing company)

More specifically, the media campaign allowed activists to identify disability discrimination as a civil rights issue not only for the purposes of public policy and legal reforms, but also for the evolution of their own understanding of what it means to be disabled and experience discrimination. Sensing commonalities in the various forms of oppression, be it through the stories told in the posters or the points of discrimination in the action materials, current and future movement members were able to see that despite the diversity of disability categories, the experience of discrimination and stigma is similarly devastating. Activists could identify the experience of discrimination not as an inevitable outcome of having a disability, but as a product of public ignorance, misconceptions, and fear. This recognition engendered a feeling of common identity, an important basis for a social movement, however problematic such essentialized identity might be. More important, however, the shift of attention from personal shortcoming (I cannot climb these stairs because I use a wheelchair) to social discrimination (This building is not wheelchair accessible) points a parallel shift from welfare to rights and rights consciousness as a remedy.

Attention to rights consciousness often included references to the United States, which is still considered the country of origin when it comes to disability rights. As one participant summarized,

> The Operation has started important discussions regarding integration as a civil right, not as something given out of pity. This shows that we are in the process of a paradigm shift. This includes the disability organizations: We all had to work together, traditional associations and newer ones, working on a common platform. When I heard about the Operation I had just returned from the U.S., experiencing the civil rights approach there, and I thought that we should be doing the same thing in Germany. So, I was so happy that now things are getting started here. (Stefan Dose of the Federal Association for Supported Employment)

PUBLICIZING DISCRIMINATION IN THE COURTS

As a separate but related mobilizing strategy, activists focused public attention on lawsuits that symbolized the injustice and discriminatory treatment of people with disabilities. The literature on rights mobilization points to such publicity as an effective tool of using the law as leverage. In *Rights at Work*, for example, Michael McCann cites one of his activists who declared that "a lawsuit is a marvelous occasion for a press conference" (1994, 62). McCann points out, however, that the target for this publicity was generally not the mass public but rather the more selective and attentive audience of fellow and potential movement activists. "As such, national media coverage was only one stage of a much broader effort to disseminate legal knowledge for movement building purposes" (1994, 63).

In the German case, the publicity surrounded recent judgments by the Federal Constitutional Court, Germany's highest court, which symbolized the ongoing discriminatory treatment by the courts. The most prominent and widely publicized of these was the 1992 judgment by a labor court in Flensburg, in which the Court upheld a judgment in favor of a family that had demanded a 10% reduction in the price of their vacation package. While the family was on vacation, the hotel where they stayed had hosted a group of severely disabled children, whose "sight and sound" were so upsetting and "disgusting" that the family felt the value of their vacation experience severely compromised (AG [labor court] Flensberg, decision of 27 August 1992—63 C 264/92).

The second, well-publicized case was the 1997 judgment against a disabled student's quest for integrated education mentioned at the beginning of this paper, which proved to activists that the constitutional antidiscrimination mandate did not provide for integrated education as a basic civil right.

The third prominent disability judgment emerging from the courts has become known as the "muzzle" case (*Maulkorb Urteil*). On 8 January 1998, the high court of the state of Cologne (*Oberlandesgericht*) ruled that the occupants of a group home for people with mental disabilities may not have conversations in their garden during restricted hours. Their neighbor, a composer and piano teacher, sued because he felt "bothered and disgusted" by their "inarticulate sounds, screams, and moans." The problem was not the noise level, but the "inhumanity" (*Artfremdheit*) of their sounds. The court ruled that such sounds constitute an unacceptable burden even for open-minded people. Moreover, because the sounds could not be considered a "language," they did not fall under "the protection of the sphere of privacy" (Theben 1999). This ruling, in effect, denied one of the most fundamental rights of personal communication, language, to people with mental disabilities.

The publicity surrounding these cases was generated to create both public and personal outrage, similar to the politicizing effects of the *Aktion Sorgenkind* media campaign. The legitimizing powers the German welfare tradition confer on social movements make it important for disability groups to be seen as part of the larger society, rather than as a "minority group" asking for special rights. So, rather than asking for separate group status, the German movement asked for an expansion of the categories of political citizenship to grant them equal right and protections.

"A PROMISE IS A PROMISE"—*AKTION GRUNDGESETZ*, ROUND TWO

After the media campaign, the logical next step on the activists' agenda was the passage of a new "equalizing" law[21] (*Gleichstellungsgesetz*) to make concrete the constitutional antidiscrimination mandate. A new center-left government prevailed in the September 1998 vote, ending almost two decades of conservative rule. In their coalition contract, the Social Democrats and the Greens promised to expand the constitutional mandate in a separate equalizing law. The final push of the *Aktion Grundgesetz* media campaign included a set of billboards on busy intersections reminding drivers of this promise (fig. 8).

The much-discussed paradigm shift in the German movement from medical solutions to social change, from pity to power, and from charity to rights has now been acknowledged and adopted by the German government. A *Bundestag* session of 19 May 2000 declared that German disability politics would focus not around the care and protection of people with disabilities, but rather on their "self-determined participation in social life and the removal of barriers towards their equal opportunities" (*Behindertenbeauftragte* 2000). In a move that was unprecedented in German legislative history, the Justice Ministry assigned a nongovernmental group, the Forum of Disabled Jurists the task of preparing a legislative draft. The draft of 8 January 2000, which I discuss below, was widely circulated among disability groups and then officially introduced to public scrutiny at a conference in Düsseldorf in October 2000, organized by the government's disability liaison. Entitled Equalizing Law Now! the conference invited prominent activists, disability groups, politicians, and representatives of the business community to discuss the parameters of the legislative draft (*Behindertenbeauftragte* 2001).

21. I am translating the term *Gleichstellungsgesetz* as *equalizing law* rather than just *equality law* because the term *Gleichstellung* (equalization of status) goes beyond the more limited notion of equality (*Gleichheit*) as captured by an antidiscrimination mandate.

Figure 8.

This meeting signaled political will for an eventual passage of the law, which prompted activists to increase their efforts and launch a second round of mobilizing. Activists turned to organizing and lobbying practices they learned from their American peers: They circulated flyers entitled "Tips for successful Lobbying," which outline how Germans should contact their elected representatives and push for disability rights, and are direct translations from the U.S. movement literature.[22] The movement also used the yearly European Day of Protest for the Equality of Disabled People (May 5) to publicly remind the government of its promise. In addition, the 2001 protest adopted the motto "Equality Law Now" and was supported by the *Aktion Mensch*. Next, another media campaign was launched, similar to the one in 1997 but on a much smaller scale. For example, the *Aktion* placed large-scale ads in all major newspapers, and bought time on large TV networks featuring images from the previous year's protests. Also, individuals could once again request "action materials" from the *Aktion Mensch*, consisting of postcards and stickers with demands for an equalizing law. And the Operation's website (www.aktionmensch.de) featured suggestions for individuals to launch their own demonstrations and street theatre. For example, a skit entitled "Have you researched today?" would involve people with disabilities wearing white lab coats, examining doctors (dolls) in their hospital beds.

22. Available at www.nw3.de/dbr/lobbytips.htm.

The purpose of this research, they would announce to the audience, was to examine how questionable bioethics had entered the doctors' heads. The researchers would encourage bystanders to do their own examinations, assuring them that this was a good opportunity—after all, the subjects are physicians, who wouldn't understand what was being done to them anyway. Another skit was intended to draw attention to physical barriers in public buildings. It called for the use of lots of yellow construction tape to rope off the stairs leading to the main entrance to a marriage license bureau, with a big sign saying that this entrance was blocked for fire safety reasons. All applicants had to use the wheelchair accessible back door. Finally, May 5th also saw the grand unveiling of the Operation's "info bus" in front of Berlin's city hall (fig. 9). Painted on a background of the eye-catching "campaign green" is the slogan "A Promise is a Promise" (*Versprochen ist Versprochen*) and a table counting down the number of days the government has left to keep its promise.

Figure 9.

TOWARD THE "EQUALIZING LAW"

The Forum's draft of 2000 featured six articles, with the first article covering all aspects of an antidiscrimination law (Forum 2000). This first article included, most prominently, the very important definition of who counts as disabled under the law.[23] The definition directly incorporated the distinctions first developed by the World Health Organization (WHO

23. The draft defined disability as follows: Article 1, § 2: (1) A disability is a handicap in every day life due to impairment. (2) A handicap ensues when the demands of the natural or social environments are limited or denied during the participation in social life or during the practice of self-determined life, due to an impairment [limitation of activity], with the measure, structure, or behavior of others leading to the denial or limitation of self-determined living due to an impairment [limitation of participation] (3) an impairment is the non-temporal (minimum of six months) limitation of physical function, mental ability, or mental health.

1980). These distinguish between the medical condition of a disability ("impairment"), for example, a broken back after an accident; the functional limitation this causes ("disability"), for example, the inability to walk; and the social barriers that limit that person's mobility ("handicap"), for example, the steps leading to a building.[24]

The draft also provided for equal rights for women with disabilities including vague references allowing for special measures. This responds to activists' demands that half of all jobs achieved through the employment quota be reserved for women with disabilities, and that local state governments offer publicly funded self-defense courses. The draft provided for a *Verbandsklagerecht* (the right to sue as a group), as well as the recognition of sign language as an official language. The remaining five articles and the bulk of the legislative proposal spell out reforms in all the areas of existing federal law that violate an antidiscrimination mandate. Article 2 reformed aspects of private law (labor law, landlord/tenant law, and fiduciary law). Article 3 mandated accessibility and accommodations in building codes, public transportation, and election offices. Article 4 spelled out the process of designating sign language as an official language, and article 5 reformed other aspects of federal law, including telecommunications and criminal law. The last article covered the transition to the new law.

In February and March 2002, both houses of the German Parliament[25] passed the Federal Equalizing Law for People with Disabilities (*Bundesgleichstellungsgesetz für Behinderte*). It will come into effect on 1 May 2002, and is to exemplify what the government has termed a "successful disability politics: civil rights in a society that practices solidarity." The equalizing law comes as part of a three-part reform package that includes the legal reforms in social welfare and rehabilitation legislation (*Sozialgesetzbuch IX*) of July 2001, and the employment law of October 2000, which reformed but did not abolish the employment quota.[26]

The equalizing law itself is a generalized and shortened version of the Forum proposal debated in the German Parliament. It covers only public accommodations; thus, many of the legislative reforms envisioned in the Forum proposal would have to be addressed in a separate, civil equalizing law (*Zivilrechtliches Gleichstellungsgesetz*) in the future. The bulk of the law focuses on access to public goods and services. It mandates accessibility and accommodations in building codes, public transportation, election offices,

24. The WHO definitions have been criticized for their focus on the disabled individual rather than on disabling environments (Pfeiffer 1998). They were revised in 1999 and are now called International Classification of Impairments, Activities, and Participation (ICIAP) to recognize that the degree of limitation experienced by a person with an impairment depends on the degree of social accommodations given to that person.

25. The *Bundestag* passed the law on 28 February 2002, and the *Bundesrat* passed in on 22 March 2002, with a large majority vote in both houses.

26. See footnote 7.

and telecommunications. Barrier-free access is thus not limited to physical spaces but also includes communication rights for people with visual impairments and language rights for the deaf. The law thus provides for the recognition of sign language as an official language, which for example, would give the deaf the right to demand sign language interpreters in court, as they can in the United States.

The law defines disability as follows: Article 1, § 3: "People are disabled if their physical functions, mental capacities, or psychological health has a high probability of differing for more than 6 months from the norm of that age and thus impedes their participation in life of society." Article 1, § 2 addresses the special situation of women with disabilities. It builds on existing federal equal rights legislation for women that recognizes the unequal situations of women versus men and allows for affirmative action policies to achieve gender equality. The disability law thus enables the enactment of "special measures to promote the equalization of women with disabilities." Paragraph 13 guarantees the *Verbandsklagerecht* (the right to sue as a group) as outlined in the legislative draft. Registered disability organizations are thus empowered to sue in cases of noncompliance with the equality mandate. The remaining 51 articles spell out specific reforms in areas of existing federal law that violate the antidiscrimination mandate, as for example a host of federal laws regulating access to the professions (articles 4–31).[27] Finally, Germany's federal structure mandates that most of the specific regulations will be left to the federal states, such as building and construction codes, and, importantly, all legislation concerning education rights, from public kindergartens to university law. The specific impact of the law's equalizing effect will thus be the subject of future study.

MOBILIZING GERMAN DISABILITY RIGHTS

The literature on rights mobilization in the United States shows that rights discourse in the American setting can provide activists with "a compelling normative language for identifying, interpreting, and challenging the unjust logic of discrimination." (McCann 1994, 48). It allows activists to name (i.e., to identify) and criticize hierarchical relations and to recognize the importance of collective action in the struggle for a good cause. In the case of the disability rights movement, questions of definition are especially important, both in the movement-building stage (who counts as disabled and thus is part of our movement?) but also in the policymaking stage (who counts as disabled and thus is entitled to benefits?). Rights discourse builds movements by encouraging a common identity and providing a vehi-

27. For example, article 43 reforms the law regulating veterinarians so that it can no longer bar those with "physical or mental weaknesses."

cle for collective effort. On a personal level, activists can derive powerful personal and political meaning from their involvement in struggles that will fundamentally change the way they think of themselves as, in this case, disabled, workers, and rights-bearing individuals.

The U.S. literature also points to the notion that rights work differently in different stages of movement activism—from movement building, to policy formation, to implementation. The German disability rights movement is still in its initial phases of building movements and formulating policy demands. Thus, the media campaign, and the publicity over the Supreme Court cases focus on the importance of public awareness and consciousness-raising, both within the disability community and in the society at large. Thus, a relationship exists between rights and time, as rights evolve at different periods of a movement's development. This notion is best captured by T. H. Marshall's rights typology in his essay on citizenship and social class (Marshall 1952). Marshall argued that full and equal citizenship is achieved in chronological order from civil to political to social rights. In the disability arena, we see the United States following this chronology, while still lacking in substantial social rights. In Germany we see the development of substantial social rights before the guarantee of full citizenship, thus subverting Marshall's chronology. As the rights model travels to different countries, it enters new territory, which changes the legal and political terms on which rights are negotiated. Thus, in Germany, disability rights activists do not mobilize around a separate minority group status, but rather around an expansion of the categories of citizenship, which would equalize them with the rest of society. As the German disability rights movement graduates from the initial movement-generating phase to a policy-implementation phase, then, we are bound to see different rights working in different contexts.

It is significant that the German disability movement chose an advertising campaign to introduce notions of disability rights to the general population. The thought of civil rights as a product for which one might wage an advertisement campaign leads to the question "How do we sell disability rights?" Do we sell them as products that will benefit everybody ("Curb cuts also help the elderly and families with baby carriages")? Or do we sell them by saying "Put yourselves in our shoes and then you'll understand" (the inaccessible bathroom example)? Either approach might transform the struggle for special disability rights into a struggle for universal rights to create a more open and accessible society for everybody. The advertising campaign thus turned civil right into a marketable product, appealing to notions of fairness, justice, and community. Rather than advocating for "special" rights limited to only people with disabilities—which the disability quota clearly is—the media campaign framed disability rights as civil rights that concern everybody and become a measure of a society's political progress.

Now that Germany is on the disability rights path, critics might question how German disability law will continue to protect disability difference while guaranteeing equal opportunities. Is the German movement risking the protection of disability difference, so well enshrined in the German welfare state, for the sake of the equality principle? Is there a danger of this paradigm shift toward the U.S.-inspired rights model leading toward a new "lean and mean" European welfare state that limits the state's role as the guarantor of a standard of living? Lessons from the treatment of the ADA in the American court system[28] might lead critics to fear that the future of the new equalizing law could lead to a withdrawal of state responsibility to pay for disability needs.

At this point it is too soon to speculate on the effect of Germany's new disability law. I suggest, however, that German disability rights activism remains firmly based in the German welfare state,[29] which rests on German traditions that posit the state as a provider of social rights. Thus, it is the relatively privileged status of disability rights activists in relation to the German welfare state that allows them to embrace the rights model so uncritically. With their special needs safely secured, the demand for equal rights becomes politically and strategically possible.

The theoretical and political limitations of rights movement's focus on the law have been well theorized in the American rights literature (Rosenberg 1991; Bumiller 1988). But these limitations apply differently for non-U.S. movements. I think tremendous potential exists to see disability retheorized in settings that guarantee substantial welfare rights and that interpret equality guarantees to include a protection of difference. And just as rights would be rethought in different settings, so would our assumptions about the meanings of equality and difference. It is a uniquely American assumption that notions of equality rest on sameness. In countries with more established protections of difference—be it through social welfare guarantees or cultural norms—we might see a potential blending of the rights and welfare models.

IMPORTING DISABILITY RIGHTS

I close with some thoughts on the role of the United States as an exporter of disability rights consciousness. As this paper has argued, the U.S. disability law and activism have had a powerful influence over German disability politics. What does it mean for the German movement to adopt the

28. Recent Supreme Court decisions have substantially limited the scope and applicability of the law, using narrow definitions of disability (*Sutton* and *Williams*, among others) and protecting states' immunities from ADA suits (*Garret*). See generally Colker 1999, 2001, and O'Brien 2001, analyzing why more than 90% of ADA cases are judged in favor of the employer.

29. The German welfare state remains enshrined in the Basic Law: Article 20 declares Germany a "democratic and social state."

American movement as a model—a movement that constantly refers to its origins in and parallels to the civil rights movement? What does it mean to borrow culturally specific political tools, such as the emphasis on rights and equal treatment, and make them work in a different cultural setting? In Germany, rights do not hold the organizing force they do in American political life and social movements, but they are increasingly used as instruments of personal empowerment and community building for the German movement. They function as a commodity that can buy freedom and equal access to participate not only in the political process, but also in the economy.

Activists in Germany do struggle with this relatively new emphasis on the law. They acknowledge common notions that "laws don't change reality," yet they still see them as necessary. They compare their struggle with that of women's suffrage in Germany, arguing that women would never have achieved the right to vote with mere appeals to goodwill and moral righteousness. Their true model of success, however, is the U.S. disability rights movement's fight for the ADA:

> We (from *Netzwerk 3*) aren't real fans of the law. We would be happy had there been a big bang after the constitutional amendment that would have changed the consciousness of the general population in regards to disability, and that would have caused the government to make some real political change to end discrimination. But history has shown, not only in our country, that progress always has to be fought for, and that laws do have the ability to change consciousness. We therefore believe that we need laws in the short run to be able to change attitudes in the long run. (Heiden 1996b, 9)

As an American "legal transplant," then, disability rights are traveling the world and taking root in different sociopolitical settings (Watson 1974). Yet the traditional literature on legal transplants sees the flow of law only occurring in one direction: from the United States or Western Europe to the (legally) underdeveloped world. In my case it is helpful to reverse this flow: What, if anything, can activists in the United States learn from the globalization of the rights model? As disability rights travel to Germany and set foot on foreign soil, they become rethought and reinterpreted in ways that may offer more comprehensive interpretations of the equality guarantee. In Germany the individualized rights model collides with labor and welfare traditions that offer more comprehensive or positive rights against the state. This encounter is not a one-time affair but continues throughout the cycles of a movement. The German engagement with disability rights might give American rights activists reason to pause and consider mobilization strategies that are less tied to the equality frame and legal remedies. As the rights model gets incorporated into the German setting, it holds as much

interest to the original American donors as it continues to hold for its current and future recipients. This encounter should also point to new directions for American rights scholarship. As rights go on the road, they force a reflexive relationship with the legal frame that informs them. Taken out of these frames, rights mobilization may reveal new forms of political engagement with notions of equality and equal treatment. Rights on the road encountering new sociopolitical contexts thus symbolize a "road not taken" for American legal scholarship.

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