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## Bodies in Dependence:

### A Foucauldian Genealogy of the Americans with Disabilities Acts

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#### Keywords:

Foucault, genealogy, Americans with Disabilities Act, power, epistemology

#### Abstract:

*The Americans with Disabilities Acts (ADA) of 1990 and 2008 are laws imagined as enacting two goals: enhancing civil rights and reducing sociopolitical discrimination for Americans with disabilities; however, findings from this study strongly contrast with popular assumptions about the ADA. Key findings show how the ADA legitimizes governmental control of disability through discourse to consolidate economic power. The study employs the genealogical method, derived from Foucault, which is used to identify destructive and productive operations of power and identify ambiguities in discursive regimes. The ADA constructs a discursive category of "disability," the results of which are contradictory and problematic, evincing an asymmetrical power distribution between governmentality and people with disabilities. In the ADA, disabled people are conflated with abnormal bodies. The ADA's rhetorical construction of disability suggests that constructing a unified "disabled body" allows for individuals with disabilities to be defined and then controlled en masse. Events and rhetoric surrounding the ADA's passage illuminate how it regulates disabled individuals, described as untapped sources of economic potential. This genealogy uncovers findings indicating disturbing facts. For instance, the ADA articulates disabled bodies in service of capitalistic exploitation rather than human liberation. Similarly, the ADA generates a unique form of discursive hegemony that aims to control the bodies, minds, and perhaps the souls of Americans with disabilities.*

## Introduction and Research Questions

The Americans with Disabilities Act of 1990 (ADA 1990, herein) and the ADA Amendments Act of 2008 (ADA 2008, herein) are ostensibly designed to address historical grievances and reduce discrimination against disabled people in the United States (Selmi, 2008). The American public assumes that the ADA protects disabled people from oppression (Jolls, 2004). Following passage, distinct interpretations and disagreements emerged regarding differences between the ADA's conceptualization and how it is *lived* (Johnson, 1997). Despite the lofty rhetoric espoused by its authors, disability scholars are conflicted about the laws; some have championed and others have vilified them (Anderson, 2008; Travis, 2009). The ADA's practical and theoretical consequences differently affect a) governmental and economic groups and b) disabled individuals and disability scholars. Two research questions are addressed to probe the divisive interpretations of the ADA outlined above: (1) *What consequences emerge from the ADA being "lived" on the bodies of Americans with disabilities?* (2) *In terms of Foucault's techniques of power, what power relationships exist between the ADA and the individuals they apply to?*

To address these questions, I employ an analytic method called genealogy (Foucault, 1980b; 1986; 1988; Nietzsche; 1967). Foucauldian genealogy is used to historicize power. Via the Foucauldian framework, the ADA 1990 and the ADA 2008 are shown to be the primary vectors through which the US government controls the lives and bodies of individuals with disabilities (Tremain, 2009). Herein, findings show how the federal government devised and enacted the ADA for economic purposes that are auto-reflexive and hegemonic. The ADA's first consequence is to define disability, which shapes how the law is "lived" in America with consequences for people with and without disabilities (Travis, 2009). The traditional goals that provided impetus for implementation are subverted by the federal government's definition of disability and its economic intentions regarding disability. The ADA elects to focus on *the rights* of disabled people, not *their needs*.<sup>1</sup> As such, a primary function of the ADA is to compel disabled people to participate in the capitalist economy. The ADA's function is to "unleash" the economic potential of individuals with disabilities (Bush Sr., 1990). The imperatives of governmentality of disability outlined by George Herbert Walker Bush and the 101<sup>st</sup> Congress, and affirmed by George Walker Bush and the 112<sup>th</sup> Congress, are divorced from the ADA's popular perception. By defining and situating disability within an economic framework, the ADA reveals its biopolitical mechanisms of control. These initial findings stand in stark contrast to the law's perceived value and this discrepancy warrants closer analysis.

This study is concerned with how power and disability interact in the ADA. To interpret my findings, my theoretical framework leverages disability studies' (DS) focus on redefining disability in terms of self-determination and post-structural theories of discourse and subjectivity. While disabled people and disability scholars are increasingly demanding theoretical autonomy to define themselves (Anderson, 2008; Kucklick, 2003), genealogy is "concerned with the consequences of actions and operations" (Perhamus, 2005). Together, this study takes up Kucklick's (2003) assertion that "disability should sit squarely at the center of historical inquiry" (p. 765). This manuscript organizes evidence showing how the ADA's discourse negates the contemporary pluralist epistemology of *disabilities* as represented in contemporary DS scholarship (Davis, 2013). Read through the analytic framework of Foucault's theories of power, and interpreted via two theoretical lenses, the ADA's consequences are: 1) to generate broad discursive powers for the government to move through and control the bodies of disabled people for its own purposes; and 2) to exert hegemonic, economic control over disability, to the exclusion of social and political autonomy that rightly belong to persons with disabilities.

## Methods and Analytic Framework

Genealogical methods are analytic tools 2 used to trace discursive ambiguities and to map articulations of power within and surrounding historical events. Foucault's genealogy is "a history of the present" (Kearins & Hooper, 2002, p. 735). Genealogy rejects linear historicizing and causality (Scheurich & McKenzie, 2005; Kearins & Hooper, 2002). Foucault (1977) cites Nietzsche as the father of the method: "Nietzsche challenge[s] the pursuit of the origin" (p. 142). Instead of seeking teleology, "Foucault [...] seeks to analyze present systems in the light of their history." (Kearins & Hooper, 2002, p. 735). Genealogy is a descriptive process (Kearins & Hooper, 2002) that depicts "an insurrection of subjugated knowledges" (Foucault, 1980b, p.81.) The method has four distinct aims (Foucault, 1977; 1998; Scheurich & McKenzie, 2005). First, it challenges the Modernist fixation on primordial origin or final teleology. Second, it traces articulations of power as inscribed upon the bodies of people through discourse. Third, it exposes the unrelenting nature of systemic oppression. Finally, genealogy shows history as imbued with chaos, discontinuity, and other "details and accidents" (Foucault, 1998, p. 373). The work of the genealogist is "meticulous and patiently documentary" (Foucault, 1977, p. 139). Genealogy is concerned with hidden operations of power (Larson, 2013). This genealogy examines the ADA's discourse and works to illuminate the ontological power generated by the ADA's epistemological-discursive knowledge system relative to disability (Campbell, 2009).

To Foucault, law is "exercised from innumerable points" (1980a, p. 94). Law is a disciplinary power constituted by rewards and punishments (Rabinow, 1984). The disciplinary power of law disciplines individuals and normalizes populations (Foucault, 1979). Foucault (1975/79; 1980a) shows how the *rule of law* emerged in the 18<sup>th</sup> century to supplant pure violence as a will to power. Law masked the violence of state power under language. Legal power is a "way of exerting violence, of appropriating that violence for the benefit of the few and of exploiting the dissymmetries and injustices of domination under cover of general law" (Foucault, 1980a, p. 88). In this way, law co-opts violence; violence is then hidden in the legal codex. Violence itself does not disappear, Foucault contends, but instead its raw power is concealed. Biopower emerged as parallel to the enactment of legal documents. The outward result of strategically re-allocating violence in law are twofold; law generates power with productive *and* destructive potentiality for the bodies it controls.

The ADA is an immense vehicle of legal power. The lived consequences (effects) of the ADA's power have been interpreted as both productive and destructive (Travis, 2009). As Scheurich and McKenzie (2005) write, "one of Foucault's favorite genealogical maneuvers is to focus not just on the negative or repressive effects of power, but also on the positive or productive effects of power" (p. 854). In this spirit, my genealogy attempts to trace both—the productive power disability is imbued with as a subject acknowledged by the state, and the destructive power of the state's ability to regulate and exert its will upon it. The ADA is a legal document with broad powers that influence all Americans, those disabled and not, and generates an asymmetrical distribution of power. Simultaneously, the ADA appears to liberate; however, what is liberated changes depending on one's state of being and point of view. The ADA's power is wielded in nuanced ways, while some consequences create legal protections, others override disabled individuals' autonomy. The dominant power produced by the ADA is its corporeal-biological definition of disability that reinforces social discrimination and reifies negative biomedical assumptions. The genealogical method assists in uncovering the ADA's systemic, pervasive oppression of subjected disabled bodies who bear the imprints of its power.

Before turning to the theoretical framework, it is worth expanding on one component of Foucault's thinking about power: *bodies*, which are made submissive and productive via biopower and governmentality (Foucault, 1977; 1979; Tremain, 2009). Foucault (1979) notes that human bodies are *useful* only when they are subjected to a larger force and coerced into productivity. Foucault explains that power is reciprocal and capillary but hierarchical power from governmental control is often ultimately tied to economic potentiality. Using Foucault's terms, the organized effort of regulating and classifying the bodies of disabled individuals makes

them *productive*. Subjugating disabled bodies to capitalism via legal discourse generates biopower for the state. Foucault (1979) explains,

The body is also directly involved in the political field...this political investment of the body is bound up, in accordance with complex reciprocal relations with its economic use; it is largely as a force of production that the body is invested with relations of power and domination...*the body becomes a useful force only if it is both a productive body and a subjected body* (pp. 25-6, emphasis added).

Foucault's notion of governmentality—strategic forms of state's biopower reified through discourse—resonates with the hidden nuances of the ADA's discourse. In this purview, the ADA works by disciplining bodies, inscribing them with powerlessness, and generating economic powers that invigorate disabled bodies, thus made *productive* for capitalism. Tremain (2009) describes Foucault's governmentality as a unique form of biopower deployed to control *disability*. Defining "disability" is a means to control that subject in domains where the definition is applied, including modern social and legal institutions, like schools, jails, hospitals, and courts.

Foucault's concerns [were] with the mutually constitutive and reinforcing relation between power and knowledge, the ontological status of the objects studied in the human sciences, the emergence of certain human phenomena as problems for power/knowledge, and the constitution of subjects by and through medical, juridical, and administrative practices (Tremain, 2009, p. 13).

To move beyond abstraction and to answer my research questions, I used critical discourse analysis (Gee, 2014) and qualitative coding cycles (Saldana, 2009) to identify operations of power in the ADA 1990 and 2008 [3](#). The first coding cycle used articulations of power [4](#) (Datnow, 2000; Foucault, 1980b; Gore, 1998). Primary findings from the first cycle of coding included identifying strategic forms of control, often emerging as dyads in tension with one another. To refine the themes, a second coding cycle was used, based on Thompson's Operations of Ideology [5](#) (Janks, 2010). Themes were interpreted through the theoretical framework (described below), and are organized in the Analysis section in the following manner: 1) Classification and Individualization, 2) Normalization and Regulation, 3) Exclusion of Consent, and 4) Economic Imperatives and Dependency.

## Theoretical Framework

The ADA is a fecund genealogical site for better understanding how disability and power interact. My theoretical framework is composed of two lenses: 1) DS scholarship focused on defining disability in relation to self-determination; and 2) poststructural theories of discourse and subjectivity. Both are conducive to the described analytic framework regarding Foucault's theories of power and prove to be useful analytic tools when applied to the legislative regulation of the bodies of individuals with disabilities (Tremain, 2009). In converging the concepts of power and disability, we find DS' orientation to self-determination and poststructural concerns for subjectivity and discourse. As Erevelles (2005) writes:

Poststructuralists have critiqued the modernist delineation of the body as an ahistorical, pre-cultural, or natural object, and have instead conceived of the body as the site on which meanings of identity, difference, desire, knowledge, social worth, and possibility are assimilated and contested. More importantly, poststructuralists have described *bodies as texts for understanding social institutions, social discourses, and social practices* (p. 423, emphasis added)

To this end, I will introduce my theoretical framework then turn to a formal genealogical analysis of the ADA by analyzing how power and disability interact in its discourse.

### Disability Studies: Definition & Self-Determination

Recent work in DS proposes that *disability* is a sociopolitical category similar to race, gender, class, ethnicity, and sexual orientation (Caldwell & Leighton, 2018; Linton, 1998; Erevelles 2005; Foster & Kinuthia, 2003). While contemporary DS scholars define disability from different vantage points, the definitions are often couched in terms of disabled individuals' (and groups') autonomous ability to presuppose sociopolitical sovereignty. These arguments are captured in the popular refrain: "we are normal and self-controlled" (Armstrong, Wright, & Dirnt, 2009). Recent DS scholarship on the epistemology of disability (Davis, 2013) counterposes the ADA's stance by rejecting medical-pathological discourses about disability (Kudlick, 2003). Advocates like Bauman and Murray (2014), Dolmage (2014), and Strauss (2013) employ ideology and rhetoric to invert negative assumptions and show the cognitive, linguistic, and social benefits of specific disabilities like deafness and autism. In the genealogic context, newly proposed autonomous definitions are epistemic forms of power *contra* biomedical discourse, and thus advance DS's political relevance.

Disability may be interpreted as an "analytic tool for exploring power itself" (Kucklick, 2003, p. 765). Erevelles (2005) explains that normalizing texts (like the ADA) construct epistemologies about disabled bodies thereby generating ontological control. Campbell (2009) describes the ADA's ontology as operating under "an ableist dynamic" (p. 126). Its discourse has been described as ambiguous (Anderson, 2008, p. 992), threatening (Emens, 2013, p. 50), or "vulnerable...to business-friendly administration" (Davidson, 2010, p. 126). These contradictions are explored later; but what is clear from the start is that the ADA operates as a normalizing text. The ADA accomplishes metonymical collapse in two ways: 1) by conflating a diagnosis of disability with the whole disabled person and 2) by conflating the *disabled individual* with the collective *individuals with disabilities*. Both discursive maneuvers function as economic strategies for governmentality. The first collapse fragments individuals' sociopolitical autonomy and the second schism segments disability from society. The ADA's discursive biopower functions reductively and uniformly defines a heterogeneous group of 60 million individuals (Taylor, 2018).

Although masked by the symbolism of liberation, a primary mechanism of the ADA is deeper control. While popular opinion conceives of the ADA as shifting the conversation toward equality (Travis, 2009), the ADA's ableist-biomedical dynamic generates new forms of biopower for the state and generates scant productive powers of jurisprudence for individuals (Emens, 2006). Regarding individuals with disabilities, self-determination—the ability to define one's own subjectivity via discourse—is overtly manipulated. In the ADA, the disabled body is subjected and loses self-control: first with the epistemic construction of *disability* and second by making it *productive* and subservient to the state's economic will. The ADA's imposed biomedical bias effects how disability is interpreted in social and political institutions and stands in stark contrast to demands for self-determination, autonomy, and agency that contemporary DS scholars rightly defend (Johnson & McIntosh, 2009; Linton, 2010; Wehmeyer, 2005).

## Post-Structuralism: Subjectivity & Discourse

Foucault's genealogy is post-structural. It traces events that inscribe, disassociate, and disintegrate bodies through language. Bodies are subjugated to power by discourse. Foucault (1977) theorizes that genealogy can trace the language of ideas operating via discourse that are inscribed upon the body and dissolve its autonomy and subjectivity:

The body is the inscribed surface of events (traced by language and dissolved by ideas), the locus of a disassociated Self (adopting the illusion of ... unity), and a volume in perpetual

disintegration. Genealogy, as an analysis of descent, is thus situated within the articulation of the body and history. Its task is to expose a body totally imprinted by history [and] history's destruction of the body. (p. 148).

The ADA's discourse is the mechanism by which it controls. Individuals' ability to auto-articulate their own subjectivities is removed and replaced with a fiat edict, which presupposes its own ability to execute the maneuver. The ADA supplants disabled individuals' sociopolitical autonomy. In place, the ADA imposes 6 its own epistemology (knowledge/discourse/definition of disability) and generates ontological power (control/subjugation/hegemony of disability). de Alba (1996) described "enunciative spaces" (p. 10) as the site of power's productive and destructive operations on the body. Enunciative spaces are conceptual locations where social, political, cultural, and economic subjectivities are articulated through language. They are spaces where positionality meets discourse and the location of the ADA's operations of power. Whereas the intent of the ADA was to emancipate, the opposite occurred. The conclusion is foregone: to receive services or protections, people must subsume their autonomy, admit to bodily impairment, and submit to state power.

The ADA infringes sociopolitical autonomy. It results in *dislocation* (de Alba et.al, 2000) and *disassociation* (Foucault, 1977), characterized by *overdetermination*, where one symbolic order overtakes another (Laclau & Mouffe, 1985). The ADA's symbolic order overdetermines and negates a disabled person's self-conception. de Alba and colleagues (2000) write, "a result of the erosion of the symbolic order [is] condensation of meaning or discourse" (p. 150). This characterization implies a porous border within the ADA's epistemology of disability, where the boundaries are contradictory. As will be shown, the inescapable nature of the *regarded as* clause imprints and inscribes itself in the body, the ADA's sole pathological site for disability. Individuals who consider themselves capable, whole, or autonomous are symbolically dislocated and classified as *disabled* anyway.

## Document Overview and Context

Foucault approaches analysis using two interdependent forms of knowledge: formal knowledge (*savoir*) and informal knowledge (*connaissance*). Scheurich and McKenzie (2005) explain that the analysis of the *savoir* (object or event) must be considered in the context of its *connaissance* (the matrix of its creation). To understand the ADA in context, it is necessary to consider the ADA's relation to US history and the ADA in terms of formal and informal knowledge about disability

produced by US government entities. Likewise, the genealogist must consider how governmentality of disability is interdependent with and distinct from the discursive conceptualization of the ADA by dissenting activist Americans with disabilities (Emens, 2013). First, I examine four vignettes of the ADA in terms of its *connaissance*, or matrix of creation, and then I analyze its *savoir*, or formal epistemology.

On June 12<sup>th</sup> 1987, standing behind two panes of bulletproof glass, President Ronald Reagan demanded that Mikhail Gorbachev tear down the Berlin Wall. As the Cold War wound down, the twin powers of neoliberalism and neoconservatism, 7 then led by Reagan and Britain's Margaret Thatcher, assaulted social democratic endeavors under the guise of deregulation and free trade (Harvey, 2007; Mouffe, 2018). Reagan and Thatcher enacted policies like *market liberalization* and ideologies like the *entrepreneurial self*. These ideological policies were systematically *applied within* governments of the First World, and *applied to* Third World countries (de Alba et al., 2000). During Reagan's second term, scholars aggressively responded, 8 describing their work as: "channeling wealth from subordinate classes to dominant ones [by dismantling] institutions and narratives that promoted more egalitarian distributive measures" (Harvey, 2007, p. 22).

On July 26<sup>th</sup>, 1990, President George H. W. Bush stood in the White House's South Lawn and declared, "today we're here to rejoice in and celebrate an *in ... dependence day*, 9 one that is long overdue" (Bush, 1990). The ADA, touted as the first disabilities act in the world (Brault, 2012), was passed with tremendous bipartisan support (Jolls, 2004). Upon signing the ADA, Bush references Reagan's demand to destroy the Berlin Wall and neatly encapsulates the ideology of market-liberalization using symbolic language. Bush asserts that his signature is "a sledgehammer to another wall, one which has for too many generations separated Americans with disabilities from the freedom they could glimpse, but not grasp...we rejoice as this barrier falls." Both Bush and Reagan demand that a restrictive barrier be removed to allow for the growth of freedom and concomitant exchange of capital. Bush and Reagan use destructive metaphorical symbolism to espouse their ideology. 10 For Bush, the ADA is a wrecking ball that demolishes a barrier. Bush relies on no subterfuge to disguise his coercive economic motives. Bush extends the ADA's creative destruction (Harvey, 2007) by weaving an emancipatory narrative of disability into the expansive tapestry of American capital expansion:

I also want to say a special word to our friends in the business community. You have in your hands the key to the success of this act, for you can *unlock a splendid resource of untapped human potential that, when freed, will enrich us all*. (emphases added)

On July 26<sup>th</sup> 2007—precisely 17 years after the ADA 1990's enactment—a letter from the National Council on Disability describing the ADA's economic impact arrived on George W. Bush's desk. In it, Chairperson Vaughn describes four unrealized goals of the ADA 1990 and a rationale for the ADA 2008. The final goal, "economic self-sufficiency" of disabled Americans, commands 20 pages, or 15% of the report. On September 25<sup>th</sup>, 2008, a new the ADA was signed into law by George W. Bush in one of his final executive acts. Bearing a cumbersome title, the "Americans with Disabilities Act, Amendments Act," became effective January 1, 2009, under an Obama Presidency (Anderson, 2008).

On July 22<sup>nd</sup>, 2015, JP Morgan Chase sponsored a summit in Washington DC. It's title: "the ADA @25: Economic Advancement and Financial Inclusion Summit [11](#)." Included in the program are words from Obama and Bush Sr., both of whom describe the unrealized financial of potential disabled Americans. Each listed goal was unrealized on the ADA's 25<sup>th</sup> anniversary. They remain so today. Bush Sr. (2015) writes, "new research shows people with disabilities continue to face persistent *barriers and obstacles* which prevent them from reaching their full *economic potential*" (p. 5, emphases added). He then details how financial instruments, tools, and services coalescent around disability are equivalent to civil rights and full citizenship for disabled persons.

These vignettes contextualize the connaissance of the ADA and show the matrix of its creation. Herein, I argue that the ADA does not liberate people with disabilities, but shackles them with biopower, and compels them to economic servitude. Millennial capitalism [12](#) demands that resources, including humans, be unfettered and transit at hyper speed. Levitt's (1985) definition [13](#) implies that the free movement of both people and capital are interwoven, but capital, not people, moves with agency. Accordingly, capital cannot be and refuses to be constrained by arbitrary walls, barriers, national boundaries, or limits. Capitalism's imperative is "mobilized by its relentless and tireless dynamics, [it] seems to be *melting all solid barriers* that have stood in its way...subjecting all realms under its form of power to ever more abstract forms of control" (Coronil, 2001, p. 65, emphasis added). Coronil discusses how symbolism (destroyed walls and barriers) are both rhetorical flourishes *and* structural tenets of capitalist ideology. Capital is the final arbitrator and destroyer of all barriers, literal and metaphoric. Here, *capital* is the symbolic vehicle of Western democracy, *globalization* its engine, and *bodies* are its fuel. Capital's relentless expansion is evident in Bush's discourses about the ADA. For without the mobility of disabled bodies, labor is prevented, and capital is immobilized. For Bush, capital, not people, demands autonomy. As such, the ADA liberates capital, not people. Perhaps it is not mere coincidence that the time period between the ADA 1990 and the ADA 2008 is regarded as "the longest period of peacetime economic growth in our nation's history" (Young, 2010).

## Analysis of the ADA in Four Parts

Thurman Arnold, Dean of the School of Law at Yale University, wrote that defining *law* is almost impossible (1935, p. 36). The ADA is similarly ineffable [14](#). In it, power operates asymmetrically, and often in contradictory ways. While this analysis produced an immense quantity of findings, I have divided the most frequent themes into four categories, each discussed in turn. Each category reflects how power and disability interact in tension within the ADA. This section concludes with a reflection on Foucault's genealogical methods and a promise for resistance against the hegemonic power of governmentality.

### Normalization and Regulation:

Normalization and regulation are techniques of power identified by Foucault (Gore, 1998). Normalization is a judgement of one occurring through comparison to another. Regulation is the explicit reference to rules or expectations that establish control. In the ADA, disabilities are explicitly defined in terms of biomedical impairments. Defining *disability*, of course, also defines ability [15](#). Those *with* disabilities are demarcated, subjected to discursive comparison against those *without*. According to ADA's tautology, dis/ability are oppositional, dyadic, finite and non-negotiable categories. The ADA thus establishes and polices a pathological, biomedical boundary. In one staggering sweep, the ADA 2008 conflates one fifth of the American population as *disabled* then codifies the assumption that *all* disabled individuals are *severely impaired*:

The term "disability" means, with respect to an individual A) physical or mental *impairment* that *substantially limits* one or more major life activities B) a record of such an impairment, or C) *being regarded as having such an impairment*. A) Major life activities include but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. B) Major life activity includes the operation of a major *bodily function* including but not limited to functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. (Section 12102, emphasis added)

The ADA's governmentality creates an asymmetrical balance of power, between itself and the "bodies" that it governs. By defining *abnormal*, the ADA codifies normal. Normalization demarcates the boundary. In the ADA, disability exists only as detrimental damage afflicting the

body, mind, or both. Individuals with disabilities are homogenously massed and catalogued as impaired, sub-standard, and outside the bounds of human normalcy.

In terms of regulation, the ADA generates its own authority to codify assumptions about disability, thereby reifying not mitigating discrimination. According to postmodern theories of representation, labeling does not occur in a void; it is a political act (Lyotard, 1979/84), which results in differentiation and displacement. Long regarded as deviant, [16](#) the ADA reifies deviancy (from perceived bodily norms) via the policing power of regulation. In this case, disabled people are displaced from mainstream society, put in the margins, and positioned as consummate *others* (Ervalles, 2005) by the ADA. According to the ADA, *able people* are sentient, cognizant, in facility of their limbs, senses, and minds. Conversely, *disabled people* are regulated as partially or wholly broken; labeled as unaware, frail, ignorant; unable, or unwilling to control their own limbs, senses, or minds. Johnson (2018) describes social standards of bodily *impairment* as a form of sociopolitical marginalization. She writes, "one way to enact oppression against members of a particular social group is to characterize them as bodily objects rather than intelligent and sentient subjects, and to simultaneously depict those bodies as uncivilized, crude, ugly, or distasteful" (p. 97). The ADA's epistemic distortion and accumulating connotations inscribe derogatory claims of deformity. Foucault would perhaps call attention to the hidden, State-sanctioned exclusion that these acts sponsor, while claiming to do the opposite.

## Individualization and Classification

Individualization and classification are opposite techniques of power identified by Foucault. Individualization singles out individuals and classification differentiates among groups based on arbitrary characteristics (Gore, 1998). Both operate by exploiting hidden tactics of power. [17](#) Conflating diverse and exceptional individuals in a centralized and undifferentiated category is concerning and problematic. The ADA's taxonomic contradiction creates strange rationalizations and jarring special rules, resulting in disproportionate representation of certain disabilities to the exclusion of others. The ADA's symbolic unity of *disability* is a deceptive misnomer and productive power of governmentality, useful for classificatory purposes in social and legal institutions (Gore, 1998, p. 232; Tremain, 2009). The designation typifies contradictory power relations; simultaneously, the ADA singles out individual units of disability *and* homogenizes them. Thompson (1990) explains that the *symbolization of unity* is a

function of ideology wherein the "collective identity ... overrides differences and divisions" (in Janks, 2010, p. 40).

Striking examples include how age-related disabilities are esteemed as equivalent to developmental disabilities; how blind people are categorized with individuals with pervasive personality disorders, then equated to those who are deaf, and so on. Foucauldian genealogies aim to uncover, unmask, or unveil hidden functions of power by paying attention to what is said and by attending to what *remains unsaid* (Larson, 2013). For this researcher, the dearth of protections pursuant to deafness is an omission keenly felt and a stunning example of audism. [18](#) For deaf children to avoid language deprivation, sign languages like ASL are an effective early intervention that prevents harm and allows deaf children to learn, grow and thrive (Holmes, 2019; Humphries, et al, 2012). Many scholars consider ASL to be *essential* for healthy educational development of deaf children. Yet the ADA never mentions it. In fact, the word "language" never appears in its 23,000 words.

While deafness is sparsely described, in stark contrast, the ADA devotes 150 words describing *in extreme detail* why "transvestites," "homosexuals" (*sic*), kleptomaniacs, pedophiles, pyromaniacs, drug addicts, etc. are *not* disabled. Proportionally, the ADA dedicates triple the volume of regulations for commercial and government entities as compared to rights or protections for individuals with disabilities. Barriers in architecture and transportation are major themes, but social and cultural discrimination are not. While the ADA holds that disabled Americans "continually encounter... communication barriers" (Section 12101:5), its sole accessibility solution is telecommunications. While 15 pages are devoted to rail cars (with circumlocutory descriptions of used rail cars, historic coaches, etc.), only 17 words evoke "qualified interpreters" for deaf persons—interpreters whose qualifications are not defined. The outward logic of the ADA collapses vital differences among disabilities and exploits its singular definition for auto-reflexive purposes.

## Exclusion of Consent

Foucault's exclusion is "a technique [that traces] the limits that...define difference" (Wagner, 1998, n.p.). Exclusion is a discursive power in the ADA that ostracizes disabled Americans and enfeebles democracy. As Joseph (2004) writes, "for Foucault, the point is not whether subjects consent to power, but how power creates the subject" (p. 152). The ADA states that *some* people with disabilities are incapable of rationality. [19](#) By classifying disability as singular, the ADA

implicitly extends irrationality to include all disabled people. Following the postmodern collapse in the faith of the governed, "the rule of consensus, which governed the Enlightenment narratives and constructed truth as a product of agreement between rational minds, has, from this standpoint, finally been rent asunder" (de Alba et al., 2000, p. 210). In these terms, the *rationality* of disabled minds is either questioned or actively undermined. DS scholarship demonstrates how boundaries are created by pervasive sociopolitical effects of negative linguistic connotations. The consequences of boundary creation are felt on bound and unbound persons. Kudlick (2003) clarifies:

[Disability] entered into the discussions of the past only when scholars or contemporaries regarded it as *having a utility for non-disabled people*...Each time communities banished them, charities helped them, *governments assisted them*, medicine treated them, or sterilization destroyed them, disabled people became the unwitting participants in the redemption of the non-disabled who struggled to secure their own status as 'natural' or 'normal' (p. 789, emphasis added).

Erevelles (2005) describes how *disability* has accumulated negative associations since origins of Democracy. In ancient Greece, [20](#) mental, physiological, communicative, and medical deficiencies were used as a basis to rationalize exclusion or promote eugenics, practices aimed at eliminating disability. The ADA uses a similar logic but claims the opposite. If we examine the etymology of *consent* (from the Latin *consentire*, "to sense, to feel, or to know") the ADA's authors betray their biases. The ADA's discourse positions its authors as normal and knowing and its subjects as abnormal and irrational. Doing so wrests the right of consent and excludes disabled people from participating in democratic control of their government.

There are three important consequences regarding an *exclusion of consent*. First, democratic consensus necessitates that individuals agree to restrictions imposed on them by the state. The ADA's homogenous definition encapsulates 60 million Americans, but circumscribes their consent. Second, Congress imposes law using a stark biomedical definition of disability. The perceived intent of the ADA in the popular imaginary—sociopolitical emancipation—is subverted. Third, in the ADA *non-disabled persons define disability*, which excludes disabled persons from the right self-government. Given the poststructural concept of inter/subjectivities and epistemological undecidability (de Alba et al., 2000, pp. 15-17), there can be no singular or universal epistemology of disability. Yet, Congress *knows* and *standardizes* disability from a xenophobic point of reference. Consequentially, each issue points to the fragility of postmodern democracy with regard to disability. Congress negates its democratic foundations, collapses the enunciative spaces of individuals with disabilities, and effectively disintegrates the consent of the

(disabled) *demos*. One wonders if the ADA conceives of disabled [21](#) individuals as autonomous or human at all?

## Economic Imperatives

While emphasized here, the final category was the least expected. It was found hidden in grey inscriptions and traces of discourse along the porous boundary between the ADA's *savior* and *connaissance*. Like Foucault's (1998) "details and accidents" of history (p. 373), the economic imperatives of the ADA were found in related but separate texts. For instance, during the ADA 1990 signing ceremony [22](#), Bush Sr. said,

This act does something important for American business...remember this—you've called for *new sources of workers*. Well, many of our fellow citizens with disabilities are unemployed. And when you add together Federal, State, local, and private funds, it costs almost \$200 billion annually to support Americans with disabilities—in effect, *to keep them dependent*.

The ADA's contradictory position vacillates between protectionism and economic self-reliance; austerity and potential economic amplification. Overtly, the ADA claims that disabled Americans: are "dependent upon the state;" cost "billions of dollars in unnecessary expenses," and "are severely disadvantaged ... economically" (Sections 12101). In another contradiction, the ADA's stated purpose is to "ensure that the Federal Government plays a central role in enforcing the standards...*on behalf of* individuals with disabilities," then claims that individuals with disabilities are victims of "overprotective rules and policies" (Section 12101, emphasis added). In one breathtaking sentence, [23](#) Congress documents a perceived correlation between *bodily impairment* and *dependency*:

Census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely *disadvantaged socially, vocationally, economically* and educationally; the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and *economic self-sufficiency for such individuals*; the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and *to pursue those opportunities for which our free society is justifiably famous for, and costs the United States billions of dollars in unnecessary expense*

*resulting from dependency and non-productivity.* (ADA 2008, Sections 12101 6-8, *emphasis added*)

Congress codifies two conditions related to economic dependency and disability. First, disabled individuals are dependent on the State to provide for them, and, without the ADA, would do so indefinitely. Second, continual dependence is a stated goal of the ADA—dependence will be *enhanced* after passage. The ADA's mechanisms of power—normalizing, regulating, individualizing, classifying, and excluding—finally have a clear purpose [24](#): to standardize disabled bodies for direct application into labor markets. de Alba and colleagues (2000) note that in late capitalism, symbolic economies substitute capital for labor in a nonreversible operation (p. 15). Thus, having been examined, surveilled, and ordered, dictated toward, and ensconced in federal registers of inadequacy, disabled bodies are now injected as fuel into the great engine of global capitalism.

The ADA aims to exploit an "untapped" economic juggernaut. The ADA claims to unfetter disabled people from oppressive chains but in fact compels disabled bodies into *economic productivity*. Infirm bodies are made productive twice: 1) as individual consumers/laborers/taxpayers and 2) as rationale for a retrofitting and construction bonanza for private contractors. The lived effects of the law are pervasive and manifold, as Foucault envisioned. Law enforcement first makes bodies "docile" and "subjugated" and only then made to be "productive."

The ADA creates a homogenous pool of workers and consumers. We can perhaps envision the ADA's architects salivating over a labor market of 60 million *underutilized* bodies. It is worth recalling two ideas here: First, Paur's (2013) dire proclamation that debility is expensive and rehabilitation is costly. Second, Young's (2010) description of the years between the ADA 1990 and the ADA 2008 as unprecedented in terms of financial productivity. Perhaps the ADA was an economic stimulus package disguised as a civil rights law.

The ADA exemplifies Lyotard's (1984) theory of language games—agonistic discursive maneuvers [25](#) and polemics used to control connotation. Lyotard (1984) writes: "the question of knowledge is now more than ever a question of government" (p. 5). In the ADA *disability* is associated with economic dependency and liberating it simultaneously liberates capital. The symbolic unity of *disability* overtakes the singular *disabled person*. Formerly autonomous individuals are now classified simply as bodies with latent financial potential, bodies which are stimulated into action via discursive symbolism and overdetermination. For disabled persons, the dynamic of power is unbalanced, biased in favor of governmentality. In the language game,

Americans with disabilities must relinquish self-determination, and in exchange, they receive indirect benefits (insofar as they are funded). The ADA's logic is Ouroboros, its metanarrative is American Exceptionalism, and its social imaginary articulates disabled bodies as underutilized capital resources.

## Foucault's Genealogy: An Analytic Post-Script

I uncovered two problems using Foucault's methods. One was related to *resistance to power*, and the other was with regard to power and *the body*.

Foucault holds that power and knowledge are equivalent. Power/knowledge is capillary; it flows everywhere in an interdependent system. However, in governmentality, it often moves downward from governmentality to control the *demos* below. Lyotard (1979) illustrates power in a similar way but with an important difference. He asks, *whose knowledge? Whose power?* "Knowledge and power are simply two sides of the same question: who reveals what knowledge is, and who knows what needs to be decided?" (Lyotard, 1979, p. 5). In Foucault's view, the battle of epistemology is fought between power and resistance-to-power (Foucault, 1997). However, in the postmodern context of the ADA, the war is between the usurpations of governmentality on one side and democratically constructed knowledge of disability (by disabled people) on the other. Language games show that knowledge is shaped by social interactions, mutual understanding, and intersubjective meaning-making, which crystalizes in democratic discourse. In terms of the ADA, Congress's discursive and legal actions subsume the will of the individual and prevent individuals with disabilities from making meaning (exerting power), themselves. This creates a critical space in which disabled activism can leverage its own resistance to power. While Foucault acknowledges the power of hegemonic domination via law, he neglects to include methodological tools for analyzing counteractive or insurgent power from below. New methods and tools need to emerge to extend this line of reasoning.

My second critique concerns "bodies". Foucault has been criticized for placing undue emphasis on bodies as sites where negative power operates, thereby neglecting people's cognitive apparatuses and collective will (Balkan, 1998). Balkan's criticism posits that Foucault supplants sentient human beings with a febrile and generic "body." *Bodies*, for Foucault, are non-agentive objects where power and knowledge do battle:

Foucault's recurrent use of the image of the "body" to refer to human beings also reflects his relative lack of interest in internal mental states. He often speaks of disciplines of the body and of things being done to the body. Foucault's 'body' is a metonym for a human being. His use of the term has the obvious rhetorical effect of depersonalizing and defamiliarizing human interaction...Foucault's recurring theme, the metonym of the body unwittingly symbolizes one of the most serious problems of his theory of power. (Balkan, 1998, pp. 6-7)

As such, Foucault appears to commit the same 'error' the ADA's architects commit—dissimulation, symbolic substitution. In contrast, DS researchers show that disability power is radically embodied, and can be exerted with agency and purpose to effect positive change (Davis, 2013; Goodley & Rapley, 2002). This schism is perhaps captured best by the disability rights group A.D.A.P.T., who eschewed their wheelchairs and literally crawled up the Capitol steps prior to the ADA's enactment (Action for Access, 2013). The result of both critiques, in line with Tremain's (2018) philosophy of disability, are new questions: *How does disabled epistemology effect resistance to governmental power? How is disability epistemology a productive power?*

## Key Findings

This genealogy of the ADA asks questions about power and its consequences for individuals with disabilities. In terms of Foucault's technologies of power, the ADA controls disability in manifold ways. Not only does the ADA harness the bodies of disabled individuals, it moves beyond the realm of the body, and exerts ontological power, perhaps against the souls of people with disabilities. [26](#) Below, key findings are summarized in relation to the study's research questions.

*(1) What consequences emerge from the ADA being "lived" on the bodies of Americans with disabilities?* Governmentality controls disabled people in the ADA using four main operations of power. By defining *disability*, the ADA normalizes, regulates, individualizes, and classifies disabled Americans to the exclusion of their consent in order to energize latent bodies and liberate capital for the government and economy. Its discourse universalizes 60 million heterogeneous people. To claim rights, disabled people must bow to the state's definition of *substantial impairment with debilitating effect*. The ADA legitimizes its actions with discourses that deny individuals with disabilities the right to do so for themselves. The ADA assumes that disability always reduces economic capacity and always will produce discrimination. The ADA is not written for disabled people, instead it is oriented toward "covered entities," where punitive measures are the

focus [27](#). Congress' singular epistemology is used to generate economic fuel. The ADA is commonly heralded as an emancipatory law; however, for both able and disabled Americans, the ADA is punitive.

(2) *In terms of Foucault's techniques of power, what power relationships exist between the ADA and individuals they apply to?* The ADA's power is discursive and economic. Congress repeatedly reifies false assumptions that disabled individuals are pathologically or medically maladapted. Ironically, the ADA defines *ability* better than it defines *disability*. Instead of liberating, the ADA encircles; rather than protecting, it devours. The ADA condescends toward individuals with disabilities and reifies overprotective and paternalistic attitudes. The ADA strengthens prejudiced views it claims to overturn. The ADA is not a civil rights document. Instead, the ADA aims to utilize the economic potentiality of disabled bodies, perceived as dormant and forestalling economic growth or capitalistic participation. Capital expansion and growth are the goals of the ADA, not human liberation. The ADA regulates the bodies of individuals using language games, creating narratives and abstract discursive forms of control that metonymize individual and collective bodies. In doing so, Congress dominates what it claims to free. The ADA robs individuals with disabilities from their enunciative potentiality, and strips citizens of the right to define themselves as capable and independent. Instead of ameliorating discriminating socio-political conditions, the ADA reinforces economic, social, and political hegemony.

## Conclusion

Bush Sr. declared he smashed the wall separating "the disabled" from freedom. In doing so, the symbolic wall was erected at that exact moment. The sound Bush claimed to hear was not the sound of the wall coming down, but the wall going up. The sledgehammer he symbolically wielded was effectively a masonry trowel designed to keep the bodies, minds, and souls of Americans with disabilities *in dependence*, subservient to capitalism.

Disabled Americans retain the moral right to sociopolitical self-determination. In this manuscript, I describe how DS scholars aim to shed negative connotation and remove sociopolitical prejudices about disability. For many, the goal is creating a space for disabled autonomy. Kudlick (2003) claims that epistemologies of disability, are "in the final analysis a political or a moral judgment" (pp. 764-5). Nearly 1/5<sup>th</sup> of Americans—60 million people—are disabled or, in the ADA's terms, *regarded as disabled*. Within the ADA, metonymy replaces autonomy. The consistency of the Federal definition across three consecutive laws (Section 504 Act, ADA 1990,

ADA 2008) indicates that supplanting sociopolitical marginalization is not the ADA's intent. Rather, the ADA's purpose is to reinforce biopower and control the bodies of individuals with disabilities in a (successful) attempt to prime the globalized economy. The ADA's homogeneous definition aims to invigorate dormant bodies. The ADA's ideological, symbolic discourse of 'freedom' effectively sustains hegemonic control of ability over human difference. The ADA's discourse is characterized by dictation, not dialogue and commandments, at the expense of colloquy. Foucauldian genealogy reveals the ADA's totalizing and overdetermined language, which mechanizes the bodies of individuals with disabilities. The ADA reinforces an asymmetrical balance of power and reserves the most immense powers for itself—via discourse, governmentality compels disabled individuals and groups to sociopolitical subjugation and economic productivity. The ADA embraces capital, not disabled persons.

For activists and those involved in resistance activities: *Take heart!* The ADA shows how governmentality is threatened by a general disabled uprising. The US Government studies what it fears. The ADA seeks to isolate, contain, and control entities that threaten its oligopoly of power; however, the ADA also created a power bloc. With a mind toward Lyotard's agonistic language games and Foucault's resistance-to-power, we must observe how discourses are created, whom they address, and critically interpret how we respond to them. If knowledge/power and knowledge/resistance-to-power are unequal, new tactics of activism and new methods of scholarship are needed to seize power and affect transformative change. Grassroots movements of "the people" can weaponize knowledge contra hegemony and generate new forms of radical democracy that are inclusive to all ways of being (Mouffe, 2018).

Discourse is a critical tool in the fight toward the better world we aim to build for ourselves. Laclau (1983) writes "Utopia is the essence of any communication and social practice" (in de Alba, et.al. 2000, pp. 190-1). Emerging from this genealogy about power, bodies, disability, discourse, subjectivity, and self-determination, the lynchpin of power is not the unequal distribution of resources, but the unequal distribution of knowledge. The ADA did not actualize an alternate world where disability is interpreted as the norm, not the exception (Davis, 2013; Shakespeare, 2013). With respect to the ADA's passage, a rising discourse of resistance generated impetus for enactment. Only by continual resistance and productive power can new progress be forged. The usurpation of sociopolitical power by governmentality generates an essential opening for the productive power of disability epistemology to fight back. For, when true disability liberation comes, we will recognize its power as originating not from the top of the hierarchy, but from the bottom.

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## Endnotes

1. The distinction between rights and needs is informed by feminist scholarship, primarily Peggy McIntosh (2009). The ADA defines the *rights* of disabled people as medical care, employment, transportation equality, and access to government-funded broadcasting. The *needs* of disabled people are social and political, they include (but are not limited to) educational, cultural, linguistic, physical, emotional, and civic needs.

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2. Scheurich and McKenzie (2005) note that genealogical methods are accessible and appealing to scholars because of their portability and transferability, "his genealogical method is more like a set of critical tools that can be used in any sort of grouping" (2005, p. 857).

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3. The ADA documents I downloaded and analyzed showed both texts in an overlapping manner and used proofreading marks and typographic symbols to indicate changes between the two documents. Extant changes between each version were textually imposed using formatting procedures (e.g. underlining new passages, striking out those that were changed, moved or modified). This unique document allowed me to trace out how the ADA changed and interpret each version in context of the other version. Additionally, as a textual relic it served as a unique discursive document that allowed me to see (in excruciating detail) how the discourse has shifted in the years between 1990 and 2008.

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4. Gore (1998) establishes eight such articulations: surveillance, exclusion, normalization, classification, distribution, individualization, totalization, and regulation.

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5. Following Thompson (1990; in Janks, 2010), my second cycle of analysis identified the following themes: 1) *Legitimation and Reification*, and 2) *Unification and Fragmentation*.

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6. Part C reads: "being *regarded as having* such an impairment." (2008, Section 12102). In the ADA if a person is *thought to be* disabled, that person *is* disabled, whether the person wants to be or not. Perhaps the most striking effect of this clause is in its ability to override a person's subjective identity. Even if an individual does not label him or herself as "disabled," and, if another person or another entity *regards* them as disabled, that person is automatically and irrevocably classified as disabled.

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7. In this paper I refer to most actions as governmentality, which includes both neoconservative and neoliberal ideology. Michael Apple (2004) describes the similarities and dissimilarities between neo-conservative and neo-liberal ideologies, though neoliberalism favors regulation, "the neo-conservative attempts to specify what knowledge, values and behaviors should be standardized and officially defined as legitimate" (p. 24).

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8. The term *Globalization* was coined in 1983 by Levitt (Spring, 2012). The English translation of Lyotard's *The Postmodern Condition: A Report on Knowledge* was released in 1984.

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9. Bush audibly pauses between syllables; the effect is *IN DEPENDENCE*, not independence.

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10. Hidden behind the symbolic barriers is freely mobile capital and capitalists attempting to collect. From the perspectives of individuals with disabilities, the ADA symbolically lifted one barrier (the "wall" separating them from obligations of capitalism) and replaced it with another (biomedical and normalizing discourses).

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11. The transcript accompanying the program is one of the most hyperreal, postmodern documents I have ever read. It's monetary innuendos, symbolic associations, and pejorative stance on *disability as financial potential* are staggering. A full genealogy could be written about that document alone. Choice examples of disability-made-productive

include: the ADA's conditions of "enforced impoverishment" (p. 62), "American Sign Language Tax Day" (p. 42), and the so-called eligibility cliff, described as a "perverse kind of system" that makes disabled Americans financially dependent upon the state, and at perpetual risk of death—the savior, of course—is economic self-reliance for the disabled person (p. 49-50).

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12. Capitalism, globalized capitalism, and late capitalism are near synonyms described by Lyotard (1979), Jameson (1991), and Harvey (2007), among many others.

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13. Lyotard (1979/84), defines the postmodern as an incredulity toward metanarratives. In my interpretation, following Lyotard I hold incredulity toward *the metanarrative of capitalism and American Exceptionalism*.

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14. Although the document aims to be easily interpretable by the courts; however, the results were commonly misinterpreted. Despite my analytical rigor, I find the ADA's discourse to remain elusive. It follows that the courts have similarly struggled with consistent, clear interpretations of the Acts. Interestingly, Section 12101 B.6 contains the following passage, "The question of whether an individual's impairment is a disability under the ADA *should not demand extensive analysis*." The ADA finds that disability should be *readily apparent*. This neglect complexity all but negates those who have invisible disabilities. A section edited out of the 2008 version is particularly telling. In the ADA 1990, Congress finds that "individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society" (ADA 1990, Section 12101, A: 7). That Congress encoded and then removed the "discrete and insular" passage perhaps points toward a shift in the overall discourse toward healing, however minimal.

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15. Contemporary evidence from President Trump's proposed 2020 budget substantiates this claim: "the White House plans to...propose strict new work requirements for 'able-

bodied' Americans across a range of [Federal entitlement programs]" (Paletta & Werner, 2019, n.p.).

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16. In Kudlick's (2003) view, negative perceptions of disability characterize it as a human frailty or imperfection. People with disabilities have been historically labeled as "'deformed', 'mutilated', or 'deviant,'" (p. 766). Erevelles (2005) describes the historical category of disability as "monstrous," (p. 427) embodying "radical alterity" (p. 430), which generates "loathing" (p. 427) for those without.

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17. Individualizing coincides with Thompson's *universalization*: "institutional arrangements...serve individual interests represented as serving the interests of all." Classifying builds on Thompson's *symbolization of unity*: "collective identity ... overrides differences and divisions" (as cited in Janks, 2010, p. 140)

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18. Audism is discrimination based on hearing status. Systemic, pervasive and utterly obvious to deaf people, audism is often unacknowledged by nondeaf people. Audism is similar to racism, sexism, etc. and describes circumstances of prejudice against deaf people; whether, or how much, a person can or cannot hear. Discrimination based on deafness is pervasive but often hard to detect if one is not "in the know." Part of this issue—who knows and how they know—is a major point of contention among scholars. Since audist discrimination is sometimes unintentional, or culturally masked, it becomes hard to detect. As with all other "-isms," there are varying forms and degrees of severity. Simple audism could be exemplified by the common practice of speaking people who disengage eye contact during a conversation or reduce the available visual communication conveyed to a deaf person. Complex forms of audism include the systemic belief that deaf people need to be "fixed" by using listening technologies, like risky cochlear implant surgeries. The implication is that the "broken" deaf person needs to undergo physiological repairs, phenomenological adjustments, or cognitive changes in order to accommodate society. The ADA assumes that English (spoken or written) is *the* language of America. Congress acts on the assumption that "equal access for communication" simply means *translating into English*, an often-insufficient remedy for signing deaf persons. The ADA makes no mention of languages aside from spoken/printed English. As

an educator of Deaf and Hard of Hearing students, I know that the central discriminations that deaf individuals commonly face are barriers of communication access, language, and audism. For many deaf, Deaf, and hard of hearing individuals, communication is frequently obfuscated in public spheres. From loudspeaker public announcements, to lack of available communication avenues in public or private spaces, effective communication becomes nearly impossible at times due to societal fixations on auditory language, and to a lesser extent on print-based English. Language modalities *other than English* (such as ASL), are ameliorative, culturally appropriate natural languages for deaf and hard of hearing individuals, yet their existence is not acknowledged by the ADA. The omission is keenly felt. The only explicit references to communications for the deaf are technological solutions, or text-based English. Likewise, the ADA only uses the word *deaf* once, and in an acronym (TDD—telecommunication device for the deaf), preferring to use of the terms "hearing impaired," and "speech-impaired" (Subchapter 2, Section 225). These terms have been largely resisted by Deaf, deaf, and hard-of-hearing individuals (Padden, 2005).

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19. The discourse marker *disability* is overdetermined when "thinking" and "communicating" are major life activities that individuals with disabilities lack (section 12102 [2])

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20. Aristotle wrote that there ought to be a law to prevent the rearing of *deformed children*, and in Sparta, the abandonment of *deformed and sickly* infants was a legal prerogative (Carrick, 2001).

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21. Perhaps the root problem is the limitation of language. *Disabled* is saturated with negative associations and connotations. *Dis* indicates the absence of a quality, incompleteness, lack of development, perhaps lack of humanity. Certainly, this 'inability' to think rationalizes the ADA's usurpation of power to govern.

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22. This statement came six months before his chilling 1991 "Thousand Points of Light" speech wherein he made the famous declaration—to move the United States of America

and the world along with it—toward a "New World Order"—aiming to force all global individuals to submit to omnipresent governmentality.

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23. These paragraphs are the preamble—I was flabbergasted that the ADA's framing device was monetary.

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24. Owing to limitations of space, it is difficult to reconcile this teleological finding with genealogical methods, which disdain the pursuit of origin. Perhaps the contradiction can be resolved by highlighting the fact that the ADA's epistemology and Foucauldian methodologies use different logics and discourses.

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25. Lyotard (1984) writes, "take any civil law as an example: it states that a given category of citizens must perform a specific kind of action. Legitimation is the process by which a legislator is authorized to promulgate such a law" (1984, p. 5). Congress legitimizes its actions on economic imperatives, and also further binds disabled individuals to itself. Language games necessitate performativity, which leads to agonistics, which lead to language games... (ad infinitum). The motion of chess-pieces in a language game are discourse structures upon the game board, here within the frame of "freely" moving capital. According to neoliberal policies, this is a game that should be played without rules, a game where nobody agrees to anything except the importance of profit.

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26. Foucault indicates in later writings, that strategic actions of power first oppress the body, and then seek to oppress the soul (Scheurich & McKenzie, 2005). While epistemic power is generated by the ADA its true operations are ontological hegemony. The "reality" of disability as a lived experience is controlled via discursive power.

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27. For instance, "Individuals with disabilities" receive 5 pages of definitions (describing impaired biological processes, lists of broken organs, etc.) while employers ("Covered

Entities") receive 64 pages of regulation.

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