Reframing Disability, Defining Access:

A Critical Discourse Analysis of the Accessible Canada Act

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Abstract

This project conducts a Critical Discourse Analysis of *An Act to ensure a barrier-free Canada*, Bill C-81. The corpus of data examined for this project are all drafts of the Accessible Canada Act, transcripts of meetings in the House of Commons, Senate, and Committees, and the written submissions by members of the disability community and their allies throughout the legislative process to Royal Assent. The analysis demonstrates the tension and dynamics of power, control, ability and disability within the scope of creating new legislation that, arguably, does not dream disability justice. The conclusions drawn from this work are based on Bacchi's 'What is the Problem Represented to be' (WPR) Approach, and the application of insights from biopolitics, critical disability theory, Human rights, disability justice and critical policy theory.

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Dedication

To all the spoonies who have come before me, are here with me, and will come after me. This one’s for you - keep on dreaming, keep on fighting.

Table of Contents

List of Abbreviations and Acronyms

ACA - Accessible Canada Act, also known as *An Act to ensure a barrier-free Canada*, also known as Bill C-81
AODA- Accessibility for Ontarians with Disabilities Act
AODAA - Accessibility for Ontarians with Disabilities Act Alliance
ARCH - ARCH Disability Law Centre
ASC - Accessibility Standards Canada, named in the Act as CASDO
ASL- American Sign Language;
BIPOC - Black, Indigenous, Person/People of Colour
CART - Communication Access Realtime Transcription
CHRC - Canadian Human Rights Commission
CRPD - Convention on the Rights of Persons with Disabilities
CwD/PwD - Canadians/Persons with Disabilities
DTC - Disability Tax Credit
GBA+ - Gender Based Analysis Plus
HoC - House of Commons
HUMA - Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities
LGBTQ2A+ - Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex, Asexual, and Two-Spirit and plus
LSQ - Langue des signes québécoise
MP(s) - Member(s) of Parliament
MAiD - Medical Assistance in Dying
OHCHR - Office of the High Commissioner - United Nations Human Rights
SSCAST - Standing Senate Committee on Social Affairs, Science and Technology
UN- United Nations
UNCRPD - United Nations Convention on the Rights of Persons with Disabilities
WPR - What is the Problem Represented to Be? Approach

Chapter 1: Introduction

It was a warm but cloudy day on June 21, 2019 when Bill C-81, *An Act to ensure a barrier-free Canada,* otherwise known as the Accessible Canada Act (ACA), was given Royal Assent. As described by the Honourable Carla Qualtrough, then Minister of Public Services and Procurement and Accessibility, "this legislation will help improve the lives of millions of Canadians with disabilities by proactively identifying, removing and preventing barriers to inclusion." This was to be accomplished by creating new powers within the Federal government, an independent Accessibility Standards Organization, providing existing entities with the ability to penalize non-compliant federal agencies and departments, all while expanding the definitions of what constitutes a disability and barrier. The aim of this Act was as simple as it was profound – to finally create a Canada on the basis of "Nothing about us, without us".

The Accessible Canada Act fulfilled the promise laid out in the *United Nations Convention on the Rights of Persons with Disabilities*, of which Canada had been a signatory since 2007, formally ratifying it into Canadian law in 2010. Compared to allied nations such as the United States, the United Kingdom, and Australia, Canada took decades longer to legislate an Act directly related to Canadians with disabilities.

Up to the point that Bill C-81 was introduced in Parliament in June 2018, Canadians with disabilities had to rely on Charter challenges and the Canadians Human Rights Act to fight for their rights. From grassroots movements and activism from various disability rights groups, much of these concessions were won through the court system. On a provincial level, Ontarians, Manitobans, and Nova Scotians gained protections in 2005, 2013, and 2017 respectively, affording more legal grounds to continue the work of disability rights.

This work has not been without its challenges. Time and time again the voices of the disabled community, like those of many other groups, have been ignored. This is also the case of the presentation of the problem of 'disability' as a whole – with legislation and policies too often being stuck in a medical model of disability, as opposed to seeing 'disability' as a socio-political struggle. In the consultation process leading up to the introduction of Bill C-81 in the House, disabled Canadians and their allies were given the opportunity to articulate what they wanted from the Act. They spoke up, and they finally felt seen[1] – an important milestone for a community that had been made absent from Canadian political life (Prince, 2009, p.3). Yet when the final version was tabled, one thing became clear: that despite the progress and the efforts made, the legislation was once again silent on the problems that disabled Canadians felt needed to be solved.

Rationale for the Project - Problematique

This project comes from a place of both intellectual and personal curiosity. As an academic, I have spent much of my studies focused on bringing together disability and political science. As an individual, I have spent my formative years working in the care industry in respite programs, and am one of many Canadians who live with a chronic illness. Thus, it was an easy decision to begin questioning the political landscape through this particular niche subject. Additionally, my fascination with the way that words hold power to shape lives, prompted a

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[1] About 6,000 Canadians participated in 18 public consultations and 8 thematic round tables throughout consultations for this Bill. Second reading from the House of Commons, Sitting 321, Hon. Minister Carla Qualtrough.

further need to examine how policy is created and how, just with the change of a few words, the power relations between State and Subject can be drastically changed.

There is a distinct need to examine the process through which policies are shaped in order to achieve their final form. This must be done in order to analyze what positions are being brought forth during the process, and what each side sees as the reason for the current condition of whatever group the policy is targeting. It also allows for a rare glimpse into the policy-making world where many groups and individuals will submit their particular recommendations to the drafters of the legislation, and yet these ideas, like fingerprints, may not all be visible in the final product of the bill. Additionally, this work also aims to bring to light the rigor through which these policies go through to become an Act, particularly when it comes to the work done in committee.

This work also recognizes that there are a multitude of perspectives expressed by people who identify as disabled. This is particularly important when considering policies that seek to address these same peoples, and the challenges associated with ensuring an Act of the magnitude of the *Accessible Canada Act* provides covers for the largest number of persons. While the intent may be positive, it is done under a system that ultimately seeks to normalize disability to a point of homogenization. Disabled Canadians are also queer, women, trans, First Nations, Black, or otherwise racialized. The discursive practices on which policies are built, therefore, matters a great deal because a one-size-fits most approach does not work in the modern context. What is needed is a method that combines several theoretical lenses to provide a more nuanced intersectional analysis, as defined by Kimberlé Crenshaw (1991, p.1241), while also conducting the research within a clear methodological framework. For this reason, the *What is the Problem Represented to be?* (WPR) Approach, coined by Australian researcher Carol Bacchi, will be used to conduct the analysis in this thesis. I will discuss later the rationale for using this approach in the Methodology section.

Regarding the theoretical approaches, this work draws for a variety of theoretical discussions, with a primary focus on neoliberal ablenationalism, biopolitics, and post-structural analysis that is highly influenced by Foucault. Threads will also be pulled from intersectionality theory, and Canadian disability political studies.

Research question(s)

This thesis examines the following question: *What can an examination of Bill C-81, An Act to ensure a barrier-free Canada through the methodology of Carol Bacchi's What is the Problem Represented to be? reveal about the current status of disability politics in Canada?* This project will be structured around the following further sub questions:

1. By problematizing barriers and accessibility, to what extent does this shift the positioning of Canadians with disabilities within a framework of 'normal accessibility' and 'other accessibility', as grounded in Bacchi's distinction between the 'normal' and 'other'?[2]?
2. What do the silences that arise from the problematization of barriers emphasize as other ways to see disability?

These subsequent questions are to ensure clear goals and a deeper dive into not only the Accessibility Act itself, but also an examination of the methodology being used to conduct

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[2] This study adopts the framing from Bacchi's 'normal justice' and 'other justice, as described later in the thesis.

the analysis of this work - which will be discussed later in the methodology section. The main question this work poses is large, and the ideas being examined equally so. This is why it is important to not only break down this project into smaller portions. It also allows for an opportunity to make connections between different aspects of the policy process, the various voices that contributed to making this Bill a reality, and the opportunity to be critical of how the personal can affect the scientific.

As scholar Heidi Lourens describes "...individual experiences are important, and that they [individual experiences], can unveil disabling and changeable social truths" (2018, p.569). The personal in this case, is what influenced my interest in this research topic in the first place, and also why at times it has taken a long time to complete this work. This is also why this work consists of more uses of the first person, as this too is an area of tension that shapes the direction this work has taken since the original proposal was written.

This work will be divided into the following chapters after the introduction. Chapter 2 will focus on explaining the Canadian legislative process as seen through Bill C-81, along with the historical contextualization that is needed to understand how the Accessible Canada Act came into being. Chapter 3 will present the literature that was used to inform the analysis in this work, highlighting the contributions of authors to this field of study. Following this, Chapter 4 discusses the methodology and theoretical frameworks that are used to conduct the analysis of Bill C-81 and the debates surrounding it. The use of the WPR approach will be tackled in Chapter 5, where the aim is to touch upon the considerations that have appeared throughout this problem analysis. Finally, all conclusions to this analysis will be found in Chapter 6, and also provide the opportunity to conduct the final elements of the WPR analysis, which are more reflexive in nature.

On a final note prior to concluding this introduction, it is the hope of this author that those who read this work appreciate the great work done by disabled Canadians and their allies who came forward, presented their vulnerabilities, and stood their ground in order to be heard. It is because of their tireless work that this Act exists, and it is because of them that this study is even possible. While the acknowledgements are for those this author personally would like to thank, it is truly here that I would like to signal to those who came before me a thank you. Thank you for paving the way, and there is truly nothing about us, without us.

Chapter 2:

The Canadian Legislative Process as seen through the eyes of Bill C-81

Prior to diving into the historical context of disability policy in Canada, let us take a moment to understand the Canadian legislative process, and, more specifically, how it is that a Bill becomes a law. In this section we will go over not only how the process works, but specifically the five W's - who, what, where, when and most importantly, the why. For readers who may not spend as much time as nerds like myself studying the Canadian political system, this will also serve as a primer on the way Canadian parliamentary democracy works on a federal level. For those readers who have studied the Canadian political system but perhaps not so much disability policy at the federal level, this section should provide a good overview of how Canada as a state arrived at Bill C-81, an *Act to ensure a barrier-free Canada*. Not only will this familiarize us with the process and the players, but it will also set the stage for the story we will be witnessing in later chapters as the bill is examined through a closer lens.

Canada's democratic system is split between federal and provincial levels of government, with provinces then further splitting into municipalities, as well. At the federal and provincial level, there is a parliament, and judiciary that enacts laws and supports the interpretation of them, respectively. The division of powers between the federal government and provinces mean that certain areas of policy are dealt with on a provincial level, such as education and healthcare, while others, such as national defense and foreign affairs, are dealt with federally. That is not to say that the federal government does not enact laws that affect areas that provinces take care of, such as health and education, but rather that the responsibilities have been delegated to those branches of power and not held centrally. Disability falls into one of those gray areas of policy, where both federal and provincial levels of government have a shared responsibility, as disability policy touches education, health, transportation, civil rights, and social services, amongst other policy areas. This is part of the reason why we see Ontario enacting the Accessibility for Ontarians with Disabilities Act (AODA) in 2005, years prior to the federal government passing any form of disability/accessibility legislation. Throughout this work, references and comparisons to the AODA will be made, as the comparison is one made by Members of Parliament and disability activists alike, but the Accessible Canada Act went through a federal legislative process, not provincial. Thus, it becomes important to understand how federally, a piece of legislation becomes law. Yet before Bill C-81 was even a Bill, consultations with the Canadian public were held - years in advance. The true start point of Bill C-81 was on June 22, 2016, when the Honourable Carla Qualtrough, Minister of Sport and Persons with Disabilities announced the launch of a national consultation process to “inform of the development of planned legislation that will transform how the Government of Canada addresses accessibility” (Employment and Social Development Canada). These consultations lasted until February 2017, with a variety of options, virtual and in person, being made available to Canadians to participate - also turning it into one of the most inclusive legislative consultations seen in Canada to date.

When it comes to actually passing a piece of federal legislation, the House of Commons does not guarantee that the legislation becomes law. The process involves several steps, each of which ensures that the proposed legislation is thoroughly examined, debated, and refined before it becomes legally binding. First, the Parliament of Canada is bicameral, meaning it is composed of both a House of Commons (HoC), made up of elected officials, and the Senate, where Senators are appointed and are meant to be apolitical. In a simplified explanation as to why Canada's Parliament has two houses where one side is elected and the other is appointed, it is for those who are appointed to serve as the 'house of sober second thought' where those members are able to work beyond the influence of party politics of the elected government of the day. While both members of the HoC and the Senate are entitled to introduce bills, it is more often than not that these bills begin in the House. Such is the case of Bill C-81, which was introduced at its first reading on June 20, 2018.

Throughout the legislative process, a bill goes through the following standardized process: it goes through first reading in the HoC, followed by a second reading where the House votes to send the bill to whichever committee is most appropriate to study the legislation by hosting hearings, receiving feedback from experts and other key groups, and finally providing changes and feedback that need to be incorporated into the legislation before it can come back to the House to be sent to the Senate. Once the bill reaches the Senate, it must go through two readings there, where it is then voted upon and, much like in the House, sent to the appropriate Senate committee where hearings are conducted and any further amendments are proposed and incorporated. Following this, the bill is then sent back to the House of Commons where it proceeds to go through a third reading after which it is sent to the Governor General of Canada, as the representative of Head of State, to be ratified into law.

While these changes may seem on the surface to only represent the everyday workings of governance, it is in those very changes where we see reflections of power and tension between the state and those it governs. These changes are influenced in part by those who are consulted during the legislative process but also the parts that *do not* get changed are representative of the will of the State. The iterations of Bill C-81 provide a perfect point of study on these tensions, particularly when examining the discussions and recommendations proposed by different interest groups. As will be seen in later chapters, those with closer ties to the State, such as banks and crown corporations, generally kept their recommendations to align closer with what had already been proposed by legislators. Conversely, those whose interests were more focused on Disabled Canadians tended to be more critical of proposed legislation and were more likely to provide both praise and critique. Upon the reception of both forms of response, committee members were then tasked to incorporate as much of the feedback into the next iteration of Bill C-81 as possible without turning it into a piece of legislation that would not receive the support it would need to pass through the legislative process.

Unlike other pieces of legislation, Bill C-81 had the support of all Canadian political parties, regardless of them being on opposite sides of many other social issues. This in turn places Bill C-81 in a unique position that other pieces of legislation do not always benefit from. However, this also meant that legislators needed to be even more careful about how much the Bill was changed - in order to not lose that type of unanimous support. This paper does not seek to make any judgements on the political costs that a party might have incurred should it have chosen not to support this piece of legislation. Nor is this work attempting to extoll the virtues of one political party’s stances toward socio-political issues over another. However, as can be seen in other countries (e.g. the United Kingdom, the United States), political parties that lean politically left tend to be more open and more willing to bring forward legislation and programs that expand upon the needs and rights of equity seeking groups. That is why this work acknowledges that this piece of legislation was brought about by a Liberal Government - the Liberal Party of Canada tending to lean left-of-centre when it comes to social change. As the official opposition, the right-of-centre leaning Conservative Party of Canada, provides much of the official critique of the legislation, though most of their concerns are limited to the economic and legalistic scope of the legislation, as opposed to being against the essence of the piece of legislation itself.

Speaking to the essence of the Act, while more of the detailed analysis will occur in later chapters, the following is a quick overview of what the *Accessible Canada Act* adds to legislation related to disability. First, it broadens the definition of disability, while also introducing the definition of barrier. The Act reaffirms Canada's commitments as a State to the *United Nations Convention on the Rights of Persons with Disabilities*, and commits Canada to the "proactive and systemic approach to identifying, removing, and preventing barriers to accessibility" (Government of Canada, Dec 13, 2022). It provides 7 priority areas in removing barriers, and also outlines the principles by which the Act is to be implemented. The Act applies to all organizations under federal jurisdiction, including banks, the federal transportation network, and parliamentary entities.

The Act also provides more of a mandate for the Minister responsible for Accessibility, while also creating the new position of the Chief Accessibility Officer- a position that is responsible for advising the Minister and reporting on results of how the Act is implemented, and also potential problems that arise in the implementation. In terms of enforcement, the Act aims to have more enforcement mechanisms that have been previously seen in federal disability policy with the introduction of the Accessibility Commissioner. This position is responsible for enforcing the Act for most organizations under federal responsibility, and has a variety of methods of enforcement. Some of these tools include inspections, compliance orders, notices of violation, to name a few. The Accessibility Commissioner will use the accessibility plans that all federally regulated entities are responsible for publishing. These same entities are required to have a feedback process and to also publish progress reports on how they are meeting obligations under the Act.

In terms of complaints, individuals can file accessibility complaints in a "no wrong door approach" system -meaning that regardless of where the complaint is filed, the system will send it to the correct organization to deal with the complaint. Most of these complaints will go to the Accessibility Commissioner, but those with specialized areas of complaint will be sent to the Canadian Transportation Agency, the Federal Public Sector Labour Relations and Employment Board, the Canadian Radio-television and Telecommunications Commission, respectively.

The Act also establishes the Canadian Accessibility Standards Development Organization (CASDO), now known as Accessibility Standards Canada (ASC), which is mandated to: create standards in the priority areas of Act; support the creation of regulations and the conduct of accessibility-related research. The ASC is to be led by a board of directors which has a majority of persons with disabilities as members. The Act also created the National AccessAbility Week, which is an annual week that encourages inclusion and accessibility by highlighting the contributions of disabled people in Canadian society.

Parliament is committed to review the Act five years after the first regulation is made, and the Minister is to launch an independent review five years after the conclusion of the parliamentary one. After this, the Minister is to have the Act reviewed every 10 years post these initial reviews.

The Accessible Canada Act did not come into existence in a vacuum. This Act comes with historical baggage that stems from before Canada became its own country, tracing back to the United Kingdom. In the following section we will touch upon the historical context that any type of accessibility legislation introduced in Canada would find itself in. While the history of the treatment of disabled individuals in the Canadian context can be traced back to the Elizabethan times and the introduction of Poor laws, this work will focus mostly on the post-rights movements that occurred in the 1970s. What this historical context aims to highlight is not only the evolution of legislative practices and the legislating of disabled bodies, but also the shifts from the charitable model, to the medical, to the rights based social model of disability that we see today.

Disability Policy before the Accessible Canada Act

In addition to the legislative process, the Accessible Canada Act also builds upon and references the following policy pieces as part of its framework and as examples of policy that came before it. These pieces of legislation and policy can be broken up into the following categories: the Charter of Rights and Freedoms, more program-based pieces, like the Disability Tax Credit, and the influence of provincial disability legislation. These distinct policy tools each represent part of the puzzle of Canadian disability-focused policy while also highlighting the different views on disability that have been shaped by the historical treatment of Persons with Disability that will be discussed further on in this chapter. We see Disabled Persons being treated as rights-seeking, as representations of specific medical conditions, as a protected group, and, fundamentally, a group who has used its voice to gain the notice of the State. In tandem, we also see the attitude of the State evolve from being one that is more paternalistic to one that recognizes the autonomy and aptitude of individuals with disabilities to shape their own participation in Canadian society and that these individuals have the right to determine what support they need for their own participation.

The foundational piece of legislation for all disability rights in a legal context arises from the Canadian Charter of Rights and Freedoms. Passed in 1982, the Charter was enacted as part of the Constitution Act, which means that it is part of the highest law of the land. Through activism which will be discussed further into this chapter, persons with disabilities became one of the enumerated groups in section 15. Section 15 outlines that:

> (1) Every individual is equal before and under the law and has the right to equal protection and equal benefit from the law without discrimination, and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. (2) subsection (1) does not preclude any law, program, or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

The scope of the Charter applies to federal and provincial government legislation and activity, and for more than a decade made Canada one of the only countries in the world that had disability enshrined as a protected class within its constitution (Vanhala, 2014, p.57). This served to further bolster what had been previously legislated in the *Canadian Human Rights Act* of 1977, where it became prohibited to discriminate against individuals with disabilities when either in employment by or receiving services from: “the federal government, First Nations governments; and private companies that are regulated by the federal government like banks, trucking companies, broadcasters and telecommunications companies" (Canadian Heritage, 2024). Much of later disability policy and decisions made by agencies like the Canadian Transportation Agency would be scrutinized and even fought back against by using the Charter provision as the main argument against discriminatory policy.

As we will see a little further on, the decision to include disability into the Charter was not one made at the very beginning of the process. In fact, it could be called one made at the 'eleventh hour' as only after significant protest and pushback from the disability community and its allies did the government in power at the time acquiesce to the inclusion. This then had a ripple effect in Canadian policies both federally and provincially, with all entities affected by the Charter given until 1985 to align with Section 15.

The Charter allows legal challenges to be made, thus giving those with Disabilities a legal recourse, which will be discussed further in the chapter as it becomes one of the main strategies used by disability rights advocates to advance the needs of Disabled Canadians while waiting for more focused policy efforts to emerge from Ottawa.

Due to the division of powers that exist within the Canadian political context, provinces often have more authority over programs and policies targeted at Persons with Disabilities simply due to the fact that provinces are in charge of policy areas such as health and education. Provinces are also the ones who, as we will see, were granted the powers to open, and later on, close, institutional settings and are often the ones responsible for how programs related to state-sponsored care services are run and how funding is distributed. This is why, historically, we see provinces creating Disability Rights Acts prior to, or independent of, the Accessible Canada Act. The primary case study that will be looked at in this work, as well as what is most commonly brought up within evidence presented by disability advocates during the legislative process for the Accessible Canada Act, is the Accessibility for Ontarians with Disabilities Act (AODA), which was adopted in 2005[3]. The AODA presents a unique opportunity for learning and improving upon a piece of legislation on the federal level as it has existed long enough for there to be lessons learned and data on its successes and failures to be readily available for study by parliamentarians, scholars, and lawyers alike. AODA is the representation of what was expected and compared to when activists and scholars alike speculated upon what a federal disability legislation would look like, and thus has become the benchmark by which success and critique of the Accessibility Canada Act has been and will be compared against. This can be seen, for example, in the analysis that I conduct in the questioning of chrononormativity as, unlike the AODA, the Accessible Canada Act originally did not contain a timeline by which Canada is to become barrier-free. Without the groundwork of provincial accessibility acts, the only models that Canada would have federally been able to use as examples while writing the Accessible Canada Act would have been limited to those from allied states, such as the United States, the United Kingdom, and Australia. By having an internal example of both the style but also reception of a disability rights act, the federal government was given a worthy model that, while not without criticism, was one that could be used to set the groundwork for a policy on the federal level.

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[3] Provincially, there also exists the *Accessibility for Manitobans Act,* passed in 2013; and the *Act Respecting Accessibility in Nova Scotia,* passed in 2017. Given the different legal framework in Quebec, while it was the first province to pass an accessibility law in 1978, the scale of this law is not the same as those listed above. It was later amended in 2004, to what is now known as la *Loi assurant l'exercice des droits des personnes handicapées en vue de leur intégration scolaire, professionnelle et sociale*.

In terms of policy on a federal level, much of what concerns Persons with Disabilities is integrated within policies related to non-disability-specific programs and pieces of legislation. However, two federal policies that will be examined later in this work are the Disability Tax Credit (DTC) and the Registered Disability Savings Plan (RDSP) program, created in 2007. Unlike the efforts of pieces of legislation such as the Accessible Canada Act, these programs with their restrictive definitions of who does or does not qualify as 'disabled' serve in stark contrast to the more expansive and flexible definitions that can be found in the Accessible Canada Act. As will be discussed in the analysis, while it is progress to see a more expanded definition at the federal level of what constitutes someone who is protected under the Accessible Canada Act, the usefulness of its expanded definition only proves valuable if the programs that fall under it also use the same definitions.

With these legislative considerations in mind, we can now turn to an even deeper examination of the Accessible Canada Act's precedent history, knowing that what is presented in this work is merely a snippet of a larger and more complex story that has not always seen the light of day.

Historical Context

Disability has always been part of the human experience, but it is often overlooked or misrepresented in historical narratives. This omission is not simply a result of ignorance; it reflects a long history of dehumanizing disabled individuals - casting them as a burden on society that are missing some quality that allows them to be seen as equal to those who are able-bodied. Stereotypes such as the leper, the village idiot, or the begging blind child have served as publicly ingrained images to justify exclusion and social neglect, under the guise of morality and prejudicial thinking.

This historical legacy continues to shape the struggle for disability rights in contemporary society. While progress has been made, attitudinal, institutional, and linguistic barriers persist. Even with an Act as progressive as the Accessible Canada Act presents itself to be, it carries with it the weight of historical systems and discrimination which continues to influence Canadian disability policy. This historical context is what created the systems that today administer programs under a model that is not free of the medical model of disability, nor the moralization of the deserving poor framing of the disabled. This history, repeated not just in Canada, but around the world, is steeped in eugenics, the view of those with disabilities as other and less than, and the struggle for those caught in this system to be seen as anything other than a drain on the resources of the society around them. The shifts seen in the last few decades from viewing disability through the lens of the medical model to the sociopolitical has shaped the way Bill C-81 was approached as a piece of legislation. It is also a state system that operates on neoliberal, capitalist, and ablenationalist principles that influence how disabled bodies are allowed and expected to interact with the rest of Canadian society.

The context of the historical understandings in this chapter are built upon the emergence and entrenchment of biopolitics into Canadian disability policy, and the ways that disabled bodies are approached within contemporary society is influenced directly by the way that disabled bodies are both in the process of being ‘normalized’ while at the same time being negatively seen through the lens of the able-bodied privilege that continues to exist within

Canadian public policy. More of this theoretical examination, including the description of ablenationalism, will appear in Chapter 4.

As mentioned previously, this section will primarily focus on the more recent historical context for the ACA, from the 1970s rights movements to present. However, it also includes a brief overview of earlier historical developments - the Elizabethean poor laws, which kick started the State being involved in disability policy, the emergence of the asylum system, and the rise of eugenics - because these represent key shifts from the charitable model of disability to the medical model. These earlier histories still play a role in how disabled people are treated to the present day, and continue to influence the way that the disabled are designated as a particular type of biopolitical subject. As Turcotte reminds us in their essay, oftentimes as researchers we tend to "focus on contemporary realities, as is necessary, without considering possible deep historical roots that have led to these realities" (2018, p.181). This work seeks, however brief this might be, to point towards these deep historical roots, while acknowledging how far forward we have moved as a society in terms of improvements for persons with disabilities.

As a final note, the historical section is also meant to serve as the "meticulous and patiently[sic] documentary" (Foucault, 2021, p.139) required in a genealogical analysis of history as asked for by Foucaultian principles. Foucault argued that *everything has a history*, and Bacchi's WPR approach urges that we provide an analysis of history as a way to question how we have arrived at the point that we now find ourselves, and how that in turn affects the problematization of a subject. It also allows us to engage in the 'subjugated knowledges' (Foucault, 1980, p.81) of groups of persons that history has paid little attention to, and who survived on the margins. Thus, this research will take the opportunity to address what would be Question 3 of the WPR approach in a more integrated way in this section, and not further on in the analysis. This is partially to avoid repetition, and also to provide a more fulsome analysis in one section, as opposed to breaking it up into two parts.

Poor Laws, the Birth of the Asylum, and the Rise of Eugenics

The ways in which disabled people have been historically governed in Canada are rooted in a colonial and mainly, British legal inheritance. Drawing on Foucault's *Birth of Biopolitics*, the 18th century marked a shift in how states viewed their populations -not as individuals, but as collectives to be classified, regulated, and controlled, particularly when it came to the areas of hygiene and disability (Foucault, 2014). British Poor Laws, introduced during the reign of Queen Elizabeth I, categorized the poor and disabled into three types - the "deserving", "undeserving", and "helpless", and developed institutional systems, namely in the form of workhouses and later on in asylums, that would push these marginalized groups into institutionalized settings that were often more punitive than supportive forms of social aid. The Andover Workhouse (Higginbotham) serves as a particularly cruel example of the policy tool that was used at the time, 'less eligibility' which saw the conditions in the workhouse as being worse than that of the poorest labourer outside of the institution (The Health Foundation, n.d.).

The rise of industrial capitalism deepened this marginalization. As Ryan and Thomas (1980, p.101) explain, the speed and discipline required by a factory worker excluded many disabled people from the workforce, creating a system where those who could not perform wage labour were cast aside (as quoted from Barnes, 1991, p.15). This further entrenched the use of institutions as the state response to removing unproductive bodies out of society-whether through workhouses, prisons, or asylums. While asylums were framed as therapeutic places that purported to provide medical treatment as the "most blessed manifestation of true civilization the world can present" (Historic England, n.d.), they functioned in reality as mechanisms of surveillance and control.

Through the passage of multiple Acts by the United Kingdom, and similar ones passed in the United States, asylums were used not only to segregate those with physical or psychological conditions, but also as a place to hide those who were viewed as lesser by the powers that be. Women, persons of colour, queer folks, and minority groups who fell into the intersections of being seen as different were often found in these institutions with their identities being labelled as a disability to morally justify their separation from society (Nishar, 2020)· These differences were claimed to be fixable by the medical complex, particularly by psychiatrists, which used its power to claim they could return these individuals to the proper role they are expected to play in society (Kunzel, 2024).[4] Yet as Gadamer points out in the last work he ever wrote, how is that the medical profession, and the institutions surrounding it, give so much authority over peoples' lives, and is it justifiable? As he discusses, it is due, in part, to the fact that doctors are presumed to be able to do more and hold more power through the knowledge that they possess that their patient does not (Gadamer, 1996, p.120). This type of relationship, built on trust, led for so many being admitted into institutional settings while also being very easily manipulated and abused due to arguments that are now recognized as blatantly

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[4] For more information on psychiatry and queer folks, I recommend reading Regina Kunzel's *In the Shadow of Diagnosis: Psychiatric Power and Queer Life.* This book dives deep into the history of queerness as a psychological disorder, drawing on case files from the mid to late-20th century US.

prejudiced and false. Asylums in Canada operated much the same way, with the last asylum closing as late into history as 2009. Deinstitutionalization in Canada began in the 1960s, mirroring the beginning of many rights movements around the world.

The rise of the medical model of disability during this period was closely tied to processes of institutionalization and the medicalization of health. Within this framework, individuals with physical and psychological conditions were viewed as inherently inferior, and in need of 'correction' – typically through medical intervention – to be considered 'improved' or functional. These assumptions were reinforced by liberal policy approaches that positioned productivity as the primary measure of bodily value.

From this state-sanctioned infrastructure, eugenics emerged. This thesis does not set out to examine the full extent of eugenics and the impacts it has had on society and the survivors of eugenic practices[5]. The importance of understanding the impacts of eugenics is that, despite the work we as a society have put in to move forward, it is still very much a real fear for those living with disabilities in 2025. No where was this more clearly felt than during the lockdown period of the COVID-19 pandemic, when the disability community came under threat of being seen as a last priority within the scope of the pandemic response. Although often associated with Nazi Germany, eugenic thought was first coined in 1883 by Englishman Sir Francis Galton, and rose in popularity across the world. This includes in Canada, where it was widely implemented. Much of the arguments made to encourage the adoption of eugenics in

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[5] I would encourage the reader to read the work of Robert A. Wilson - particularly his book *The Eugenic Mind Projec*t. Within this work, Wilson describes how eugenics is still very much alive today and that it is important to remember this in perspective of discourse surrounding those with disabilities. Wilson is also the mind behind the Eugenics Archives, a repository of information and stories collected from the survivors of eugenics in Canada and around the world.

Alberta and British Columbia, and in the lobbying conducted in the rest of the country was as Turcotte notes, based on the Poor Laws mentioned earlier in this chapter (p.185). Through the inheritance of a British system of governance, the attitudes towards disabled people as a government responsibility, and that these very same disabled people as a burden on both state and society, was also adopted by the population of Canada. The same time period also saw the expansion of the welfare state, which furthered the belief by eugenicists that in order for those with disabilities to pay back their burden to the system, they needed to do something for the public good by not perpetuating what was believed to be inherited misfortune. That was what led to Alberta and British Columbia both passing variations of Sexual Sterilization Acts in the early 1900s, which were only repealed later in the 1970s. 1986 saw the Supreme Court of Canada rule on the Eve Decision, which deemed that no one in Canada could be forcibly sterilized without their consent, except for a medical reason, but unfortunately cases of this occurring continue to present day (Rukavina, 2024) . During the period that the Sterilization Act in Alberta was legal, over 3,000 persons were sterilized, with a disproportionate amount being Indigenous women (Turcotte, 2018, p.188).

In the modern context, disability activists continue to fight against eugenics, particularly how Medical Assistance in Dying (MAiD) perpetuates eugenic narratives. While it is not a topic that this work will go into depth on, it is worth noting that two years after the ACA received Royal Assent, MAiD was ‘considerably expanded’ to include more conditions that could be eligible to go through the process. Many experts have criticized this expansion, with the warnings that this expansion would lead to a two-tiered system of approaching complex medical situations, and would lead to those with disabilities considering MAiD because of the failures of the system. It is as recent as 2022 were the headline of “Ontario man applying for medically assisted death as an alternative to being homeless” (Mulligan & Bond) that starkly highlights the continued lived realities of those with disabilities, and that the system still has a long way to go in addressing systemic barriers and potential eugenic-leaning pitfalls[6].

The Rights Movement and de-institutionalization and Disability Rights on the International Stage

Like other rights-seeking movements—such as those led by Black, LGBTQ2A+, and feminist communities—the disability rights movement began gaining significant momentum between the 1960s and 1980s. While this period is often studied through an American lens, Canada experienced its own powerful wave of activism. It was this sustained effort that led to disabled persons being explicitly named in the Charter of Rights and Freedoms, which became a cornerstone for modern disability legislation in Canada.

As discussed earlier in this chapter, the birth of the Charter of Rights and Freedoms marked a turning point. It signaled a move away from seeing disability as a charitable concern and toward recognizing it as a legal and political identity entitled to rights. As Yvonne Peters writes, the Charter was the moment when the national disability rights movement “came of age” and became a permanent part of Canadian advocacy and policymaking. It is also where “the shift from disability as a charity concept to legitimizing disability as a status entitled to rights” occurred, marking a significant change in the political perception of the disabled subject

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[6] For more information on MAiD and the concerns held by the disability community, see: https://archdisabilitylaw.ca/wp-content/uploads/2023/03/MAID-Report-Response-March-7-2023.pdf

(Peters, 2003, p.134). Indeed, it is thanks to these activists and their lobbying[7] that saw those with disabilities being included in the Charter, and it was here that we also see the beginnings of defining disability within federal legislation.

During this same era, calls for deinstitutionalization gained traction. Survivors of institutions, alongside families and advocacy organizations, pushed back against the abusive conditions that defined institutional care. In response, many began advocating for a community-based model that centered on autonomy, respect, and individual agency. These demands were rooted not only in the lived experience but also in a broader rethinking of how disabled people should be supported in society. This is also, from a theoretical point, where we see liberalism giving way to neoliberal ways of viewing the disabled subject, which continues into the present day. It is this context that gave rise to the Independent Living Movement, which argued that disabled individuals should have the power to make decisions about their own care. Disabled persons also began to be seen as a potential untapped consumer market[8]. The argument was being made that those with disabilities should have a choice on how they receive care, and that the State would not inherently know what type of care is best for individuals.

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[7] As Vanhala describes in her work, the lobbying efforts were relentless, particularly towards then Justice Minister Jean Chretien, "even to the point of following him into the washroom in the Parliament bathroom and talking to him while he was having a pee." (p.58). Truly an example of determination to be seen and heard by the disability activists.

[8] For a greater examination of the tension between the idea of choice in neo-liberalism and the feminist care theories in the Independent Living Movement, I recommend Christine Kelly's "Re/Moving Care from the Ontario Direct Funding Program: Altering Conversations among Disability and Feminist Scholars" (2014).*Social Politics*, *21*(1), 124–147.

In addition to this movement, the approach to handling issues of discrimination and inaccessibility shifted towards a legalistic approach to protest- one done through the courtroom. The establishment of the Canadian Human Rights Commission in 1978, followed by the implementation of provincial human rights codes and tribunals, gave individuals new tools to challenge discrimination. As argued by Vanhala in *Making Rights A Reality?,* disability activists increasingly turned towards the courts to enact new forms of protections, including the eventual creation of the ARCH Disability Law Centre in Toronto, which supports many organizations with their litigations, and is one of the big contributors for submissions to the committee hearings for the Accessible Canada Act. Between 1988 and 2007, disabled individuals appeared before the Supreme Court of Canada 39 times, and as described in a footnote "anecdotal evidence suggests that disabled persons have been the most active equity seekers in the lower courts, and before human rights tribunals" (Vanhala, 2011, p.64). This suggests that much of the strategy presented in this part of disability history was 'if the State will not proactively protect our rights, we will bring about the change ourselves'. This legal activism proved to be effective, but as is the case with most legal actions, it often comes at great personal and financial cost.

Internationally, the development of legal and policy norms also influenced Canada's approach to how disability should be addressed and governed. Canada's engagement with international conventions, namely through the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), as well as the optional protocols, formed a large portion of the background for the emergence of the Accessible Canada Act. The UNCRPD was adopted by the UN General Assembly in 2006, and came into force in 2008. This Convention was set out with broad priorities for States to: promote, protect, and ensure rights for persons with disabilities; the right for persons with disabilities to have full and equal enjoyment of all human rights; and the right for disabled persons to the respect for inherent dignity. These broader priorities are further broken down into specific areas such as liberty of the person, respect for privacy, health, education, to name a few. Additionally, States are expected to provide training for professionals to assist in the shift from the medical model to a human rights perspective (OHCHR, 2014, p.1). This Convention was written with a rights perspective in mind, as well as a socio-political understanding of how barriers to accessibility for the disabled person can be more debilitating than the actual medical condition itself. The Convention challenged signatory states to move beyond the medical and charitable models of seeing those with disabilities, and recognize disabled people as rights-holding members of society.

Canada signed the UNCRPD in 2007 and ratified it in 2010, but it took until 2018 to sign the optional protocol, which allows individuals to bring complaints directly to the United Nations. The timing aligns with the time frame of Bill C-81 becoming a focus on the national stage. From April 2 to 12, 2019, the United Nations Special Rapporteur on the rights of Persons with Disabilities visited Canada to observe the progress the State was making towards meeting its obligations as a signatory of the CRPD. Within her report, the Special Rapporteur outlines Canada's commitments to upholding international conventions on human rights, and the ongoing work being done by Canada to support those with disabilities (Devandas-Aguilar, 2019). She also outlines the need for Canada to work on various areas of improvement related to Indigenous persons with disabilities, the need to change current legal frameworks, and the need to move away from segregated schooling systems (p.9).

The visit by the United Nations special Rapporteur coincided with the time that the accessible Canada Act was being legislated which allowed for the unique opportunity to highlight Canada's progress on its international commitments in a very public manner via the special Rapporteur report published later on in 2020. The United Nations also allows for states that have been visited by the special Rapporteur to provide official comments and explanations in a subsequent report to the United Nations which can range from full acceptance of recommendations made or providing rebuttals for anything that the state might deem as incorrect (Canada, 2019). As seen in the preamble of the Accessible Canada Act, Canada reaffirms its commitment to being a part of this international convention and describes its efforts of making Canada barrier free as part of its acceptance of all parts of the CRPD.

Not limited to the commitments that Canada made on the international stage with the UN, the ACA also is in some parts influenced by other pieces of legislation found in similar nations such as the United States, the United Kingdom, and Australia. These countries provided case studies of what was or is not working for disability related legislation, and showcases the interesting shift that Canada made to centre the problematization of accessibility, not disability, as the main focus of the act. This decision sets Canada apart on the international level in terms of both approach and positions it as one of the first countries to model its disability policies on something other than the medical model for defining disability.

Disability in Canadian history - a genealogical perspective

There is a very important emphasis that Bacchi places in the use of a historical genealogy to examine how the problematization comes to be. One of the aims of this historical examination is to interrogate how we have arrived at a point where disabled identities are constantly evolving in the political space, while also remaining a constant antithesis to the able-bodied subject that has emerged. It is within these trigger points throughout history that we see disability being problematized over and over in different ways that shape how we interact with the concept in the current policy context. It is also through these points that we can examine how the Accessible Canada Act even became possible as a policy, and how we understand disability as something to be interrogated through the lens of accessibility, as opposed to through disability itself.

As can be seen above, the road to the disabled subject as a rights-bearing subject was not linear. There have been several upheavals where disabled bodies have gone from being seen as just a general part of the populace, to being moralized, then marginalized, then re-examined in the light of rights-based movements, and now, arguably, are being normalized into society. Yet as can be seen in the Canadian context, all of these ways of seeing disabled persons still define the disabled subject, as they did prior to the Accessible Canada Act. The charitable model still lingers within the Canadian culture and to some extent, in the policy landscape. Go Fund Me campaigns, and many of the disability organizations that advocate for greater disability rights, started as charitable organizations for the fundraising for different conditions to supplement the support offered by the state. There are still many religious communities where support for those deemed ‘less fortunate’ continues to provide charity as part of the core tenets of respective religions. Anecdotally, there have been quite a few experiences in my own day to day that I have been stopped to be prayed over to heal my need for using a mobility aid. An additional example is the public sympathy that was given towards Tracy Latimer’s father during his trial coverage.[9] Even though the Supreme Court upheld Latimer's sentencing, concluding that "mercy killing" should remain a punishable offense, the concerns held by the disability community remain active to this day.

In many ways, the medical model remains one of the seemingly necessary building blocks within most policies and programs that Canadians with Disabilities have access to. Whether it is something as simple as taking sick leave, or as complex as receiving the Disability Tax Credit, most of these programs require that the individual present documentation that confirms their disability through a narrow set of criteria that is only verifiable by a licensed medical professional. The medical model sees disability through the lens that assumes people are disabled due to an impairment or some other physical manifestation within the body. Within this model, the solution to those with disabilities being excluded from society is to treat in some way the physical condition that is impeding participation within society. This work will also argue that the medical model of disability places the identification of being disabled as only identifiable via a medical professional formally diagnosing the condition and consequent impairments that the individual lives with. In order for the state to recognize one as being disabled under the medical model, this medical identification is the only way the state will grant you access to services that it offers for those with disabilities. This creates a space where some individuals will never be formally recognized as having a disability or even being placed in a strange position of not being 'disabled enough' to be deemed worthy of state support. To put

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[9] Tracy Latimer was only 12 years old when she was murdered by her father due to her disability, allegedly to end her suffering. This case continues to permeate the conversation surrounding MAiD. As is often stressed by disability activists, the public sympathy that Tracy's father received demonstrates a concerning undercurrent that there is still a line after which some in society deem a life not worth living.

this in another perspective, the medical model of disability views the individual and their existence/experience as the cause of barriers, not the environment around them.

This problem evolution also needs to be seen within the context of the evolution from the provincial Accessibility for Ontarians with Disabilities Act to the Accessible Canada Act. As described earlier, the AODA provided a lot of valuable information to the government of Canada on what succeeded and what would need to be improved in the federal context. What we will point towards in this section is how the definition of 'disability' -and thus, how the disabled subject is created - evolves between the two Acts. The AODA provides a robust definition of 'disability', but there is a very strong emphasis on condition-specific language that itemizes what will be considered protected. This touches upon an interesting transition point for the historical legislation for Canadians with disabilities, as both the definition and the title present almost an unwillingness to let go of the medical model in favour of the rights-based model for disability. Even though the problem represented in both Acts seems to be barriers, the older AODA still needs to specify that this legislation is to support specifically the needs of those with disabilities. The evolution to the Accessible Canada Act shows that, in the span of ten years, there has been enough of a shift politically that not only is the federal government willing to step in to address gaps that provincial accessibility legislation cannot, but also that they are comfortable with sidelining and minimizing the concept of disability in favour of the more palatable accessibility. Despite this, even the Accessible Canada Act is not able to fully discard the necessity of defining what is or is not considered disability as seen by how much of a 'win' it was considered in the disability community that episodic conditions were enumerated for the first time in a federal policy (Neurological Health Charities of Canada, 2018, p.2).

Proponents of the Accessible Canada Act describe the work that was done to focus the social model as the central framework that influenced the way that the Accessible Canada Act was written. The social model of disability challenges the authority of the medical system to determine who is considered disabled, highlighting the system's failures for many equity-seeking groups. Instead, the social model of disability allows for a greater emphasis on self-identification, thus capturing a greater proportion of those experiencing disability due to social limitations such as individuals who have not been able to receive a formal diagnosis or those whose disablement is temporary in nature, such as pregnant persons and the elderly. Thus, instead of the barrier being the medical condition of an individual, the barrier can become anything in the environment, both physical and cultural, that can impact one's ability to participate in society.

Even during the second reading in the House of Commons, there was recognition by the government that those with disabilities have been put into an untenable position where any advancement of their rights as Canadian citizens had to be sought within a system that did not allow them to do so. This is why the Honourable Carla Qualtrough describes the need for the Bill to say "no more" to burdening Canadians with this, emphasizing to the House of Commons that a) There is a need to create a system of standards whereby it will be incumbent upon governments and institutions to take the burden to ensure accessibility for all; and that b) through accessibility, there will be a culture shift, which is why "there is a massively important business case here for accessibility". (HoC, 2018, sitting 321). The choice to use 'business case' in reference to what most would consider a discussion of rights and freedoms is subtle, but does not go unnoticed as a gesture towards the neoliberal disabled subject. Even as the government acknowledges that there is inherent responsibility towards disabled persons in Canada, there is still the need to bring up the potential economic benefit as a way to encourage buy-in from members of other political parties. Equally, what should be highlighted in this particular intervention by the Minister is the idea of culture shift. If we were to take the Minister at face value, the culture shift in question would occur as soon as the Bill achieved royal ascent and formally became a law. While internal policies and considerations within federal institutions may have been in the process of being proactively changed in anticipation of this Bill, what needs to be recognized is that culture does not change at the same speed as internal policies of institutions. Just because an institution changes its practices to have more inclusive hiring, that does not mean that those actually doing the hiring will make an effort to engage with and change the way that they approach hiring employees simply because they have been instructed to do so. Culture requires education[10], and most importantly, time. This is not something that a law can speed up, as evidenced by how long it has taken for us as a species to even get to a point where disability is seen as an equity-seeking group outside of the often more cited groups.

While this analysis does not suggest that the Minister believes that culture shift will be instantaneous or easily achieved, the greater point is how long it has taken to get to this point historically, while also acknowledging the sheer amount of rapid change that has come about within the last two decades concerning disability. Yet what is also true is that now living in a post lock-down world, it is troubling to see just how quickly the progress that has been

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[10] As noted in the Special Rapporteur's report on Canada, the education system continues to segregate children with disabilities in schools, and due to education falling under the purview of provinces and territories, this results in significant disparities in the way disabled Canadians access education. (p.9)

witnessed can easily backslide. The fact that discussions on eugenics, on life worth living, and the mass disabling event that is continuing right before our eyes while governments stand by and focus more on the productivity of their economies shows just how much more work needs to be done, and how little change the system has achieved, even with the ACA being five years old. What is clear is that, despite all good intentions, there is still an evaluation being conducted at all times that focuses greatly on productivity and ability, with the assumption that, at some point, actually living in a more accessible world becomes too hard and unnatural for those who are able-bodied to the point where governments bow to the wishes of these individuals without considering that by doing so persons with disabilities are given the very clear understanding that they will never be seen as equal within society. While, yes, there have been some changes that point towards a more accessible future, such as more companies embracing hybrid and tele-work arrangements, including governmental institutions, what is equally true is the amount of pushback and difficulty in maintaining these as viable work options can be seen as a barrier to employment in its own right. Any culture shift, proposed by any government, will also need to work on tackling the many intricacies and complexities that come from intersectional biopolitical work. One particular group that comes to mind is Indigenous peoples. To write about Indigenous Persons in Canada who are also disabled and their histories could be a thesis project by itself. Indigenous People have suffered a great deal of disabling events throughout the colonization of Canada, whether through wars, plagues, or famine. Their particular 'subjugated knowledges' are often left out of the greater analysis of disability, and are often problematized through other avenues such as lack of clean drinking water, housing, mental support strategies, and economic environments. As described by Nicole Ineese-Nash, the label of disability, as applied to Indigenous Persons, can in fact perpetuate a colonial construct that conflicts with Indigenous perspectives on community membership and thus perpetuate ways that continue colonial harm (2020, p.28). Many Indigenous cultures did not even have a word for disability within their languages, and most programs and services do not take into account cultural differences as to the understanding of how disability should be approached. Yet when we examine the Accessible Canada Act, Indigenous Peoples with disabilities are conspicuously absent. Aside from the late-stage inclusion of Indigenous Sign Languages as recognized sign languages in Canada, there is little evidence of their presence in these policy discussions. Even the addition of placeholder language indicating that further collaboration with Indigenous communities was forthcoming would have been preferable to the complete absence that is evident in the Act. Failure to acknowledge this specific intersection signals a lack of recognition that Indigenous communities require distinct and dedicated work to be properly included within this policy context.

One additional element of the histories of the disabled subject that we are seeing is the shift from the disabled subject to one who is accessibility seeking. This represents the opportunity that is currently being taken to move towards broadening and including more individuals under the umbrella of ‘accessibility-seeking’. This follows the line of inquiry that Mitchell and Snyder follow in their book, *The Biopolitics of Disability: Neoliberalism, Ablenationalism, and Peripheral Embodiment,* where they discuss how neoliberal ablenationalism uses disabled bodies in a few ways: to bulk up their population; to demonstrate their morality by caring for the less fortunate; giving medical treatment to those with disabilities in exchange for them becoming part of data collected to improve the health of the rest of the population; and finally with the recognition that all citizens are entitled to participate in normative social institutions (such as marriage, education, etc.) (2015) . States have now begun to see bodies as 'incapacitated' which describes "all bodies as languishing through excessive demands of productivity, exacerbated social anxieties, and excessive exposures to toxic environments in order to exploit new treatment markets (ibid., p. 40). This in turn creates a situation where disabled bodies are both used as a marker of Western progress due to their inclusion, while at the same time creating what is referred to as ablenationalism – that is to say, "[a] tactic of integrating a privileged minority at the expense of the further abjection of the many …Ablenationalist inclusion models involve treating PwDs as exceptional bodies in ways that further valorize able-bodied norms as universally desirable and as the naturalized qualifications of fully capacitated citizenship to which others inevitably aspire" (ibid., p.44) Canada is not immune to this approach, as during the unveiling of the ACA, it was presented as an Act that would serve as a role model for other countries in the world (HoC - MP Damoff, sitting 324, 2018) - presenting a moral superiority argument of the approach that Canada has taken towards the accessibility-seeking subject that other countries should emulate. This is an additional sign of how neoliberalism operates, by creating a dichotomy of the countries that do 'care' about their disabled populations, and those who do not.

The final historical context that will be examined, as another form of 'subjugated knowledges' is how often disability rights have had to be argued in court. Up until the ACA, if a person with disabilities were to find themselves in disagreement or in need of any legal remedy against discrimination, the onus was placed on them to identity, manage, report, and follow through any forms of legal action that was deemed appropriate by the judicial system. As mentioned before by Vanhala, most, if not all, concessions that have been legally given to persons with disabilities only occurred because of the amount of work that disabled Canadians and their activism groups have put in. This in turn points towards the way the State, through legislation that it itself created, was given greater leeway in terms of having a more reactive, as opposed to proactive, approach to disabled people. The claims made throughout the legislative process attempt to differentiate the Accessible Canada Act from these historic inadequacies by placing an emphasis on how, unlike previous forms of accessibility legislation, the Accessible Canada Act would work on removing this barrier to accessibility by placing more of an onus on federal institutions to proactively report and work upon barriers to accessibility before they can cause an issue for persons requiring access.

Yet, as Mitchell and Snyder point out, despite what seems like positive movements in the direction of inclusion, the reality is that what the State gives, it can also take away. What was first described as a movement towards independence has been replaced by complex bureaucratic systems that rely on the ‘professional’ other to “determine the coordinates of one’s care, support, inclusion, nonreproductive life, treatment level, and social value” (2015, p.42). Additionally, as has been seen time and again, when the economy is in trouble, the first programs to be cut are social ones, which disproportionately affects the disabled/accessibility-seeking population. Additionally, much of the effectiveness of the Act will be measured by regulations and the way that these regulations will be policed.

Thus, we arrive again at the question of how did we get here? As states around the world began to categorize and create systems and institutions through which power was asserted, so too did this create a subject that was the antithesis to the able-bodied normate man. This body, this subject, represented all which the State, through its governments and regulations, attempted to stamp down. Now, we find ourselves again at a 'moment of openness' that allows us to examine "the changing social practices not yet naturalized in discourse and fixed in institutional structures" (de Goede, 2005, p.xxvi.) that showcases how we are moving away from the disabled subject to one that is accessibility seeking, even as identity for many in the disability community is tied to the very word disabled.

As we move forward in the following chapters of this work, I urge the reader to keep in mind these historical moments as we analyze the Accessible Canada Act. This act does not exist in a vacuum, nor do the opinions and presuppositions made by those who aided in drafting and writing this piece of legislation. All of these elements, including that which comes from doing the research on this subject come with baggage that is connected to the history and context within which the discussion is occurring. There is no doubt in this author's mind that some of the conclusions drawn in this paper would have looked differently had the COVID-19 Pandemic not occurred. Similarly, lawmakers who see disability contextualized through the medical model or even the charitable model of understanding disability, carry this bias throughout the comments and discussions surrounding the Accessible Canada Act, regardless of the content that the bill itself presents. It is important to underline that we have a partial view of disability history, one that has been filtered through the lenses of the medical institution, academia and other institutionalized forms of archiving.

It is also one of those subject areas that remains missing from the everyday education of Canadians where stories of those with disabilities are limited to those that can be seen as inspiring or as examples of those who 'overcome' whatever made them disabled in the first place, such as Terry Fox[11]. While inspiration can be positive it does not truly educate those with no lived experience onto the realities of how disability has historically been treated in Canada. Similarly, while throughout the presentations made in committee by the architects of Bill C-81 speak on the historical reality of persons with disabilities, not much is done to educate others about these historical injustices, nor do they offer any sort of formal apology. This continues to maintain disabled persons and their stories as 'subjugated knowledges' within the greater system, and affects how the Accessible Canada Act is heard throughout the process.

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[11] The term "inspiration porn" gained prominence after disability advocate Stella Young gave a TED Talk entitled *I'm not your inspiration, thank you very much.* (2014).

Chapter 3: Literature review, Theoretical Framework, and Methodology

Literature Review

This work builds upon the foundation of researchers who have been studying Canadian Disability Policy in the last 20 years prior to the passage of Bill C-81. Authors such as Michael J. Prince, Lyn Jongbloed, Michael Orsini, and Deborah Stienstra have all produced a variety of works that show the precarious position that Canadians with disabilities hold within the Canadian political landscape. They also critically examined the policies that surround those with disabilities and demonstrate that the policy efforts fall short of creating radical and sustainable positive change. Rather, disabled Canadians do not enjoy the full benefits of citizenship to the point of being 'absent' from the political landscape (Prince, 2009, p.13), being subjected to policies that use a definition of disability that incongruent that does not allow for flexibility within policies - and thus do not reflect the current disability landscape (Jongbloed, 2003, p. 207). Moreover, many Canadians have to deal with structural injustices due to the ongoing impacts of colonialism, which place disabled individuals at certain intersections – such as race, indigeneity, gender, or age- in even more complex and precarious circumstances than their more privileged counterparts (Stienstra, 2018, p.2). What these authors also demonstrated is the great influence that "neoliberal ableism" (ibid., p.5) has within the policy landscape, despite the move of disability-related policy from medical models to socio-political ones. Neoliberal ableism relegates those with disabilities to the role of "sacrificial" citizens, who are only valued for their productive potential - and if they cannot produce, then the government needs no longer be troubled by these citizens (ibid., p.5). While Stienstra may seem to be alarmist in regard to this form of interpretation of the "sacrificial citizen" being applied to policies such as

Medical Assistance in Dying and its effect on disabled Canadians, she nonetheless raises a crucial point: if the value of citizens in Canada continues to remain solely focused on their productivity, then all attempts of incorporating human rights into the discussion simply remain a "window dressing" (as seen in the submission to HUMA by Alan Levy, 2018) that does little to actually change the situation.

Most of the work done by these researchers occurred in the timeframe when federal accessibility legislation did not exist; much of this analysis occurred on either provincial levels or examining policy that was not explicitly labeled for accessibility purposes. This project recognizes the concerns that these authors have presented, and that they continue to be valid concerns when examining *The Accessible Canada Act.* This was achieved in part by comparing existing federal disability acts with those from other countries (Prince,2010). Prince's work analyses what was or was not working in those countries, and even though this is not the focus of this project, it is definitely a gap in the literature that needs to be further explored. This analysis pulls a few key points into perspective, namely the fluid nature of the term "disability" and how it is still very much a contested term; the emphasis on individual/family responsibility for the individual living with a disability; the need to focus on the welfare system and the liberal-democratic way that this system has developed and emphasizes income potential; and the way these policies cause a particular form of social stratification to occur depending on effectiveness; the approach tacks on disability as an additional policy component onto various pieces of legislation (Prince, 2016).

Other authors, such as Rick August, discussed the need to provide greater support for those living with disabilities to gain access to the workplace. If greater attention was paid to creating accessible workplaces and less to the creation of passive income strategies, then disability, a “normal part of the human condition” (2009), could cease to be an additional identifier that creates division within the population and simply become a condition that can occur to many and just needs to be accommodated. This type of argument fits well with the problematization of barriers as proposed in the ACA, and also is an example of the neoliberal goal to normalize and refold disabled bodies, as opposed to seeing them as the unique subjects they are. August’s article clearly demonstrates that there exist at least two sides within discussions in Canadian Disability Policy. One side includes those whose arguments stem from a neoliberal framework that the less time the State spends overseeing all elements of an individual’s life, the better this is for all. For individuals with disabilities, this clearly implies a type of society where as long as participation in the workforce on some scale is guaranteed, then the rest - social equality, political participation, and inclusion will follow. Such argumentation also seems to base itself on a more medical model of disability, where the focus is placed not on the way societal structures could be disabling, but rather how the proper accommodations can offset the physical condition of the disability. This contrasts sharply with the *socio-political model*, where the changes required would need to move away from condition-specific thinking towards more societal and attitudinal**.** With this in mind, the analysis will examine how the problematization presented by the Government of Canada reflects critiques that have been leveled in the years prior to a Federal Disability Act.

The first portion of the literature review focused on situating this project within existing literature on Canadian Disability Policy. The next section aims to reach across to the fields of Canadian Disability Law and Canadian Human Rights Law to add another layer to this analysis.

Since Canada is a signatory to the United Nations Convention of Human Rights, and the consecutive Convention on the Rights of Persons with Disabilities, there has been a movement in the study of how this lens is applied to Canadian policies. Disability has connections to a variety of Canadian laws - employment and workplace safety, health care, housing, and building codes to name a few. But disability also influences policies that touch upon more abstract subjects such as anti-discrimination, accessibility, rights, capacity, and the worth of a life. As is described by authors who write on Canadian Disability Policy, moving from the medical model to the socio-political model does not mean that the laws that frame disability as a solely medical problem have gone away (Jongbloed, 2003, p.208). Rather, it highlights how the rights of disabled Canadians remain fragmented across a patchwork of legal frameworks and public policies, rather than being addressed through cohesive or unified legislation.

Canadian Disability Law has activists to thank for its emergence in Canadian legal consciousness. As numerous scholars such as Lisa Vanhala and Yvonne Peters, and more recently Jacobs, Dhand, and Ireland, point out, if it had not been for Canadian disability activists who worked to have disabled Canadians recognized in the *Canadian Charter of Rights and Freedoms*, the appeals and discussions about this group in Canadian society would be very different. A key reason was moving the discussion of disability from a narrative of pity and charity to actually allowing for disabled Canadians to engage within the political process (2004). It provided a legal recourse to ask for and receive the aid that they need, and to provide a new form of activism. This project is not focused on activism per se, but it does acknowledge and recognize that it is the grassroots work by organizations and individuals in these activist groups that have created many of the foundational theories and court case rulings that this project is now able to study (Vanhala, 2010). Given how those with disabilities are often shut out of more traditional forms of protest, the legal system has become an important arena to fight for equality. More than 52% of people who complained before the Canadian Human Rights Commission (CHRC) in 2019 were related to discrimination on the basis of disability (2019). Organizations such as the Council for Canadians with Disabilities have established legal funds to support or even initiate legal suits to protect the rights of the disabled.

Yet there are also authors who remain skeptical of the way human rights are actually applied in practice – and this project positions itself within that critical examination of the gap between rights-based language and lived realities. Even when official Canadian policy utilizes the language of rights, official reports from the CHRC from 2018 show that Canada's human rights protections "do well in addressing discrimination, but they do little to address hate" in addition to the system being overloaded with cases (p.1, p.3). The changes that are required within the legal and social systems to be truly inclusive require, at the very least, the very basis of the law itself. Winning court cases requires money, and many Canadians, particularly those with disabilities, do not have the resources necessary to fund such legal expenditures. This again speaks to a neo-liberal capitalist model where power lies in the hands of those with intellectual and physical capacity, as deemed by society and the law. This is why this project needs to recognize that law, in particular human rights law, has a role to play in shaping how disability is discursively portrayed.

Finally, this project draws from critical disability studies and intersectionality theory, particularly in the application done by Moya Bailey and Izetta Autumn Mobley (2019). These theories grew within movements, nurtured and sustained by the people, particularly women of colour, trans and non-binary folks, and First Nations traditions that have not been extinguished by colonial influence. While theories such as Critical Disability Justice, and Intersectionality have been integrated in the academic mainstream, their roots should not be forgotten. This paper recognizes, as author Amanda Saxe does (2017), that disability is not "one size fits all" and is thus important to respect and include in this term the experiences of disabled, white, cisgender, heterosexual, neurotypical Canadians, which differ from those of people of colour, black, LGBTQ2A+, women, and neurodivergent folks. As Cate Thill describes, the goal of intersectional analysis is not to present a narrative of oppression on multiple fronts but rather to examine "the extent to which oppression is produced by social power and privilege" (2019, p.693). Indeed, the lack of intersectional analyses of "matrix[es] of domination" (Collins, 2000) creates silos in public policy for specific groups - and ignores the way in which vulnerabilities can and do intersect due to the way power structures in society are built. Such an approach is even more crucial for those with disabilities as any arguments made for discrimination in other intersections could be ignored from the onset simply due to ableism, and especially when disability is often already seen as an "old age problem". This creates a power imbalance, which cannot be rectified if the identities, and not the structures, continue to be problematized. How Bill C-81 defines disability, the discussions that were held around the creation of the Bill, and the concern of disability activist groups, particularly the ARCH Disability Law Centre, on the lack of an intersectional approach/language used within the Act, reminds us that while the government used certain words and phrases during the presentations of the Bill, the Act's language did not reflect an intersectional approach.

Bill C-81 is the first Federal disability/accessibility legislation for Canada. As Prince describes, the ACA is "...perhaps [the] most significant outcome of disability activism for human rights in Canada" (2023, p.219). The activists who fought for this law did so with intersectionality in mind. While the Government of Canada places an emphasis on the use of Gender-Based Analysis+ (GBA+), disability advocates such as the ARCH Disability Law Centre critique the ACA for not including an intersectional lens (2018, p.13).

Theoretical Framework

One of the main theoretical models that will be referenced in this work is the changing conceptualizations of disability from it being a medical issue to what is, in fact, disabling the individual, that has shifted within the scope of Canadian policy work throughout the decades. Specifically, these are three models of disability that disability scholars have identified throughout history. moral, medical and social. Each of these models have a view of how disability comes about, and the most appropriate way for the state to respond to this disability through each lens. As seen in the historical context, society began by seeing disability as a moral condition - the idea that the state has a duty to its 'deserving poor' and that the condition the individual is dealing with is a sign of either a corrupt character or even a sign of God's touch (Historic England). As the medical field evolved, and more attention began to be placed upon actions such as hygiene, living conditions, and the health of the population, the model of perceiving disability moved towards a medical model. The idea is that there is something wrong with the body that only an 'expert' such as a doctor could determine, and it is the state's responsibility to compensate for this condition. This model still exists in the present day, with many persons being denied support unless they have documented proof from a medical expert that the support is indeed required.

This leads to the latest model of disability, and the one of which is of particular focus for this thesis - the social model of disability. Within this model, disability is seen as “one aspect of a person’s identity, much like race/ethnicity, gender, etc” (Olkin, 2022). Disability occurs in the space where the environment, in interacting with the individual, creates barriers because it is not accommodating the needs of the individual. Thus, it is up to the state to remove the barriers by changing the environment, which includes societal attitudes, as opposed to ‘fixing’ the individual with the disability. Olkin provides an effective summary of the three models of disability, and these will be referred to throughout the analysis.

The next theoretical framework that we will touch upon is the idea of biopolitics, and the subsequent offshoots in the work of Agamben and the *Homo Sacer,* Mbembe’s necropolitics, Puar’s idea of homonationalism, and Mitchell and Snyder’s ablenationalism. Biopolitics, and biopower, both coined by Michel Foucault, focus on how the state administers life and populations as its most important project to “ensure, sustain, and multiply life, to put this life in order”. Biopower refers to how a state has the power to “exert a positive influence on life, that endeavours to administer, optimize, and multiply it, subjecting it to precise controls and comprehensive regulations” (Foucault, 1998, p.137).In Foucault’s work, biopolitics is what represents the changes that have occurred within the last few centuries where states, through industrialization, have had to deal with a great many changes, including populations growing and moving to cities, and the hygiene needs that followed. It is also through biopower that the state is able to both give the opportunity to live, but can also allow the state to utilize its "sovereign right to kill" by dividing the population into two groups - ones who are to live, and ones who are to die. While this is an important distinction, successors of Foucault such argue that biopolitics does not go far enough to discuss the ways that populations are managed through their labelling of the 'living dead'.

Agamben continues the line of questioning in *Homo Sacer: Sovereign Power and Bare Life*, where he describes a figure in Roman law, a person with no political protections who "may be killed and yet not sacrificed", who lived a life of exclusion, called the "bare life" (1998, p.53). This, Agamben argues, is how the state is capable of defining power, through its ability to include by excluding, "the inclusion of bare life in the political realm constitutes the original - if concealed - nucleus of sovereign power" (ibd, p.11) In his work *Necropolitics*, Mbembe describes his theory by the same name, which takes the theory that Agamben describes and furthers it by moving away from the concept of bare life to the idea that "the ultimate expression of sovereignty….resides in the power and capacity to dictate who is able to live and who must die" (2019, p.66), and the ability of a State to have power over the space *between* life and death. Through a decolonial approach, Mbembe focuses on discussions on slavery and colonialism, and how states used power to subjugate populations of persons "to conditions of life conferring upon them the status of the *living-dead*" (ibid.,p.92) .To both Agamben and Mbembe, it is not enough that states are able to control populations in a positive way, but it is the exclusionary powers that the state can wield that can cause massive population upheavals and changes.

Unlike Agamben and Mbembe, Puar does not describe herself as a Foucaultian scholar, and critiques the former two authors by furthering their argumentation in the discussion of modern violence, where unlike in apartheid Africa and during the Nazi regime, the focus is now on the right to maim, not kill. As she discusses in *The Right to Maim*, states can and do exercise control not just through the right to kill or exclude, but by the right to maim - to cause debility, which "is the slow wearing down of populations instead of the event of becoming disabled" (2017, p. xiii), and is not to be confused with disability. It is through the nexus of Puar's vectors of analysis - capacity, debility, and disability - that Puar attempts to break out of the disability/ability binary that she also demonstrates how debility is used to 'pre-disable people' and that mutilation and amputation are "thus no accident but part of the biopolitical scripting of populations available for injury, whether through labouring or through warring or both" (ibid., p. 64). Thus, this adds an additional facet to the biopolitical puzzle - biopower is not only something used to have positive influence on a population, like Foucault originally described, but can also actively place that population in harm's way, can make the population be seen as worthless, can strip away the state's protection to make this all seem justifiable, and additionally, be the source of colonial and imperialist systems that continue to privilege white lives over others.

Building on biopolitics and Puar's work, not only debility, Mitchell and Snyder's theory has already been described briefly. Neoliberal ablenationalism, I suggest, adds an extra dimension to this work. Not only is it enough that the state has the powers it does over a population's life/death/and in the spaces in between, Mitchell and Snyder critique the way biopolitical ways of identifying dysfunctional bodies allow the "further embedding of universal norms of functionality, appearance, and capacity" in nations (2015, p. 10), thus creating ideals of the normate citizen. These ideals reflect a similar critique made in another of Puar's works, where she describes homonationalism, which marks certain homosexual bodies as worthy of protection precisely because other bodies - queer or not - are cast as always already threatening, particularly in the context of vilifying others (2018, p. 230). Some bodies, as is evidenced in the Accessible Canada Act, are being ‘refolded’ back into the mainstream, homogenized, being made to seem as normal in order to draw attention away from a particular group as needing/being entitled to further protections by the State. The closer these bodies are to the heteronormative, able-bodied normate man (Thornton, 1996, p.2), the more likely they are welcomed back into the systems and structures that then become even more oppressive on the most marginalized of the marginal. This is also reproduced by activist groups who do not push beyond what is deemed as allowable within the context of neoliberal systems and frameworks.

All of this comes together to create a complex system that describes the condition of populations, particularly in neoliberal countries, and the way that the politics over life itself is examined. Biopolitics and the subsequent expansions are critical to the analysis conducted in this thesis, as it describes much of the tensions that are felt by bodies living in precarity, who are often excluded and are forced by the systems around them to live life in-between life and death. Canada is no exception to this, where the poverty rates for persons with disabilities are twice as high as for those without disabilities (Campaign 2000, 2024); where approximately half of the deaths during COVID-19 that had occurred as of March 2021 were in long-term care settings (Government of Canada, 2022); and where the effects of colonialism and segregation of populations continue to create situations that worsen health outcomes.

Finally, we will touch upon Titchkosky's theorisation of accessibility, and particularly the way that people with disabilities who need accessibility exist in a space of half-in, half-out. As she writes in her book, "access, addressed as the gap between what is and what ought to be, can lead to questions that arise in the gap between the experience of…disabilities, and the particular environment where this learning occurs (2011, p. 24). Access is then not merely a question of gaining entry to something, but rather the need to reimagine the political and cultural ideas of who belongs. To extend Mitchell and Snyder's insights, one can argue that accessibility furthers the ablenationalist homonormative project by ensuring that accessibility reconfigures the idea of who belongs, and who is allowed to be included or excluded. Those who are included gain protections of the State and become functionally rights-bearing individuals. Those who do not remain condemned to the half-out experiences of someone with a bare political life.

To better contextualize the silences identified in the following analysis, the theoretical concepts outlined above offer a critical lens through which to examine how the government has problematized barriers and accessibility. These theoretical concepts also present alternative ways of seeing what could be considered "normal accessibility" versus the "other accessibility". I am borrowing here from Bacchi's discussion of "normal justice" versus "other justice" (Bacchi, August 30, 2024a) to examine what is considered normative within the context of rights-seeking in Canadian disability politics, and whether the promises made in the ACA are ones that truly move the needle for meaningful change. While no one will disagree as to the importance of the Accessible Canada Act, as we will explore in the analysis, there is a valid concern amongst those with disabilities, and articulated through Puar's refolding critique and that of Mitchell and Snyder's ablenationalism, that they are being further marginalized through ablenormativity.

Methodology

This work adopts Carol Bacchi's *What is the Problem Represented to be?* (WPR) approach to conduct a critical policy analysis (2012) of Bill C-81. This method begins from the understanding that from a young age, children and adults are raised to become 'problem solvers'. People approaching the world with many different problems to be solved means that inherently when we provide an answer to something in the world, we have decided that that is a particular problem that needs to be solved. For example, someone stating that the homeless population needs to be given jobs sees the problem of *lack of jobs* and *lack of training* as the potential reason why the homeless population exists. When put into the policy context, 'policies and policy proposals contain implicit representations of what is the 'problem' - otherwise known as problem representations (Bletsas and Beasley, 2012, p.2). One of the advantages of using the WPR approach, as described by Cairney, is that it allows the researcher to locate where the power to decide what the problem is, and the very nature of how that is a political process as it identifies how to define and address the social world (Cairney, 2019). The aim of the WPR approach is to provide us with a clear framework of guiding questions that will allow them to determine how the 'problem' is represented, and to provide a critical analysis of said problematization. This framework in turn allows the researcher to move away from an assumption that problems are something that inherently exist in nature, and also allows the interrogation of how often policy analysis is done in a way that focuses the framing of issues to the benefit of the political power holders. The questions are as follows:

1. What’s the ‘problem’ represented to be in a specific policy or policy proposal?
2. What presuppositions or assumptions underpin this representation of the ‘problem’?
3. How has this representation of the ‘problem’ come about?
4. What is left unproblematic in this problem representation? Where are the silences? Can the ‘problem’ be thought about differently?
5. What effects are produced by this representation of the ‘problem’?
6. How/where has this representation of the ‘problem’ been produced, disseminated and defended? How has it been (or could it be) questioned, disrupted and replaced?

These questions are meant to be considered as iterative, as opposed to sequential, and should be considered as a starting point to the analysis being conducted. As a framework, the fact that these questions allow for flexibility is precisely what allows this approach to be used in a variety of contexts and policy applications (Marshall, 2012, p.54).

In addition to these original questions, this work includes the consideration of one additional question that Bacchi created in 2014. Question 7, as described by Tawell and McCluskey, is the inherent need to consider the researcher’s own positionality within the context of the analysis as well - in other words, that my own views on the policy, and the self-problematization that comes with it, needs to be included, as well. I turn to the description of the ‘half-and-half’ life that Titchkosky describes in her work. I am a person with a disability, a chronic illness, but I also was a person who used to be able-bodied and did not need the access needs I now have. I used to work in providing care and access to others, and now I am in the position where I am the one who needs extra care. I am currently studying in university, but I also plan on working within the very system that enforces these types of policies on others. Existing in this nexus of half-in, half-out of the spaces I describe provides a unique avenue from which to pursue this research. To be disabled and to succeed, to take up space, challenges the systems that exist and interrupts the flow of structures that were built to keep people like myself from having a voice at the table. While I acknowledge that I do not represent all lived experiences of those with disabilities, the positionality I bring to this discussion is relevant to the analysis I put forward.

It is this final question that again places an additional emphasis on *The Accessible Canada Act.* It is not enough to examine this Act as a piece of legislation that exists in a nebulous, untouchable legal framework. Instead, this Act allows for the acknowledgement that this policy touches the lived experiences of all Canadians. It is in the way that sidewalks curve down to touch the street, in the way that the coffee shop on the corner has an automatic door press, and the way that certain pejorative words are leaving our vocabularies[12] because we recognize the impact that they can have on persons who we might not have thought of before. It is through the interventions of disability activists who have provided a way to highlight the silences and the spaces of in-between that Canadians with disabilities still continue to occupy, even when a policy is attempting to re-fold them back into the mainstream. It is within this final question that I will argue resides space to interrogate what Orsini and Wiebe describe as the “emotional landscape” of disability; referring to - an environment that includes affect and emotions, sensory experiences, the conscious and the unconscious (2014). Much of the discourse and debate surrounding Bill C-81 come from a place of emotion and of a problematization that is not free of the influence of that society’s perception of difference, despite the continued efforts to move away from the prejudicial feelings and attitudes that

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[12] Words like retard and expressions like ‘are you blind’ are slowly making their way out of common parlance due to the advocacy efforts of various disability activists.

were used to determine what types of intervention and supports that the state would provide to those with disabilities. One cannot simply divorce the Act from the emotional entanglements of seeing disabilities as medical issues to be cured, questions surrounding quality of life, and interpretations of personhood and rights. Just like the case of autism that Orsini and Wiebe discuss, the whole Accessible Canada Act exists in an environment that is "at once facilitating and constraining…" (ibid., p. 149). It is seen in the way that emotions, via personal stories and anecdotes, were used by politicians to gain full-hearted support from others. Equally, it is also the very real feelings of hope and frustrations as felt by Canadians with disabilities as well as other feelings of betrayal, senses of justice and their knowledge that they inherently deserve to be seen as more than their disablement that has led to discussions of the problematization to even occur in the first place. While not the focus of my work, one could perhaps argue that it is because of the ways in which emotions – or the effect of these emotions onto others- and disability have interacted with each other throughout the centuries that disability justice and the politics of care work have even become as big a political issue as they are now, as power circulates through feeling (Pedwell and Whitehead, 2012, 116).

Utilizing the WPR Approach is not unprecedented in analyzing Canadian policies and the discussions within the House of Commons, as can be seen in the work of Gerrits (2024) and Paterson et al. (2016). That being said, this analytical framework has not been used to analyze Canadian disability policy. This work uses the WPR Approach to conduct an analysis of a corpus of data that includes:

- Speeches and debates in both the House of Commons and the Senate of Canada throughout the legislative process in making the *Accessible Canada Act* into Law;

- Written submissions made by the disability community and allies referencing their opinions on what Bill C-81 does well and what the Bill is missing;
- Questions and answers received during the committee hearings in both the Standing Committee on Human Resources, Skills, and Social Development and the Status of Persons with Disabilities (House of Commons), and the Standing Senate Committee on Social Affairs, Science and Technology (Senate).

This corpus spans a large number of details, viewpoints, and intersections in Canadian society. What becomes apparent throughout this great corpus of data is the way in which the power relations between the state and the people it governs becomes faces within which the tensions and points of contention arise whether within the act or in the debates themselves. While I cannot determine the personal motivations or reasoning behind the specific decisions made in the creation of Bill C-81, I recognize that all research is shaped by interpretive choices. What this project examines, therefore, is not intent, but how the problematization of barriers has shaped the subject of the disabled person within modern Western societies. This is reflected in the struggles of speakers and activists to situate themselves within a discursive framing of disability that moves away from the familiar medical model and toward a more diffuse – and thus broader- understanding rooted in the concept of barrier removal.

This corpus of data also reflects the reality that those with disabilities do not have the easiest time in interacting with the political system, with the advocacy often done through disability activist groups. While these groups have had great impact upon the cause for disability inclusion, they are not unproblematic - oftentimes these groups are focused on condition-specific issues, which in its own way, continues to perpetuate the medical model of disability when interacting with the State. The data analysed allowed for a unique opportunity to delve into the minds and thoughts of individual Canadians without the need to conduct interviews, both within the political space and outside of it. While it would have been ideal to conduct interviews with key players in the creation of the ACA such as the Honorable Carla Qualtrough, it was not feasible to do so. Instead, I pay close to what some of these key players, such as Minister Qualtrough, said during their legislative appearances.

The WPR framework is not without its critics. One of the main critiques is that the WPR approach, like other forms of poststructuralist forms of political analysis, resists “truth claims” - i.e. not taking any particular piece of information as the be all and end all of information. That is why concepts such as human rights and social justice can be critiqued in post-structuralism, with the acknowledgement that there are certain concepts that in social science are taken as “for granted” truths. As Foucault describes, it is not the truth of a subject that is post-structural analysis, but rather the question of how something has come to be seen as the truth. The political target is thus not the “truth” as is seen, but rather who has the authority to make these knowledge formations legitimized (Foucault, 1972). This in turn, necessitates the examination not of the why, or the “right” or “wrong” of a subject, but rather the how.

This leads to another critique of poststructuralism, that it is inherently critical, and leads to it being “collapsed into a theoretical category that targets misrepresentation…. focusing on uncovering “truth” and challenging the “evil ones” who misrepresent it” (Bacchi, 2024). Bacchi warns against the dichotomy, specifying that poststructuralists question “all forms of knowledge”, and that is why the WPR approach is not a “finger point exercise”. It is intended to highlight how certain influences, such as institutions, shape lives in ways that can be examined through genealogies. Drawing heavily from Foucault, the WPR approach uses genealogy to trace “an unstable assemblage of faults, fissures, and heterogeneous layers” (1977, p.146), revealing how the present is connected to particular historical constructions. In the case of this thesis, it is to allow us an opportunity to examine what has come before, to see what is now, and to examine how we have taken the idea of disability and accessibility in some ways for granted, and how that has shaped the approaches taken in disability politics, and how this in turn influences policy pieces and activism approaches.

Overall, Bacchi’s WPR approach has been a useful tool in this project, one that has provided the opportunity to work in a way that runs counter to the dichotomous “they are either right or wrong” approach that many researchers can find themselves prey to in their academic career. It also provides an approachable way to interact with Foucault and his works.

Analysis

As previously stated, the analysis that is to occur in this thesis is in line with answering the questions that are described within the WPR approach. Given the scope of the Act, while I focus on one problematization, there are other sub-problematizations that could and should be examined and addressed. While it is not possible to do so within this work, the threads are ones that would make for very interesting roads to follow, particularly with the Act’s review period being not too far away. Thus, this analysis will touch on many areas that come into view throughout this legislative process, in order to set, much like the ACA itself, a foundation upon which further research can build. This will be critical when more regulations and standards come into effect that exist solely because of the problematization of barrier removal and mitigation.

Chapter 4: Analysis

Using Bacchi's WPR approach, the following chapter will use the questions that appear in her work to structure the examination of the Accessible Canada Act. The purpose is to provide as much of a fulsome overview and examination of the problem that is presented within the Accessible Canada Act as possible, while also recognizing that all these topics could be theses in their own right. Through this broad examination of the Act, the aim is to demonstrate that problem representations on their own are not inherently right or wrong, but rather to approach critically why the choice was made to approach the topic of disability in this way, and how this might inform our understanding of the shifting currents in Canadian disability policy.

Through Question 1, we will examine what the overarching problem is represented to be in the Accessible Canada Act, that it is due to barriers that Canadians with Disabilities are being 'disabled' and not included within Canadian politics and society. Question 2 will address the presuppositions and assumptions that underpin this problem representation, with an emphasis on the need for the federal government to step in and act as the lead for accessibility, that the barriers that Canadians with disabilities face are ones that can be mitigated through policy, and how this Act is underpinned by the assumption that at this time, full accessibility is impossible. The historical treatment of Canadians with disabilities, including the legacy of the medical model of disability, the onus placed on those with disabilities to be their own advocates, and the legacy policies that exist in Canada, particularly in the provinces, will be examined in Question 3.

We will then pivot to what is left silent within the Act, and how it could be framed differently in Question 4, where we will interrogate systemic ableism, the lack of timelines, and the economic and social realities of disability. Question 5 digs deeper into the effects produced when problematizing barriers as the main problem of the Accessible Canada Act, such as the continued complexification of a system with the creation of new roles and responsibilities in the federal government, the continued burden placed on persons with disabilities, and the removal of urgency with a lack of timeline. Finally, Question 6 demonstrates that this problem representation, while creating what could be considered as different dimensions of the debate, actually demonstrates progress in the disability movement in Canada by working to replace the medical model with the disability rights model, while also defending other systemic barriers that remain unchanged.

Question 1: What is the problem represented to be in the Accessible Canada Act?

When reading Bill C-81, it is understandable that many problem representations could be drawn from this Act. However, all of these problematizations fall under one main problematization: that the Accessible Canada Act frames the problem as being that the presence of barriers prevents accessibility rather than the systemic exclusion of disabled people. These barriers are, according to the *Accessible Canada Act*, “anything - including anything physical, architectural, technological or attitudinal, anything that is based on information or communications or anything that is the result of policy or a practice” (sec.2). Interestingly, the Act does not define accessibility itself, even though it is in the title. This suggests that the logical problem resolution within the purpose of the Act is simple: identify barriers, remove them, prevent new ones from occurring, and Canada becomes accessible. But as most things that involve social, economic, cultural, and physical change, it is not that simple. The Act identifies eight types of barriers that need to be addressed:

> employment; the built environment; information and communication technologies, and the sub clause c.1. of communication, other than information and communication technologies; the procurement of goods, services and facilities; the design and delivery of programs and services; transportation; areas designated under regulations made under paragraph 117(1)(b) (sec.5).

It is interesting to note the order that these areas are listed, whether intentional or not. Employment, which is placed at the top of the list of priority areas, and as will be seen later in this chapter, is a primary argument for the passing of this bill. Following in quick succession are the built environment and information and communication technologies, both areas that are, arguably, low-hanging fruit in the realm of policy and program work concerning persons with disabilities. The areas of procurement and program/service design and delivery are areas that make sense given the context of legislation and federal government work, while transportation has long been a source of tension between Canadians with disabilities and the government of Canada.[13] The areas identified by the government of Canada can be tangibly and measurably seen in terms of improvements. It will be easy enough for the Government of Canada to report on statistics related to increases in disabled employees, to cite the changes and initiatives being made in policy and programs and in making sure they are procuring accessible goods, services, and buildings. Yet what these areas leave vague are how accessibility will apply to the social and cultural changes that are necessary to ingrain these concepts in Canadian society.

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[13] Even as recently as February 5, 2024, accessibility and transportation such as airlines have been put to task by the House Committee on services for Canadians with Disabilities for failing to provide accessible services to Canadians. (Reynolds, CBC News).

This way of framing the issue of disability within Canadian politics presents an interesting shift that will be explored later in this chapter. The Act introduces a broader definition of disability at the federal level than what has been seen in previous provincial legislation. Disability is now defined to mean “any impairment, including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment - or functional limitation - whether permanent, temporary or episodic in nature, or evident or not, that, in interaction with a barrier, hinders a person’s full and equal participation in society.” This is what sets the Accessible Canada Act from disability legislation in other countries: the centering/problematization of accessibility as opposed to the disability as something that requires correction. This focus is also unique to the Canadian disability policy suite, with all previous federal and provincial legislation focused on the definition of disability itself, not on accessibility. By presenting the problem as being one of barriers to inclusion, this Act also shifts the conversation away from the term ‘disability’ towards the use of the term ‘accessibility’, which proposes a new way of examining and discussing the topic of disability. As the shift moves from disability as the marker, it will be argued that this represents a pivotal moment for Canadian disability policy where the emphasis is moving from the medical model of viewing disability towards the socio-political rights-based model that has been encouraged by national and international disability advocates. What this could also be seen as, however, is an attempt to further sanitize the discussions around disability by only providing a limited acknowledgement of bodies that do not fit the normate standards within which our society operates. In fact, the Barreau du Québec makes note of the absence of the term ‘disability’ in the title, suggesting that this omission causes the Act to “lose some of its instructional value…to target correctives and transformative measures….” (HUMA submission, 2018).

The decision to frame disability as an accessibility issue within Canadian federal politics also highlights what is perceived to be gaps within the system that the federal government is aiming to fill. For all pieces of legislation that follow, the Canadian Charter of Rights and Freedoms is what sets the bar for not discriminating against those with disabilities. However, the Charter itself does not provide a definition of disability, instead allowing for the broadest protection possible within the scope of Charter Rights. It was not until the arrival of the Canadian Human Rights Act in 1985 that a definition was provided. In Section 25 of the Act, disability is defined as “any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug”. The Human Rights Act contains remnants of the moral model of disability - the idea that those who are deserving of protection include many, even those whose disability might be due to substance use.

In addition to the rights portion of legislative advancement, as in 1988 the Disability Tax Credit (DTC) became part of the Canadian Income Tax Act, thereby providing a means for those with disabilities to reduce the income tax that may be incurred (Government of Canada, 2024a). A Canadian eligible under the DTC could be eligible to a variety of other federal programs, as well, in turn granting them additional social support. However, the DTC boasts very stringent criteria for eligibility, which are very heavily influenced by a medical model of disability.

The definition was later expanded in the Employment Equity Act where:

> Persons with disabilities means persons who have a long-term or recurring physical, mental, sensory, psychiatric or learning impairment and who (a) consider themselves to

> be disadvantaged in employment by reason of impairment, or (b) believe that an employer or potential employer is likely to consider them to be disadvantaged in employment by reason of that impairment, and includes persons whose functional limitations owing to their impairment have been accommodated in their current job or workplace (sec 3, 1995).[14]

Provincially, the definition found in the Accessibility for Ontarians with Disabilities Act (2005), is perhaps the most comprehensive, with the definition focusing on a variety of conditions that could be considered a disability on a provincial level.[15] These early definitions in Canada focused on a medical model of disability, placing an emphasis in these Acts and policies on specific conditions, be they mental or physical. This, in turn, made it difficult for those with conditions not listed to find support and recognition under the law.

Changes in attitudes away from the medical model towards a social model of disability first became noticeable on the provincial level in the Accessibility for Manitobans Act of 2013, where the definition of disability first recognized the intersection between a medical condition and the interaction of daily life. While most of the definition still focused on outlining different medical conditions, be they intellectual, cognitive, learning, communication, sensory impairments, or functional limitations (sec 2(1)), there is for the first time the acknowledgement that participation in society was what was more disabling to the individual -

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[14] The Employment Equity Act is focused on bringing an equitable and representative workforce in Canada, and is an example of how many of policies focused on improving the participation and experiences of equity seeking groups like persons with disabilities.

[15] The full definition is: "disability means, (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and, without limiting the generality of the foregoing, includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device, (b) a condition of mental impairment or a developmental disability, (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language, (d) a mental disorder, or (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997." (sec 2, 2005).

not the condition itself. This was also the first time that the focus of an act was on Accessibility, not disability.

Finally, in preparation for the eventual arrival of the Accessible Canada Act, the Nova Scotian Accessibility Act (2017, sec 3(b)) introduces for the first time in Canada the idea of barriers and episodic disability, and more firmly moved the needle in Canadian disability policy towards the social model of disability, which is later replicated in greater detail in the Accessible Canada Act.

As a whole, all of these parts that are emphasized within the Act are worthy of examination and study. Throughout the Act, the intent of the government is clear – there is an acknowledgement that what has been done in the past concerning Persons with Disabilities was unjust and unequal as some groups received more support and attention from society and the government than others. There is also an acknowledgement that the federal government can no longer prevent the expansion of support and rights of those with disabilities, nor can they ignore the pressures being placed upon them both internally and internationally. There is an awareness that the system is not doing what is required to allow the fulsome participation of Canadians with disabilities with all the rights and freedoms that non-disabled Canadians enjoy. However, as we will engage with further on in this chapter, while the problematization that this Act proposes sees the systemic issues surrounding those with disabilities, it still does little to address how the system needs to be fixed. Instead, this Act does create more complexities within an already complicated system, while also not engaging with the way that disability advocacy groups, and disabled Canadians themselves, are engaging with the issue of how Canadians with disabilities are treated.

As described by Michael J. Prince, Canadians with disabilities have often been relegated to the ‘invisible other’, the absence of those with disabilities within the society and the state, or put in another way, disabled people are still excluded from the public role and from societal structures of power through stratification (2009, p.86). Canadians with disabilities, even those who have been refolded[16] to exist within society, face struggles of not being able to access spaces, or to have full participatory abilities in society. Canadians with disabilities, and their advocates, see disability and the issues surrounding it as a lack of rights and equitable treatment within Canadian society, but they also see it in some ways in more practical terms than what is being proposed in the Accessible Canada Act. When a group of people are faced with the option to either become homeless or to receive Medical Assistance in Dying, the needs of that population are clearly not being met. That is why within the submission letters that were received during the committee process, within the letters drafted by individual disabled Canadians, requests ranged from Jim Thomas’ request for clear regulations on the *bona fide* need to have a service dog, to Shikako-Thomas, Lai and Cavanaugh discussing building capacity for services for children with disabilities to having Sarah Shephard’s need for access to a wheelchair-accessible building where they can participate in their graduation ceremony (HUMA, 2018)[17]. These submissions demonstrate a view of this problem in terms that are tangible and look upon accessibility in ways that go beyond an abstract and intangible examination of rights. These submissions also highlight the impact that being deemed an

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[16] The principle of refolding, as described by Puar, is the idea that over time, certain marginalized groups can be reframed to be included into the mainstream. This refolding can then reinforce existing normative practices within the same society. As seen in *Terrorist Assemblages: Homonationalism in Queer Times* (2017).

[17] All of these submissions can be found through the HUMA website on documents related to the hearings held for Bill C-81.

'invisible other' has on Canadians with disabilities, where the submission from John Rae reads that because they are blind they cannot even verify if their vote has been properly cast and yet the Act does not address participation in the democratic process as one of the key areas of removal of barriers within the Bill. If a disabled Canadian is not able to participate fully in the democratic process, and the Act meant to address this barrier does not specify this all-important area of democratic participation, then how are those with disabilities meant to be seen and heard? Thus, as will be felt time and time again throughout this analysis, the tension between the practical and the intangible touches upon multiple areas within this Act and is part of why making the choice to focus on barriers as the main problem for those with disabilities is more nuanced that what might be originally perceived when simply examining Bill C-81.

Question 2: What presuppositions or assumptions underpin this representation of the problem?

As the state has focused on the problem as being barriers, this type of problem representation is not as simple as described. All forms of interaction between a topic for issue and potential problematization of a particular subject area in policy comes with the understanding that some assumptions and presuppositions are not explicitly stated, but do influence how the problem is addressed and the approach taken towards the subject at hand. One of the primary points that is assumed with the creation of this Act is that barriers can be removed through policy. It is important to note that the Accessible Canada Act's longform title is *An Act to ensure a barrier-free Canada*. What this emphasizes is that barriers are the primary issue at hand. It is not the rights of disabled Canadians, the expansion of what disability means, or even the conceptualization of accessibility. Instead, the term barriers is mentioned 97 times within the Accessible Canada Act, while 'accessible' is mentioned only 67 times – most of which are mentions of the ACA as the title, rather than the concept of what ‘accessible’ or ‘accessibility’ means. One can argue that it is easier to conceptualize a barrier than to explain the abstract concept of accessibility. By turning to barriers as the problem, it also allows for a more intersectional approach to accessibility, as barriers can be seen as economic, social, physical, and emotional, and are not automatically associated with the disability movement. Accessibility, on the other hand, has a very strong connotation of being a disability-centric buzz word, meaning that other intersections may not be considered as quickly. Additionally, as is described by many Black and racialized thinkers such as Leah-Lakshmi Piepzna-Samarasinha, Puar, and Moya Bailey, the idea of accessibility for BIPOC folks is hard to come to when “Black people cannot afford to be disabled when they are required to be phantasmically abled in a white supremacist society” (Bailey and Mobley, 2019, p.22). Barriers, on the other hand, may provide the opportunity that the federal government needs to continue to dismantle harmful systems.

An intersectional approach to the topic of disability builds on Audre Lorde’s assertion that "there is no such thing as a single-issue struggle because we do not live single-issue lives." (1984, p.138), by applying this insight to the specific contexts of race, gender, and disability. The federal government of Canada has also made many strides towards acknowledging that intersectionality is an important lens through which to examine and create policy, even creating its own framework called Gender Based Analysis+. As Moya Bailey and Izetta Autumn Mobley describe in their Black Feminist Disability Framework, there is a need for more nuanced and intersectional work in the areas of race, gender, and disability, where historical treatment of Black people based on their race and the structures built to keep them out of society has been disabling in ways familiar to those with disabilities (Bailey and Mobley, 2019). In Canada, the historical treatment of Indigenous People, while not being the topic of this analysis, is similarly true, with Indigenous Peoples being disproportionately disabled through a variety of different means. Their bodies are deemed as other, as not fitting within the conventional heterosexual cisgendered white male frame have and continue to be, in many ways, disabled and barred from full participation in society even to this day. By focusing on the removal of barriers, the state acknowledges that something is keeping certain groups relegated to the fringes of society, while allowing others to benefit fully from what there is to offer. These barriers, importantly, are not just ones that are physically in front of you, such as a fallen tree blocking a path, but also includes attitudinal, which means there is an understanding that there continue to exist expectations and assumptions being made by everyday Canadians that limit people as much as any tree in the road would.

By asserting that the way to promote the full engagement of those with disabilities and others dealing with barriers to their participation in society is by working towards a barrier-free Canada, the federal government presupposes that they have a role to play within making this goal into a reality. As mentioned earlier, most policies that are related to the lives of disabled people are dealt with provincially. This includes policies around education, healthcare, benefits, support workers, housing, and the like. The federal government's interventions up until this point in time have been focused on the enforcement of the Charter as well as the Employment Equity Act and through programs such as the Canadian Disability Tax Credit, and the Registered Disabilities Savings Plan. Yet despite being a signatory to the UNCRPD since 2007 and ratifying it in 2010, it took almost nine years to draft an act related to those with disabilities into a law.

This is not to say that activists were not calling upon Canada to enact some other forms of protections for those with disabilities; it is difficult to pinpoint what propelled the federal government to finally take action and bring the Accessible Canada Act into being.

This recognition of responsibility highlights the disparities that exist between provinces and territories where different laws and policies were not guided by an overarching framework, making it possible for a disabled person to potentially be treated differently from one area of Canada to the next. What this also highlights is the shift from seeing disability as either a question concerning welfare or a question concerning healthcare into one where this group has gained a status equal to other equity-seeking groups within the country. This places disability in Canada in a category that is not othered by physical differences within the body, but rather an acknowledgement that the othering occurs due to a system that was not built to encourage the participation of certain members at the fringes of society. This also places greater responsibility on the state to ensure that atrocities, like those that had occurred in asylums or in forcible sterilizations in the 20th century, never happen again. While provinces are not obligated to adopt federal disability or human rights laws exactly as they are written, they nonetheless provide a space that encourages dialogue and the hope of a unified approach to the treatment of disabled persons in Canadian society.

One thought that has guided this work, as many throughout my academic career, is that words and word choice matters. The words chosen to write legislation can drastically impact those whose lives are affected by what the piece of legislation has made official within the political and social context. This is part of the reason that the terms of disabled Canadians and Canadians with disabilities are used interchangeably within this paper - it is an acknowledgement that for some groups, they identify with a disability-first identity, while others prefer to see the person before the disability. While most pieces of legislation found nationally and globally have settled on the convention of person-first language, this does not truly flesh out the nuances that claiming the identity of disabled does to a person. Like many other pieces of policy before it, globally or domestically, there is a presupposition that exists by even interrogating disability - that there exists an abled with which one measures all those who are disabled against. This entity, labelled as the normative citizen, a term coined by Margaret Thorton: “The normative citizen represents the standard against whom all others are measured and is invariably white, heterosexual, able-bodied, politically conservative, and middle class”(1996, p.2) This person finds themselves in the middle of society; they are able to fully experience what is promised by the state because the system was built to uplift and support them in doing so. Yet this normate man only can exist if they can be compared to those who do not fit this description.

Because of this normative citizen, and the effects of neoliberalism and capitalism, there exists a presupposition to the ACA of compulsory able-bodiedness, which can be seen in the almost frantic obsession that Western culture has with youth and longevity[18]. Yet as many disability scholars will point out, if one lives long enough, the chances of us inhabiting a disabled body and the corresponding identity, in whichever form that is seen, is inevitable. This paradoxical way of thinking is inherently antithetical to a society where the worth of a person is tied up in their worth as both a worker and a consumer. One might assume that because of the

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[18] To this, I would suggest the dissertation written by Kelly Fritsch, on the neoliberal biopolitics of disability. (2015).

need to maintain compulsory able-bodiedness, more attention would be placed on providing as many supports as possible to those with disabilities. However, that would require the acknowledgement that we may all at one point face the reality of inhabiting a disabled body/mind. This work will not aim to delve into the complexities that is the tension that exists between the abled and the disabled and the reticence that most persons have with confronting this spectre of their own mortality, but it does shape how the disabled body/mind is treated in all aspects of life.

The Accessible Canada Act names employment as the number one priority area where barriers need to be removed and mitigated. As described by Minister Carla Qualtrough, by integrating people with disabilities in the economy, the expected growth is statistically significant. By expanding the term ‘disability’, as well as ‘barriers’ and ‘accessibility’, dominant ideas of who counts as a ‘productive’ or ‘normative’ citizen are unsettled by the perceived economic utility of disabled body/minds. As discussed by Mitchell and Snyder in *The Biopolitics of Disability,* what emerges is a concept called ableliberalism, which is not to be confused with ablenationalism, is seen “as the contradictory premise that support for disability assists corporate and governmental interests, but not necessarily disabled people themselves… Neoliberal disability couches its rhetoric of assistance in terms that mask the institutional interest it serves” (2015, p.36). Put differently, while the intent of the Accessible Canada Act may be, on a surface level, coming from a place that supports the rights of disabled Canadians, the Act also perpetuates a system predicated on the need for a productive workforce. While the ACA proposes to remove barriers that have kept the marked bodies out of the economy and other areas of life that are vital for full citizenship, it also perpetuates a system that was built to keep those marked bodies out of the mainstream. This can be seen even in the proposed creation of more departments to support the application of the ACA, which further complexifies a system that forces equity seeking groups to be the bringers of change - as opposed to the state doing so themselves. It can also be seen in the perpetuation of disability as a negative ontology, as something that is inherently always and will be seen as opposing the abled, and therefore something to be avoided, unthought[19].

This avoidance leads to perhaps the hardest presupposition to grapple with when it comes to this problem representation. Barriers, as many things in life, are rapidly changing and evolving in the world in which we live. By consequence, while there are many ways in which the lives of disabled Canadians are being improved, new barriers to accessing the Canadian social sphere are also being created along with the solutions. That is why the Accessible Canada Act leans on the briefly touched upon, but not often verbalized presupposition that Canada will *never* be fully accessible. While on a moral level, most if not all Canadians would agree that giving disabled people the ability to fully participate in Canadian society is the right thing to do, the unspoken truth is that barriers will always exist. This is why, even when the Bill was introduced and discussed, the mention of the ACA having a deadline by which Canada would be accessible was met with resistance and the explanation that it would be more beneficial to not include a timeline. The argument in favour of not putting a timeline was that many entities would wait until the last minute in order to begin practices that needed to be implemented from the moment the Bill received Royal Assent.

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[19] Fiona Kumari Campbell's chapter in *Foucault and the Government of Disability* interrogates further the problem of disability and policy through the tension that exists between abled and disabled subjects, particularly when trying to legislate for those who exist outside of the benchmark man. (2015, p.-108-132)

Once Bill C-81 passed through its first and second readings at the House of Commons, it was referred to the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) to go through the required review. During this committee meeting, ministers, academics, business leaders and individuals were invited to speak and to answer questions on ways that the Bill could be strengthened before being sent back to the House for its third reading. During the first committee meeting, the Honorable Carla Qualtrough was invited to present the Bill to the committee. During this appearance at HUMA meeting 112, the Minister was asked by fellow Liberal Member of Parliament (MP) Robert Morrissey why timelines were not included. In response, Minister Qualtrough said the following:

> There are two aspects to the conversation around timeline. There's setting a date in this bill by which accessibility will be achieved. Then there's also setting timelines within the standards themselves. Some jurisdictions go for rolling timelines…It is very difficult to predict how long it will take to establish a standard and very, I would say, risky to suggest that we know exactly when accessibility will be achieved given that the standards are always going to be changing. What is accessible today will not be accepted as a standard five years from now, or 10 years from now… We also want people to get moving on this now. We don't want to say that we are going to have an accessible Canada by 2025 or 2030, and then people sit back and say, “Okay, I have time.” We need to do this now. It's like giving people a reason to wait instead of requiring people to do something now… I also personally believe that we would not put in the Criminal Code that Canada is going to be crime-free by a certain date[20]. We wouldn't put in the Human Rights Act that Canada is going to be discrimination-free by a certain date. We need it now. The bill has to say people deserve a barrier-free Canada today, and this [sic] are all the steps we need to take to get there. We know it isn't going to happen today, but to set a timeline at the other end just seems antithetical to what we are asking federally regulated entities to do (HUMA Meeting 112, 2018).

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[20] It is an interesting choice to bring the Criminal Code into a discussion around disability given the perpetuation of ableism and disability by the criminal justice system and its institutions. For more on this, see Fritsch, K., Monaghan, J., & van der Meulen, E. (2022). *Disability Injustice: Confronting Criminalization in Canada*.

There are a number of elements to analyze from this one citation alone, and it is one that has resurfaced in my thoughts time and again while writing this chapter. First is the issue of how often persons with disabilities are asked to wait. They are asked to wait to see specialists. They are asked to wait to gain benefits. They are asked to wait to gain access to public spaces. They have been asked to wait to gain rights. They have been asked to wait. Time and again, when advocates on disability have spoken, they have been told, and it has been made clear, that their needs are not the priority. And when they do finally receive those rights that they have been looking for, oftentimes it is only given to specific groups which are deemed 'easier' to accommodate than others. This means that for those whose lives are more complicated, more marked by disability, they are continuously placed at the back of the metaphorical line for social inclusion. This can be seen even in the public consultations on the Accessibility Act, where an anonymous participant from Whitehorse specified that "this consultation is the first time in more than 20 years that I was able to use my language of choice, LSQ, to communicate with my government" (2017, p.9). As Prince describes in his work (2009, p.65), this has led many to consider themselves as second-class citizens, where their political and social worth is seen as less valuable and thus easier to exclude from state priorities.

This discontent with being made to wait is evidenced by the number of persons who came out during public consultations for Bill C-81, part of the submissions to HUMA and SSCAST committees and in the remarks made by Minister Qualtrough that one of the main takeaways was that Canadians with disabilities were tired of waiting. To quote one anonymous submission, "Any (meaningful) Canadian disability law requires ***<u>immediate</u>*** enactment, with enforcement by the government" (emphasis and brackets from source, HUMA, 2018). Yet at the same time, the lack of inclusion of a timeline within the Accessible Canada Act assumes that despite the evidence that disabled Canadians are tired of waiting, they would be content with a lack of assurances to when they could feasibly begin to see change. There is a logic within the comparison of the Accessible Canada Act to the Criminal Code and the Human Rights Act that can only make sense if the Bill was written with the assumption that full accessibility was unattainable. This assumption also, in some ways, takes pressure off the state to deliver on the expectations outlined in this Act, for all of the checks and balances that the Minister mentions are at levels that are lower than the legislation itself.

Most people do not think about policies and regulations on a daily basis. A piece of legislation that commits to an action by a certain date is seen as a more serious commitment than whatever policies might be coming out of individual departments and agencies. Conversely, it should be mentioned that most true work, in regards to change, does in fact occur on a policy and regulatory level as those tend to move much faster through the system to be placed into action as opposed to a piece of legislation, which can take years to pass and often requires great effort to amend to reflect current realities that may not have been present or foreseen at the time. Despite this, given the way that legislation is often used as a political tool, and the higher coverage that they receive within the media, that is why there is more of a push towards seeing palpable promises made within legislation as opposed to regulation.

The same can be said for the Accessible Canada Act, where the decision not to include a timeline became one of the most contentious points of the Act during and after going through the legislative process. As will be discussed later, the state's lack of emphasis on a timeline was challenged, and successfully so, and highlighted an additional presupposition that often goes unnoticed for those not inhabiting a disabled body/mind. Disabled body/minds are expected to operate and abide by a linear timeline, and thus have become adept at using timelines as a tool to keep governments in check. But as Michael Huck presents in his HUMA submission, "fighting dragons" through bureaucratic complaints processes also takes time - five years in his case (2018). Without a concrete timeline, there is no way to measure the 'progressive realization' that the government proposes as the way to implement the ACA. The state also creates an opportunity to shield itself from critique by removing one of the primary ways by which the disability community holds the state to its promises.

While these presuppositions may seem at first to not link back to the problematization of disability as a need to remove barriers, what ties them together is the ways in which those with disabilities have been historically and systematically excluded from Canadian society. It is through these historical events that have shaped attitudes and understandings of how and where disabled persons are allowed to be included and consulted within the confines of their disablement. Without the presupposition that there is a difference between an abled and disabled body, and how they interact with the world around them, there would be no need to consider barriers. Without the assumption that there has been and needs to be a shift in who is responsible for the normalization of persons with disabilities and the gaps that currently exist in the system, the federal government would not feel the necessity to create an Act that requires the removal of barriers on a federal scale. Finally, if not for the presupposition that Canada will never be fully accessible due to an ever-changing world, as well as the understanding that certain attitudes may never change, not only would we maybe have seen a deadline in the original version of the Accessible Canada Act, but also we may have seen the usage of a different term other than ‘barriers’. It can be argued that some of these presuppositions would remain, even if the Act was seen from a different lens, as most of these presuppositions are rooted in the historical tensions that exist between the abled and the disabled dichotomy. The problematization of barriers provides the state an opportunity to acknowledge its responsibility for the systemic barriers that exist for disabled people. In some ways, the creation of the ACA is an acknowledgement that the system has been found lacking, which is why there is an urge in “integrating accessibility into existing systems” (Minister Qualtrough, 2019, Senate Sitting 264). Is this a full acknowledgement? One can argue, no, given the silences that will be discussed later on, but it does serve as the first step in the “progressive realization” of change as is described within the Act. Whether these changes will lead to any noticeable changes within the system is difficult to tell.

Question 4: What is left unsaid in this problem representation? Where are the silences? Can the problem be thought about differently?

While much of the analysis of the Accessible Canada Act and its creation throughout the legislative process has focused on what is written and verbalised, as can be seen during HUMA meeting 124, where the committee discussed amendments to Bill C-81 (2018), what is perhaps more interesting is what is left unspoken and unwritten within the context of this problematization. This space that exists between the spoken and unspoken, the problematized and the unproblematized, is, in many ways, a space that is all too familiar for the disabled who understand this as the lived reality of their position in the world. It is within this space in-between where many do not want to venture and those who find themselves within must contend with an embodied existence that both allows for and denies the reality of the disabled bodymind. Such is the case with the silences that are found in the Accessible Canada Act and the discourse surrounding it. While much of what is verbalised and claimed portrays a positive and hopeful space that those with disabilities are welcomed to occupy, the reality of what is left unacknowledged and what needs to be read between the lines presents a more complex picture of what it is like to live in the space in-between.

In this section, I will pay attention to what is left unacknowledged or de-emphasized in the Canadian policy space, and how this creates barriers that would potentially be resolved if the problem was looked at in another way. I will also suggest that these silencing acts to constrain discussions of disability in a limited space that keeps those with disabilities in the space in-between. The use of the *space in-between* is not a new concept within the discourse surrounding disability; authors such as Titchkosky describe disability as a “half and half experience” where those with disabilities orient themselves between the what is and the what ought to be, and being “neither fully determined nor undetermined by culture”; an identity born out of the crisis of belonging and to bridge the gap of the ought and the is (2011. p.24). Thus, for the purposes of this analysis, we will consider the space in-between what the ACA explicitly promises against where the implicit lines are drawn. The unsaid parts of the Accessible Canada Act that will be examined delve into the theoretical and attitudinal, and provide an opportunity for us to examine how accessibility can be reframed in a way that does not rely on the current ‘ought to be’ perception of disability, but instead showcases the reality in which disabled Canadians find themselves.

It is much easier to place tangible concerns into a problem question and find a resolution at the same time. It is understandably more difficult to fully encompass and address all that is felt, required, and needed by Canadians who live with disabilities when many of their concerns are met with an inherent ableism that is not always consciously recognized. When one is confronted with a concept such as racism, homophobia, and sexism, for example, there is a level of discomfort and coming to terms that society is still working through. While ableism can elicit similar feelings due to its juxtaposition with how we perceive ablebodiedness, as well as the aforementioned normate person, the ubiquity of disability creates a situation where inequality for those with disabilities almost seems to be a foregone conclusion. Yet as is pointed out in the growing body of disability justice work, this does not mean that the fight for the inclusion of those with disabilities is not worth continuing.

The hardest concept that needs to be wrestled with in any policy work focused on equity and social justice is to acknowledge that the system that has been built over the course of centuries is one that does not easily allow for change that will grant new benefits to those who were not originally considered when the system was made. While a system is inherently not capable of making decisions, the work of governments and those who hold power within a state can and have continued to perpetuate systemic inequalities that advantage certain groups over others. Those who were tasked with creating the ACA may have done so with the best of intentions. But without acknowledging and actively working to change a broken system, progress will be hindered - good intentions or not. It is true that, within presentations and committee appearances, members of the government acknowledged that the Bill was introduced to acknowledge that “it is our system that we are acknowledging as broken, not the people.” (Minister Qualtrough, HoC, sitting 355). At face-value, this seems like a proper acknowledgement of how disabled Canadians have been treated, and how the government is taking the responsibility to ensure that there is systemic and meaningful change across the priority areas described earlier. Yet when this is interrogated more closely, the contradictions are fairly easy to spot – if one knows where to look.

As someone interested in studying policy, some of the first key words that I search for when examining a policy piece is the use of the words ‘may’, ‘should’, and ‘must’. This is because these words, particularly when used in a legislative context, provide the legal boundaries wherein those affected by the legislation must stay within. If, for example, the law says one must not do something, then one can be held legally responsible if one does not do the thing. Equally, if an entity is told that they should do something, within the context of legislation, that means a failure to comply will result in reprisals. May comes into play as well, but this is where the language becomes softer. May implies a choice – an option to comply, or not. May provides wiggle room, and a chance to occupy a space where even if other parts of the law state a must or should requirement, there is a spot where there is flexibility. This is why within government documents and work, the usage of ‘may’ and ‘should’ have been heavily standardized to maintain the level of formality and legal obligation that the use of the word ‘should’ places upon the user of a guidance or reference document.

So what terms are used in the Accessible Canada Act? The short answer is that both ‘must’ and ‘may’ appear within the Act. Throughout the four versions of the Act - 1st-3rd reading and the version that received Royal Assent - all of these words, as well as the more antiquated usage of the word ‘shall’ appear in various quantities and in a variety of spots. In fact, there are almost twice as many ‘must’s as there are ‘may’s within it, particularly when discussing principles, duties of various new roles that have been created, and concerning accessibility plans and the actions of agencies. Yet, it is where the ‘may’s’ appear that presents a space in-between that I would like to draw attention to. To put this discussion into perspective, the ARCH *Final Report: Legal Analysis of Bill C-81: An Act to ensure a barrier-free Canada* (2018) provides a detailed breakdown of the bill as it was when it was first introduced during the first reading in the House of Commons. The Report goes through every single section of the Act, providing constructive feedback from a group of disability rights lawyers from across Canada, on behalf of the Council of Canadians with Disabilities, to the Government of Canada. Using this report and the later versions of the bill, as well as the formal version that received Royal Assent, it provides a way of considering which of these words were changed, added or kept, even with the sound legal advice from one of the country’s top disability law centers. What makes using this report an even more valuable tool is the amount of credibility and emphasis that other disability advocacy groups put behind this analysis, some going as far as to forgo conducting their own analysis in favor of providing a statement of agreement to the parliamentary committees that what was written in the ARCH report reflected the concerns and pressure points that more than one disability group could see themselves in.

Let us first agree that the review conducted by members of the Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities (HUMA) addressed quite a few of the comments that were included in the ARCH report. This included taking certain ‘mays’ and changing them to ‘musts’, such as can be seen in sections 43, 48, 52 and 57, to name a few. On the other hand, many more sections where the ARCH report recommended stronger language were not changed. Some of this could be attributed to an acknowledged convention used in legislative drafting where a minister ‘may’ do something within their powers, implying not so much the choice of using these powers or not, but rather that this would fall within the minister's purview and that does not therefore indicate that they would never use the granted abilities (Department of Justice Canada, 2022). However, it is the places where this may crop up, namely in the section surrounding enforcement mechanisms, that highlight the weaknesses of the language choice found in the bill. For example, in section 95, which deals with the power to conduct investigation, the bill states "the Accessibility Commissioner *may* [italics added for emphasis] conduct an investigation into a complaint filed under subsection 94(1) unless it appears to him or her that...". Logically, one would think that in the event of a complaint filing that is deemed in accordance with other provisions laid out in Bill C-81, the Accessibility Commissioner would conduct an investigation. As the ARCH report points out, the use of the word may weaken the ability to enforce the act, namely by creating an option where the Accessibility Commissioner could choose to do a less fulsome investigation or even review of any potential complaints that are brought forward. Yet as is also pointed out within this report, this is not even the most legally troublesome point within the Act, which is found in section 117. This section deals with regulations and specifically the ability of the Governor in Council to take the standards that will be established and created by Accessible Standards Canada (ASC, or as it's called in the Act, CASDO) to become regulations within the Canadian political system. In policy work there is a hierarchy of how much power a policy instrument has with laws being the most powerful and guidance documents some of the least. Regulations fall closer towards the law and policy side of the spectrum with regulations holding greater weight than simply standards. That is why within Bill C-81 s.117 exists to allow the standards that the ASC creates to gain more weight by formalizing them as a regulatory instrument. Yet again, the use of the word ‘may’ is very telling considering that the strength of the ACA rests specifically on this section. Without these regulations many of the purported goals are not as easily achievable, thereby creating a potential weakness that could be taken advantage of should decisions move away from working towards a more accessible Canada. The ARCH report specifies this even further by stating “Without a requirement to make accessibility standards into regulations, there is no assurance that the government will do so and therefore no assurances that regulated entities will be required to comply” (2018, p.34). There is a lot of faith placed on the government, and by consequence the state, to use their power in a way that is just. Much of this rests on complying with the systems of checks and balances, as well as the laws that exist to hold governments to account. Yet if the silences, which exist in many ways like legal loopholes, are not addressed/acknowledged, then this ultimately weakens the problem-solving that this problem representation raises.

Another interesting point raised in the ARCH report is their proposed expansion of the definition of barrier. While the report fundamentally agrees with what is proposed in Bill C-81, they do highlight one key area within which the Bill is silent - the barriers that exist within the law. It is no secret that those with disabilities have a harder time accessing the legal system, or even understanding the finer nuances of the Canadian legal system. The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) tasks signatory States to “take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities” (4(b)). The fact that Canada is a signatory of the Convention and recognizes itself as such in the preamble of the Accessible Canada Act would obligate the work to be done by Canada to become barrier free would include the need to change or abolish legislative instruments as appropriate. Yet the ACA and the problem representation are silent on the topic of the way these older legislative pieces can pose a barrier to those with disabilities. Legislation and the law are not listed within the priority areas, nor are they discussed/acknowledged within discussions surrounding Bill C-81. The only time that the legislative system is at all brought up is in one tension point where the problem representation of barriers not including the legal system can be examined more closely.

Throughout the engagement process, disability activist groups came out with the concern about how the Accessible Canada Act would add more layers to an already complex system. At a very basic level, as witness Kory Earle says in his testimony before committee at HUMA meeting 115, even having the Act written in something other than plain language already presents a barrier, stating that “most documents about the Act that are in plain language were either requested by or produced by People First of Canada” demonstrating how their concern of “further documents around the act…not be[ing] accessible to people with intellectual disabilities” being a very valid concern (2018). He also adds that the creation of a complaints system where different organizations get to create their own standards that are not enforced by one central body creates confusion. As someone representing persons with intellectual disabilities, still referred to as “the left behind of the left behind”, this echoes loudly in the silence of our given problem representation. For if those who find themselves in the most precarious positions of those already in precarity, are concerned with the creation of greater inaccessibility with something that is meant to do the opposite, what does that say about the system?

It is interesting to note that the government recognized during the Standing Senate Committee on Social Affairs, Science and Technology (SSCAST) that the system is complicated, even going so far as to say that if they could have started with a 'blank sheet of paper' to redesign the system, the system might not have looked the way it currently does (Minister Qualtrough, Meeting 131, 2019). Yet despite this and the acknowledgement that what was heard during consultations concerning the regulators mentioned in the ACA, the decision was still made to "beef up" their powers in dealing with complaints around barriers. This leaves a silence, or a lack of recognition of the concerns the community already had about the regulators, and the system was not in any way simplified, even as the government continued to promote the 'no wrong-door approach' as the best solution to the barriers within the system. Highlighted as removing the burden from those with disabilities and shifting it onto the system, the government claimed that complaints could be directed to the right space in order to be addressed, regardless of where it enters into the system. But as rightly pointed out by activists, if the complaint were to get lost in the system, how would the complainant know where to begin with finding out where their complaint went? This is not to mention the already problematic nature of a highly bureaucratic system that forces disabled body/minds to conform to a particular type of subjectivity (Titchkosky, 2011, p.9). Here the silence highlights a patronizing form of governance of disabled people. A gentle pat on the head by those in power seeks to remind this group not to worry, those who are more able-bodied than you have come up with this decision and it is 'best' for you. While there is a certain element of handholding present in all pieces of legislation, regardless of who the legislation covers, the emotional sting is perhaps even more acute due to the already depersonalized nature of how most disabled bodies interact with the state.

This leads to the final silence that will be probed, which is the idea that time can be frustratingly ableist. Not time in the abstract, but rather the dominant Western construction of time – linear, rigid, and deeply tied to productivity and output. This socially enforced understanding of time is confronted by disabled individuals whose body/minds and lives do not conform to expectations around speed, punctuality, presenteeism, or milestone attainment. This places certain bodies at an inherent disadvantage over others as, due to a variety of intersecting circumstances, it may not be possible for that individual body to achieve or attain or maintain certain milestones within a so-called prerequisite timeframe. This then creates unnecessary pressure and in turn barriers to an individual feeling like they have achieved something within the scope of their life. This also entrenches a capitalist mindset into the value we place on bodies – with some being deemed as less valuable simply for the fact that they are not as efficient, or do not have the same capacity to produce as other bodies can. This results in societies placing unreasonable standards on what a body is capable of being and of doing.

However, this is not an examination of whether we should have such milestones, or have something to compare ourselves to. Within the context of the Accessible Canada Act, it is the very real tension point that including a timeline (or not) resulted in the Act needing to be amended within months of it becoming law. To be clear, up to and including Royal Assent, the government chose not to include a timeline for when Canada would become ‘barrier-free’. The arguments that were presented varied, but one of the most striking was when Minister Qualtrough stated at HUMA Meeting 112, as seen earlier, “we would not put in the Criminal

Code that Canada is going to be crime-free by a certain date. We wouldn't put in the Human Rights Act that Canada is going to be discrimination-free by a certain date" (2018). To be clear, it is possible that Minister Qualtrough spoke to this subject because she wanted to highlight that the work needs to happen now, irrespective of a timeline. The context of this statement might explain why the Minister made it, but nevertheless the fact that this argument was made at all highlights the chrononormative work at play. On the one hand, many organizations such as the Accessibility for Ontarians with Disabilities Alliance (AODAA) bring up the very obvious point of "...this federal bill does not set a deadline for Canada to become accessible to people with disabilities. Under it, Canada may not become accessible to people with disabilities for hundreds of years, if ever" (HUMA submission, 2018). Meanwhile, the examples brought forth by the government demonstrated organizations who were either already in the process of working on barrier-free solutions, or were ready to implement them as soon as the law came into force. On the other, the elusive specter of last-minute compliance was placed as the main barrier towards the inclusion of timelines into the Act. This tension point creates a place of half-in and half-out for disabled Canadians, where they are both being asked to maintain their complaints and requests to chrononormative standards, while also being asked to let those same chrononormative timelines go as accessibility may never be fully achieved, regardless of the ambition of the legislation. This tension highlights a new potential barrier, especially in a system that only recognizes one system of time as legitimate for purposes such as funding, programs, and other supportive measures.

This lack of inclusion of timelines, despite the very clear calls from the disabled community as to the importance of why they were required, emphasizes a silence that we will interrogate here - the idea that full accessibility is difficult to achieve. In a different set of circumstances, perhaps such a critique of chrononormative time would be welcome as it would acknowledge other ways of being and of perceiving time. It is easy enough to make this as an argument, similarly to how justice or rights are not fully possible to achieve because of a complex web of connected and disparate requirements that are not humanly possible to achieve. However, it is one thing to acknowledge this within a theoretical paper, and quite another to make it into a policy issue. While it is true that this action could be a demonstration on the part of the government to critique normative time by attempting to move away from timelines, rights-based movements rely too heavily on the use of timelines as a check on the system to not see this as anything other than a method to avoid realization of a barrier-free Canada. By actively choosing not to include a timeline, the signal to those who would benefit from the act could not have been more clear - we do not find this issue worthy enough to even attempt to strive for this eventual ideal. The very tools that society runs on, the timelines that exist within chrononormative society will be removed from the disability community, and thus make it even more of a challenge for those who live in the half-in, half-out to move the pendulum more firmly in the direction of these ideals.

The silences produced by the Accessible Canada Act show us as policy analysts two things. They highlight where there are areas of possible improvement, through regulatory or programming changes, and the possible areas that may be brought up as pain points during the Act's review periods. What the silences also highlight is, as discussed earlier, the 'normal accessibility' and the 'other accessibility' tension. Where silences are produced, so too are the limits, whether self-imposed or not, that the government will not move beyond to produce a policy piece. What is thus produced is a disconnect between the ‘other accessibility’ that is expected by disabled Canadians and their advocates, and the ‘other accessibility’ that the government is willing to consider. This is further enforced and produced, but also disrupted, in ways that we will now discuss.

Questions 5-6 What are the effects? How is the problematization produced and defended? How is it disrupted?

Questions 5 and 6 in Bacchi’s work are ones that we have seen echoed within the questions written above, and so we will only touch upon them briefly. Question 5 asks the researcher to reflect upon what effects that the problematization creates, while Question 6 asks how the problematization is both produced and defended, while also taking the opportunity to examine where the problematization is being disrupted. To that end, this section will examine the “subject”, “object” and “place” that the problematization has created, and how this is both being produced and disrupted. Keeping in mind that some of these ideas have been discussed earlier in the analysis, this will be the briefest portion of the work.

As described earlier, the government, through the problematization of disability as the need to remove barriers, has begun to shift the disabled subject from one who is disabled, so less focused on the able/disabled dichotomy that has existed for centuries, and is replacing it with a more homogenous grouping of the accessibility-seeking subject. This represents a definite shift in the discourse, and the potential ramifications are both positive while also creating new marginalizations. While on the one hand, broadening the inclusion of more subjects under one banner is positive, as it provides for greater coverage under the law, it does create barriers in a few different ways. One, by sidelining disability, it continues to treat disability through a negative ontology, a way of being with which people do not want to be associated. Therefore, for those who *do* identify with the label, it suddenly makes it even harder to claim the space that they have fought for. Secondly, the accessibility-seeking subject therefore requires a rethink of the systems and ways through which governments and activists alike navigate questions concerning the needs of those with disabilities. While accessibility is to be seen in a positive light, the term is used in a variety of ways to signify a lot of different situations that are not inherently tied to the disabled body/mind. Thus, the accessibility-seeking subject finds themselves in a new half-in, half-out space, where they are both disabled and looking for equity, while also being refolded into society through homogeneous approaches to making everything barrier-free. This in turn places those who are not brought back into the norm further into the margins, and can lead to potential further oppressiveness from those who were once also found on the margins.

Here we will turn to Puar and the concept of homonormativity, which describes how "once-marginalized members of deviant communities [are often] most capable of, or willing to further fetishize, the norms of dominant communities as a bulwark of their own social integration" (as quoted in Mitchell and Snyder, 2015, p.43). This is a critique that focuses specifically upon civil rights based movements, and how they "fail significantly to challenge the majoritarian lifestyles that create and perpetuate inequality" (ibd). Thus, while the movements may be working towards bringing around more rights, the reality is that they are not really shifting the needle in any way that was not already expected and therefore accepted by the neoliberal ablenationalist state. Indeed, that is how the disabled subject is now becoming the accessibility-seeking subject, because it is morphing along the rules that governments have set out, and activist groups have, in some way or form, agreed upon.

This leads to the next point, which is the creation of the object of ‘barriers’. It is around this ‘object’ that the problematization revolves around, and it is through the interaction between this ‘object’ and the accessibility-seeking subject that the ‘space’ those with disabilities occupy is now being redefined. By shifting the discourse from the body being that which poses a challenge to those with disabilities (i.e. the old object), to barriers that surround those with disabilities (i.e. the new object), political actors have attempted to shift the conversation in a way that encourages two ideas. Firstly, that barriers are something that can be identified, mitigated, removed, and prevented, and secondly, that barriers are what have been causing people with disabilities to be treated differently this whole time. While historical precedent would argue differently, what is missing from this creation of barriers is the nuances of concepts such as intersectionality. The barriers that are listed within the ACA come from a neoliberal perspective of productivity, accommodation, and the reality that there is a large market of untapped consumers and further labour market opportunities for certain professions who will benefit from the need of barrier-removal. The barriers that the government focuses on do not address areas that are equally as embodied as disability, such as barriers that are faced by BIPOC or LGBTQ2A+ persons, or less visible intersections such as classism. It is not enough for a government to focus on single issues as the objects of problematizations, as we now live in a society that is aware of how different life circumstances can affect the way we interact with any ‘object’. The barriers that I, a heteronormative, cis-gendered, white disabled woman face differ from those of a BIPOC disabled trans woman. Thus, attempting to segregate the barriers to be ones solely focused on disabilities while also broadening the accessibility-seeking subject does not adequately address the problematization, nor the needs of the Canadian population.

Here I will lean upon the work of Leah Lakshmi Piepzna-Samarasinha, whose writings have made me laugh, cry, feel, and motivated me in many ways. In *Care Work: Dreaming Disability Justice,* the author disrupts the thinking of barriers as a way to problematize accessibility. You see, barriers inherently continue to carry a negative connotation, which is accurate to the degree that a barrier is a negative thing. But when coupled with accessibility, it creates a situation where access became and to some degree still is a "service begrudgingly offered to disabled people by non-disabled people who feel grumpy about it" (2018, p.ii). Instead, as Piepzna-Samarasinha argues, accessibility can and should be seen as "a collective joy and offering we give each other" (ibid.). Thus, this requires people to think of ways to do this work in spite of the systemic oppression, as opposed to through the system.

This is where disability justice comes into play. Disability justice is as described by Patty Berne of Sins Invalid, a movement and framework that "understands that all bodies are unique and essential, that all bodies have strengths and needs that must be met." This movement is born out of collective struggle that centres "sick and disabled people of colour, queer and trans folks of colour, and everyone who is marginalized in mainstream disability organizing" (as quoted in *Care Work,* p.v). Disability justice also asserts that ableism helps make "racism, Christian supremacy, sexism, and queer and transphobia possible" and that these systems of oppression are all interlinked. In what would be seen as radical to most political theorists, disability justice problematizes not the barriers, but the State itself, with the view of the State as both object and space is built upon racist, colonialist ableism that “will not save us, because it was created to kill us” (ibid., p.vi).

This is an uncomfortable position to sit with; indeed, when I first read Piepzna-Samarasinha’s work, as well as that of Puar, I recoiled. There is a lot of privilege in the idea of even being able to identify oneself as disabled, and that was something I had, until that point in time, taken for granted. While personal interactions for myself with the medical system were not pleasant, I have been more fortunate than many others. But the ideas that are described in Piepzna-Samarasinha’s work stuck with me, and if we were to examine the object of ‘barriers’ through the lens of disability justice, one can argue that removing barriers is not enough, and does not go far enough, as the systems that are now being stood up to do that barrier removal are tied to a state apparatus that carries a heavy burden of past injustice. So how does the policy analyst grapple with this tension? Let us turn to the question of “place” to ponder this question.

Through the creation of the accessibility-seeking subject and the object being the barrier, the problematization creates a further place within which the interaction occurs. That place, as described by Hardt and Negri, is an extension of the “commons” to more people who are now able to participate due to accessibility being provided (2001, p.303). Throughout the presentations made at committee, Canada Post, airports, banks and other examples of the commons were brought up as case studies of what to aspire to in order to be truly accessible. Condemning comments on the accessibility of the House of Commons and Senate were also made (Senate sitting 264, 2019), which provide an interesting perspective between private and public institutions, and what that means for accessibility. What is interesting is how the problematization of barriers creates the ‘barrier-free’ place as an ideal place/time that does not currently exist, but also one that everyone should aspire to. What is also worth considering is the shift of the place that disabled body/minds are permitted to occupy, and whether these will expand as more regulations and standards are passed.

Let us next examine how this place that is created by the problematization of barriers is disrupted by drawing on Judith Butler. In her work *Notes towards a performative theory of assembly,* Butler discusses the politics of assembly and the right to appear. Particularly, “sometimes overcoming unwilled conditions of bodily exposure is precisely the aim of a political struggle. And sometimes deliberately exposing the body to possible harm is part of the very meaning of political resistance” (Butler, 2015, p.126). Turning back to the historical genealogy, we can trace the times when disabled bodies have been exposed to possible harm as they used their bodies to demonstrate for their inclusion in the *Charter of Rights and Freedoms*. Now, we can argue, the reverse is true. Throughout the COVID-19 pandemic, and the response that occurred throughout, the disabled population worked hard to limit the harm that came from the active spread of the virus. Then when lockdowns were lifted, those with disabilities continue to work to overcome the unwilled bodily exposure that they are being put through by masking when outside the home. This ‘place’ that disabled individuals find themselves in is one built on precarity, and one which has not changed even with the creation of a federal accessibility act.

By representing the question of access, as well as barriers, as the main ‘problem’ for Canadians with disabilities, the Act denies the reality that society was not created with disabled bodyminds in mind. Placing the onus on barrier removal shifts the discussion away from the knotty philosophical questions of how modern societies, particularly western societies, come to terms with the hard questions of life itself. By shifting and moving the subject to being one who is accessibility-seeking, it creates a point within which the focus of discussion moves from the margins of disability, to the more homogenised middle. With barriers becoming the ‘object’ of the problematization, policy creators maintain the discussions surrounding the disability policy inside of parameters deemed acceptable by neoliberal frameworks of understanding, all while shifting attention away from the State and its systems that were created to erase those who are marginalized. This, in turn, maintains the framing fully within the ‘normal accessibility’ space, and does not shift the positioning of disability policy towards more radical ways of thinking. The interactions between the accessibility-seeking subject and barriers creates a new place within the Canadian political commons, where a focus on businesses and places that have economic significance towards the consumer subject are held up as ideal standards of accessibility, while also creating a utopian ideal towards which all organizations must strive towards. At the same time, this new place does little to remove those with disabilities from the margins or away from precarity, even as many get re-folded back into the mainstream.

Conclusion

"People do not want people with disabilities to be successful. If we succeed, it means they will have to accommodate us."

- A quote from the son of Rachel Blaney (NDP -North Island-Powell River)

This thesis set out to critically examine how the Accessible Canada Act constructs and frames disability by examining it through Bacchi's *What is the Problem Represented to be?* (WPR) approach. By analysing the language and logic embedded within the Act itself, as well as within the parliamentary debates and committee testimonies, the project explored how the government of Canada chose to problematize disability through the use of 'barriers' and 'accessibility'. Through the WPR, we were able to examine how Canada's policy landscape has arrived at the ACA as the next step in disability policy; identify some of the silences and assumptions that surround this problematization; and elaborate the power structures that shaped the Act and its implementation.

As we moved through this analysis, several threads stood out. The first was the decision to frame this Act as one related to *accessibility* as opposed to *disability,* a move promoted as more inclusive and intended to broaden the bill's coverage, while simultaneously continuing to place attitudinal barriers around the word disability. Then as I continued to research more, the tensions between the government and the disability community about timelines, and the lack thereof, quietly pushed aside one of the most important tools for disability activism. This omission was justified under the guise that "the work needs to be done now," yet it ultimately required the government to walk back and amend the newly assented Act to include a timeline after significant public pushback. There were also the historical ways that people with disabilities have been treated, and how the Act fails to push for structural change in systems that are rooted in liberal and neoliberal logics that do not take into account intersectionality or a disability lens. Even as the government spoke of taking the burden off individuals with disabilities, the concerns from the community about the bureaucratic confusion that the "no wrong door approach" would create and the unease of continuing to give power over regulations to agencies that have lost trust with the disabled community such as the Canadian Transportation Agency (AODAA submission to HUMA, 2018) went unheard.

This analysis has led, perhaps positively, to a place where there are more questions than answers. Perhaps in all, that is the most important piece of this work - the asking of further questions. It has led to the understanding that while within the accepted 'in' boundaries/group in Canadian disability policy, the Bill and Act have moved the needle toward something resembling 'another disability' - one where boundaries, and not the physiological condition, need to be remedied and prevented. However, in the grander scheme of the power structures and institutions that exist surrounding those with disabilities, all of the changes proposed keep the framing firmly within 'normal accessibility' as opposed to creating space for other approaches.

It is evident in the silences created by Bill C-81, by the weaknesses pointed out by disability activist groups, and through the lack of systemic legislative change as required by the United Nations Convention on the Rights of Persons with Disabilities, that the continuation of Canada as a neoliberal ablenationalist state disallows for a true shift into the "other accessibility" that disabled Canadians challenged the government to provide. It is evident in the way that the discourse presented in Parliament calls for "immediate action and change" while simultaneously continuing to reflect the tendency to treat disability, as described by Mitchell and Snyder, as an “exceptional case to be put off until later” (2015, p.8). This contradiction is exemplified by the federal government’s decision to defer the protections of the Accessible Canada Act for Indigenous Canadians, even though statistically they are among the most disabled populations in the country.. It is even verbalized in Parliament through the son of MP Blaney, whose quote is used to open the conclusion. It is seen in the contrast between promises made by federal institutions such as banks stating that they have been “doing a lot of this work [removing barriers] already in the absence of legislation…” (HUMA meeting 117), while also claiming that there is no need for a timeline in which barrier removal needs to be realized, and then backtracking due to public pressure. As mentioned previously, the initial decision to not include a timeline took away one of the greatest tools at the disposal of disability activists to hold the government to account. It is seen in the way barriers are problematized, yet the barriers in relation to the law are not enumerated despite legal advice; the first priority area is towards employment; and the barriers to entry into programs created for those with disabilities continue to perpetuate the medical model of disability despite the claim otherwise.

Yet this is not to say that the approach taken by the government to problematize this policy issue as barrier removal is without merit. It provided a much-needed opportunity to broaden the scope of what accessibility means within Canadian politics, even though it does not use an intersectional lens to do so. The Accessible Canada Act also allows for the federal government to build upon existing provincial legislation, and create a position from which provinces and territories that have not yet passed accessibility legislation the opportunity to consider such an action. Bill C-81 also resulted in one of the biggest consultation periods in Canadian legislative history, and allowed disabled Canadians the opportunity to voice their concerns and grievances in a way that was outside of the court system. This process allowed disability to take center stage in Canadian politics in a way that has not been seen since the protests surrounding the inclusion of disability as a protected group in the *Charter of Rights and Freedoms.* Yet much of what is seen throughout this legislative journey is that there is a certain amount of reticence on the part of the government, even with the buy-in of all major political parties, to use the Act as a catalyst for change. The Bill throughout its stages shows the reluctance to push beyond the boundaries of the accepted, and does not, to quote Leah Lakshmi Piepzna-Samarasinha, "dream disability justice".

If anything has become clear through this work, it is that the use of the problematization does not go far enough. It is a start, and there are shifts happening in a positive direction - but none that is beyond what is considered acceptable within the social norms of neoliberalism. It is recognizing that when disabled communities say, ' this is not what we asked for/was promised', it is where the government needs to stop, listen, and then act. The goal of the problematization should not be vague inclusiveness that simply gestures towards the injustices that have been done against this group; it should be about legislation that pushes into uncomfortable, uncharted policy territory - that demonstrates that systems, like people, are not perfect. It means acknowledging who continues to be left behind, and whose voices are missing from the table. Most importantly, if legislation is to have teeth, there needs to be an actual commitment and recognition that these teeth *will,* not may - be used.

In these last few paragraphs, let us engage in "dreaming disability justice" and acknowledge the grieving that comes with this work. I will take this opportunity to indulge in something that Bacchi is wary of: answering the last of the WPR questions by referring to emotions. To lean again on my thesis supervisor and his colleague Wiebe, I will be using the concept of “emotional landscapes” - “an environment that includes affect and emotions, sensory experiences, the conscious and the unconscious”.

We are taught in the social sciences to avoid speaking of the emotional, to aim instead for the rational - to meet the standards of “rigorous social science inquiry” expected in a world that relies much on facts and empirical evidence. Yet, as Jasper reminds us, power structures and systems, “...operate at least partly through the emotions they arouse”. It is very easy to see this in Bill C-81’s legislative journey. Countless MPs and Senators who spoke in favour of this Act, as well as those from the disability community, spoke in ways that evoked emotion. They harkened to personal stories, experiences, the feelings they felt, the emotions evoked by the people in their lives who are disabled and why this made them want to enact this Act. Emotions were used alongside the more rational economic numbers to persuade, to coax, all to vote in favour of this work. Words such as ‘hope’, ‘fears’, ‘desires’, ‘inspiration’ echoed through parliamentary debates and public commentary. Policy, and fundamentally the political systems that create them, come from an emotional space; and with a growing awareness of how political pressure works, emotion must be taken more seriously when conducting policy analysis. Not because it is a guaranteed effect that a specific emotion will be aroused, but because optics have become central decision-making itself.

So too I would argue, does emotion shape how a problematization is created - and how the problematization may in turn be challenged by a researcher. Much of my academic life has been spent examining the overlaps between politics and disability, and the shifting space where disabled bodies exist within. Many of the tensions I explore are ones that I have lived with for years. This thesis became a space to be critical of the times I have stayed silent - to avoid being seen as disruptive or outside of the collective. Those silences surfaced in real ways: I wrote this work partially while being horizontal in bed, or hunched over my desk, while working full time to keep the health insurance that made my studies possible. It is in the lived experience of walking masked in a sea of people who have moved on from a globally disabling event. I know I am not alone in these feelings. I hear them echoed in the spaces where disabled persons congregate to see and be heard - to grieve our losses, and to provide collective care that society has failed to provide.

If there is one thing true about the disability community, it is that hope is something that is still alive - if battered, bruised, and stumbling, probably with a mobility aid in tow. The community has always been, and continues to be, the centre of where the “other accessibility” or more accurately, the disability justice, lives and continues to thrive. It is from within this space that the world learned how to survive, and even thrive, during the pandemic. It is from within this community that “nothing about us, without us” came to realization. Disabled people build remote networks of care, mutual aid structures, and practical strategies for surviving a mass disabling event – strategies borne from crip wisdom – that were embraced globally. While governments and states floundered, persons with disabilities stepped up and said “there is another way”.

But even now, six years after the Act passed, the same communities are being left behind. Hybrid and remote access is disappearing, as governments urge to return “back to normal”, which, to quote Piepzna-Samarasinha, means “a return to the ableist bullshit that partially receded over the last few years of immune awareness, masking, CART and ASL on

Zoom, mutual aid, and remote work" (2022, p.45) The Act still does not meaningfully include Indigenous communities, or those who lack medical documentation that is needed to be legitimized in the bureaucratic system of accessibility.

As I conclude this, dangers creep ever closer on the horizon, and I urge all policy writers to be aware of these pressures - economic and social - and the potential risks they pose to the Canadian disability community. Eugenic ideologies are being reignited across the world, all while being covered under the cloak of cost-saving and 'post-pandemic' resolutions. While we ought to have moved past seeing disability through the lens of burden, the undercurrents spoken in neighbouring countries should carry a sharp warning to anyone listening. What is needed to ensure this does not affect Canadians is a firm retrenchment of disabled people as subjects of legislation, but as leaders and architects of change that benefits all Canadians.

The disabled community is not just something to look at for inspiration, it is a society within a society that pushes back against pre-conceived norms, that resists simply by living, and creates solutions that the ablenormative state can only dream of. It is a demonstration of care, of being, that may very well shape the future of survival of a world teetering on the edge of many crises - ecological, social, war - as they know what it means to struggle, to survive, and thrive in the face of adversity; adversity that is not due to anything physical, but the perceptions around them. It is not enough to say "nothing about us without us", and say you have done the work. The work is starting from the very beginning, very personal and human level, and applying outwards. It is about sitting in discomfort and acknowledging how we disable one another, and saying "no more". It is about using the ACA and building a foundation that integrates disability justice in a daring way, a way that will have Canada sitting where it is claimed to be - as an example and innovator of what accessibility and inclusion can and should look like.

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