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# Disability and the Persistence of Poverty: Reconstructing Disability Allowances

Sagit Mor\*

## ABSTRACT

*Disability policy has always been deeply immersed in questions relating to the relationships between disability and poverty. These efforts began as early as the Poor Laws of eighteenth century England. They were further enhanced by the rise of the modern welfare state, and culminated twenty years ago with the enactment of the Americans with Disabilities Act that symbolizes the turn from welfare to rights. In this Article, I argue that it is time to reexamine the nexus between disability and poverty and attend to their co-constitutive relationships. I suggest a reconstructive reading of disability allowances as a locus of the transition from an understanding of disability and poverty as two overlapping categories to an emphasis on the constitutive relationships between them—a transition from a heavily civil rights-based discourse to a social welfare-oriented discussion that internalizes the actual needs of disabled people who live in poverty. These issues have generally gone unnoticed in the literature, rendering the understanding of the politics that surround disability allowances incomplete.*

*Focusing on the construction and negation of disability allowances, this Article identifies and traces the roots of a fundamental tension that underlies disability politics with regard to disability allowances: are cash benefits an archaic and outdated form of assistance to disabled people, or are they still a relevant mode of response to their systematic marginalization and exclusion? Based on a field study of the Israeli disability community, the Article shows that while disability rights advocates tend to reject disability allowances as fundamentally wrong and to support the transformation of society's social structures, welfare activists tend to view disability allowances as a response to a pressing necessity, an expression of social responsibility, and a means to provide economic security for disabled people. The Article employs a disability legal studies framework to analyze the study's findings, attending primarily to questions of power and difference, and offering a framework that considers both perspectives as two authentic voices that express genuine concerns. At the same time, the analysis maintains*

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*that both approaches lack a more complex understanding of the relationships between disability and poverty, within which the meanings of disability allowances are negotiated. It concludes with a call to re-conceptualize disability allowance, as a form of compensation that redresses disabled people—individually and collectively—for society's past and present continuing practices of exclusion and discrimination. The struggles of disabled people over rights and allowances become a fascinating site from which to draw the critical lessons that disability activism has to offer to social theory.*

## I. INTRODUCTION

We are given poor and miserable allowances so that we stay alive and be silent. They say: “Nobody can tell us that we are an immoral society, because you are alive.” But what kind of life are we talking about here? I am struggling so that a disabled person can be part of society, and this starts with money and food. I want the disabled to live in dignity, to be able to go to work and to contribute to society.

Yoav Kraim, 2002<sup>1</sup>

¶1 Disability policy has always been deeply immersed in questions relating to the relationships between disability and poverty. Ever since the Poor Laws<sup>2</sup> of eighteenth-century England, there has been a constant effort to separate disability from poverty. This effort has been enhanced with the rise of the modern welfare state during the nineteenth century, and has culminated in the twenty years that have passed since the enactment of the Americans with Disabilities Act (ADA).<sup>3</sup> It is time to reexamine the nexus between disability and poverty and attend to their co-constitutive relationships.

¶2 I suggest a reconstructive reading of disability allowances as a locus of transition from an understanding of disability and poverty as two overlapping categories to an emphasis on the constitutive relationships between them—a transition from a heavily civil rights-based discourse to a social welfare-oriented discussion that internalizes the actual needs of disabled people who live in poverty. The attempt to separate disability from poverty has generally gone unnoticed in the literature, rendering the understanding of the politics that surround disability allowances incomplete.

¶3 Focusing on the construction and negation of disability allowances, this Article identifies and traces the roots of a fundamental tension that underlies disability politics with regard to disability allowances: Are cash benefits an archaic and outdated form of assistance to disabled people, or are they still a relevant mode of response to their

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<sup>1</sup> Hagar Yanai, *Things I Learned While Sitting*, HA'ARETZ, Jan. 11, 2002, at 24–28 (Hebrew) (translated by author). Yoav Kraim is the spokesperson of an Israeli organization called Campaign for Handicapped Persons in Israel.

<sup>2</sup> DEBORAH A. STONE, *THE DISABLED STATE* 29–55 (1984).

<sup>3</sup> Americans with Disabilities Act, Pub. L. No. 101-336, 104 Stat. 327-33 (1990). The ADA is civil rights legislation that prohibits the discrimination of disabled people in five major areas: employment, state and local government programs and activities, accessibility of public entities, accessibility of private facilities that provide public services, and accessibility of communication devices.

systematic marginalization and exclusion? Do they serve as a manifestation of ableism or a way to fight it?<sup>4</sup>

¶4 This Article draws on an in-depth field study of the Israeli disability community's struggle for economic security and human dignity, focusing on two long sit-in strike campaigns of disabled people in Israel that took place in 1999 and 2001.<sup>5</sup> Both campaigns were mainly concerned with social welfare benefits for disabled people, particularly cash benefits. The field study revealed two dominant approaches within the disability community toward disability allowances. While the entire disability community is interested in breaking the well-established link between disability and poverty, its members do not share a vision of the way to do it. Welfare activists tend to view disability allowances as an important service that addresses the most pressing needs of poor disabled people who cannot wait until the rights revolution becomes a reality.<sup>6</sup> Disability rights advocates, however, tend to reject disability allowances as fundamentally wrong, because it reinforces the marginal status of disabled people in society as a nonproductive group.<sup>7</sup> Instead, they support a total transformation of society's structures and institutions.<sup>8</sup> In the case of the sit-in strikes, they argued that by emphasizing disability allowances and by using images of disabled people as miserable, poor, hungry, and sick, the strikes threatened the fragile achievements of the disability rights era.<sup>9</sup>

¶5 This Article analyzes these conflicts through the lens of disability legal studies. Disability legal studies is a theoretical framework for the study of law and disability that incorporates lessons drawn from disabilities studies in the humanities and social sciences.<sup>10</sup> The primary tenet of disability studies is that disability is a socially constructed category rather than an inherent, objective, or fixed trait that resides within the disabled person.<sup>11</sup> Disability studies focuses on the complex ways that economic relations, cultural meanings, social practices, and institutional settings participate in the disablement of persons. It analyzes the forms and manifestations of the disability power system in various social practices and institutions. It also examines the portrayal of

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<sup>4</sup> Ableism is the power structure that renders disabled people inferior to and dominated by nondisabled people, thereby serving as a justification for the discrimination and exclusion of disabled people. Disability activists and scholars seek to abolish ableism by exposing its hidden forms of operation and the social and cultural conditions that support it. See SIMI LINTON, CLAIMING DISABILITY: KNOWLEDGE AND IDENTITY 9 (1998); Paul Abberley, *The Concept of Oppression and the Development of a Social Theory of Disability*, in DISABILITY STUDIES: PAST PRESENT AND FUTURE (Len Barton & Mike Oliver eds., 1997).

<sup>5</sup> See discussion *infra* Part IV.

<sup>6</sup> See discussion *infra* Part V.A. & Part V.B.vi.

<sup>7</sup> See discussion *infra* Part V.B.iii.

<sup>8</sup> See discussion *infra* Part V.B.

<sup>9</sup> See discussion *infra* Part IV.B.

<sup>10</sup> Sagit Mor, *Between Charity, Welfare, and Warfare: A Disability Legal Studies Analysis of Privilege and Neglect in Israeli Disability Policy*, 18 YALE J.L. & HUMAN. 63 (2006) [hereinafter *Between Charity, Welfare and Warfare*]; Sagit Mor, *Imagining the Law: The Construction of Disability in the Domains of Rights and Welfare—The Case of Israeli Disability Policy* (Nov. 2005) (unpublished J.S.D. thesis, New York University School of Law), available at <http://works.bepress.com/sagitmor/5/>.

<sup>11</sup> The following is an introductory list of seminal works in disability studies: LINTON, *supra* note 4; LENNARD J. DAVIS, ENFORCING NORMALCY: DISABILITY, DEAFNESS, AND THE BODY (1995); MICHAEL J. OLIVER, THE POLITICS OF DISABLEMENT: A SOCIOLOGICAL APPROACH (1990); SUSAN WENDELL, THE REJECTED BODY: FEMINIST PHILOSOPHICAL REFLECTIONS ON DISABILITY (1996).

disabled people as inferior, useless, abnormal, and as a burden to society.<sup>12</sup> Methodologically, the discipline requires listening to voices and experiences of disabled people and incorporating them into its findings and critiques.<sup>13</sup> Disability legal studies applies these underlying principles to the study of law and focuses on critique of legal doctrines, institutions, concepts, and practices, as it examines the role of law in the social and cultural construction of disability.<sup>14</sup>

¶16 This Article applies a disability legal studies approach and calls for a re-conceptualization of the meaning and function of disability allowances, as well as the further investigation of the relationships between disability, poverty, and rights. It suggests that disability rights advocates have disregarded the urgent needs of disabled people because they have failed to create a model that can guarantee economic security (for example through social welfare or social security mechanisms). It will also argue that welfare activists have neglected to develop a structural and comprehensive critique of welfare (of disability allowances, in particular).

¶17 This Article will introduce a different view of disability allowances, a view that rests on three complementary premises. The first premise stresses the unavoidable nature of disability allowances and the need to acknowledge the possibility that the disability rights vision might never be fulfilled. The second premise substantiates the view of disability allowances as a group-based form of compensation that redresses disabled people not for their disabilities but rather for society's ongoing practices of exclusion and discrimination. The third premise examines what services disability allowances are intended to provide and suggests two possible components: disability-related expenses and general poverty-related costs.

¶18 The contribution of this study is not limited to disability politics or to the Israeli context. Rather, the suggested critique presents a challenge that has implications for the politics of poverty and rights more generally. Its lessons can contribute to the understanding of the tensions that underlie struggles over disability, ranging from public assistance to single parents to food stamps and housing vouchers. It can also enhance the possibility of coalition building among various groups around these seemingly sectarian issues.

¶19 Part II of this Article discusses the relationship between disability and poverty, emphasizing their contingencies and mutual relations. Part III provides a short introduction to the history of disability allowances in Israel. Part IV tells the story of the disability allowance protests in Israel and the criticism they faced. Part V delves into the details of the two perspectives on disability allowances that this fieldwork identified: the social welfare perspective and the disability rights view. Part VI explores the conflict between the two perspectives. It offers a critique of the disability rights discourse and suggests that poverty is a sustained problem and that disability allowances should be

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<sup>12</sup> See, e.g., Rosemarie Garland-Thomson, *Integrating Disability, Transforming Feminist Theory*, 14 NWSA J. 1, 4–5 (2002); Martin Pernick, *Defining the Defective: Eugenics, Aesthetics, and Mass Culture in Early 20th-Century America*, in *THE BODY AND PHYSICAL DIFFERENCE: DISCOURSE OF DISABILITY* 89 (David T. Mitchell & Sharon Snyder eds., 1997).

<sup>13</sup> See, e.g., LINTON, *supra* note 4; Geof Mercer, *Emancipatory Disability Research*, in *DISABILITY STUDIES TODAY* 228 (Colin Barnes, Mike Oliver & Len Barton eds., 2002).

<sup>14</sup> *Between Charity, Welfare and Warfare*, *supra* note 10, at 67–82; Arlene S. Kanter, *The Law: What's Disability Studies Got to Do With It or An Introduction to Disability Legal Studies*, 42 COLUM. HUM. RTS. L. REV. 102 (forthcoming 2011).

acknowledged as an undesirable yet unavoidable necessity for disabled people who live in poverty. Part VII proposes possible alternatives for reconstructing disability allowances. It discusses what services these allowances should cover, and suggests that they should be understood as an obligation of society towards disabled people for maintaining its able-istic structure and for not removing all barriers that prevent them from full participation in society. Part VIII examines the possibilities for coalition building between disability advocates and welfare activists, especially with regard to the basic needs component of the newly constructed disability allowances.

## II. DISABILITY AND POVERTY: CHALLENGING RELATIONSHIPS

Not all who are poor are physically handicapped; not all who are handicapped are poor. But the two conditions—poverty and disability—are historically so intermeshed as to be often indistinguishable.

Jacobus tenBroek and Floyd W. Matson (1966)<sup>15</sup>

¶10 Understanding the historical, political, and socioeconomic context of disability allowances requires a close examination of the relationship between disability and poverty. In this Part, I identify and describe two general approaches to the relationship between the two. The overlap approach views disability and poverty as two distinct concepts that refer to two distinct groups of people, though there are points of overlap and correlation between them. The constitutive approach holds that both disability and poverty are a socially constructed, fluid, and contingent phenomena, which historically have been co-constitutive, intensely intertwined, and mutually dependent upon one another. Both perspectives are important, and together they enrich our understanding of the role that disability allowances play in disabled people’s lives. Nevertheless, the latter view allows for the development of a more complex understanding of poverty and disability and, consequently, for the evolution of a more critical approach to disability allowances.

### A. *The Overlap Between Disability and Poverty*

¶11 The overlap approach is widely accepted among scholars, activists, and policymakers because it highlights both the disproportionate poverty of disabled people and the disproportionate disability rates amongst people who live in poverty.<sup>16</sup> Under the overlap approach, disability and poverty are two separate concerns that require different policies and generate distinct struggles. This approach tends to take these categories “as

<sup>15</sup> Jacobus tenBroek & Floyd W. Matson, *The Disabled and the Law of Welfare*, 54 CAL. L. REV 809, 809 (1966).

<sup>16</sup> Rebecca Yeo & Karen Moore, *Including Disabled People in Poverty Reduction Work: Nothing About Us, Without Us*, 31 WORLD DEVELOPMENT 571 (2003); Dan Atkins & Christie Guisti, *The Confluence of Poverty and Disability*, in *THE REALITIES OF POVERTY IN DELAWARE 2003–2004* (2004), available at <http://www.housingforall.org/rop0304%20poverty%20and%20disability.pdf>; see also Jeanine Braithwaite & Daniel Mont, *Disability and Poverty: A Survey of World Bank Poverty Assessments and Implications* (2008).

they are” without questioning their shared histories or the power dynamics within which they are jointly situated.

¶12 The overlap approach is most clearly supported by those who perceive disability as an immutable trait and who view disabled people as inherently unable to work, without considering the social aspects that shape disability. But it could also be supported by those who believe that disability is socially constructed and that social and environmental barriers prevent disabled people from working, who often aspire explicitly to liberate disabled people from being destined to poverty, and implicitly to separate disability and poverty.<sup>17</sup> The significance of this approach is that it draws attention to the important link between disability and poverty, according to which disabled people are more likely to become poor and poor people are more likely to become disabled. The shortcoming of this view is that it tends to perceive this link as a result of mere correlation, an unwarranted connection between having an impairment and becoming poor.

¶13 There are, of course, many disabled people who are employed and earn their own living. Yet a considerable number among them are still poor because of low wages, limited working hours, and high payments for disability-related costs.<sup>18</sup> Some disabled people may also support themselves using public or private funds that provide them with the required financial support (such as family resources, public assistance, social security benefits, and charities of all kinds); however, statistics suggest that the unemployment rates among the disabled remain high, even after the introduction and enactment of disability rights laws, which prohibit disability-based discrimination in the workplace.<sup>19</sup> The challenge of breaking the link between disability and poverty lies at the heart of recent welfare reforms, and it informs contemporary disability rights laws.

¶14 Disability is also an outcome of being poor.<sup>20</sup> An insufficient standard of living can create health risks that lead to illness and impairment: malnutrition, unsanitary conditions, and outdated infrastructures, all of which are more prevalent in poor areas, are recognized causes of disability. In addition, access to healthcare, rehabilitation, and vocational services are principal factors determining the degree of disability remaining after exposure to a disabling event.<sup>21</sup> Acknowledging the overlap between disability and poverty lays the foundation for the constitutive approach, which considers the poverty-

<sup>17</sup> See *infra* notes 149–150 and accompanying text.

<sup>18</sup> Martha Russell & Ravi Malhotra, *The Political Economy of Disablement: Advances and Contradictions*, 38 SOCIALIST REG.: A WORLD OF CONTRADICTIONS 211 (L. Panitch & C. Leys eds., 2002); Asghar Zaidi & Tania Burchardt, *Comparing Incomes When Needs Differ: Equalization for the Extra Costs of Disability in the U.K.*, 51 REV. OF INCOME AND WEALTH 89 (2005); Yeo & Moore, *supra* note 16.

<sup>19</sup> See DINA FELDMAN & ELIYAHU BEN-MOSHE, PEOPLE WITH DISABILITIES IN ISRAEL 2007: A COMPARATIVE REPORT—A MULTIYEAR PERSPECTIVE AND AN INTERNATIONAL COMPARISON (2007) (Hebrew) (translated by author); ELIYAHU BEN-MOSHE, LIORA ROFMAN & ISRAEL HABER, PEOPLE WITH DISABILITIES IN ISRAEL 2009: DISABILITY AND INTEGRATION IN SOCIAL LIFE IN ISRAEL—A COMPARATIVE MULTIYEAR PERSPECTIVE (2009) (Hebrew) (translated by author), for such statistics in Israel. See also DISABILITY WORK AND CASH BENEFITS (Jerry Meshaw et al. eds., 1996) (providing a United States perspective).

<sup>20</sup> Atkins & Guisti, *supra* note 16; Yeo & Moore, *supra* note 16; Katherine Seelman & Sean Sweeney, *The Changing Universe of Disability*, 21 AM. REHABILITATION 2 (1995).

<sup>21</sup> GARY L. ALBRECHT, THE DISABILITY BUSINESS 13–14 (1992); see also WENDELL, *supra* note 11, at 36–37 (describing the social factors that construct disability); Regina Austin & Michael Schill, *Black, Brown, Poor, and Poisoned: Minority Grassroots Environmentalism and the Quest for Eco-Justice*, 1 KAN. J.L. & PUB. POL’Y 69 (1991) (arguing that race was the greatest differentiating factor in communities with hazardous waste facilities).

disability connection to be a product of social construction rather than of chance and individual circumstances.

### B. *The Constitutive Relations Between Disability and Poverty*

¶15 The constitutive approach is critical of the boundaries and definitions of both disability and poverty; it is therefore more compatible with a disability legal studies analysis, which questions the use of all categories and situates them within a historical and political context. According to this view, disability and poverty are closely connected and co-constitutive, as shown by the history of the modern welfare state,<sup>22</sup> as well as by recent accounts of disability rights struggles. In fact, the boundaries between disability and poverty have historically been a matter of constant negotiation, subject to persistent attempts to associate and disassociate between the two categories, to draw them together and to set them apart. Drawing the boundaries was fundamental to capitalism's definition of the labor force and to welfare's definitions of desert and need.<sup>23</sup> As Deborah Stone, a social scientist who studies the history of disability policy, has shown, the structure of many modern welfare states is rooted in the line drawn between the disabled and the nondisabled as a means of distinguishing between those who are exempt from work and those who are required to earn their own income.<sup>24</sup>

¶16 The English Poor Laws are an example of an historical attempt to distinguish the deserving from the undeserving "idle" poor, between those who were eligible for charity and protection of the state and those who were expected to work.<sup>25</sup> Similarly, debates in the United States over social security programs involve questions about the fluid boundaries between the two categories. Deciding the components of the definition was a major issue, particularly since an emphasis on medical versus socioeconomic constraints could broaden or narrow the scope of the population covered by the program.<sup>26</sup> The link between the employability of disabled people and larger social processes was most vividly exposed during World War II, when disabled people suddenly enjoyed higher rates of employment in the United States.<sup>27</sup> As Harlan Hahn puts it, disabled people were, and still are, treated as part of the "industrial reserve army" for times of employment shortage.<sup>28</sup>

<sup>22</sup> Yeo & Moore, *supra* note 16; Jennifer Pokempner & Dorothy E. Roberts, *Poverty, Welfare Reform, and the Meaning of Disability*, 62 OHIO ST. L.J. 425 (2001).

<sup>23</sup> NEIL GILBERT & PAUL TERRELL, *DIMENSIONS OF SOCIAL WELFARE POLICY* (2d ed. 1986).

<sup>24</sup> STONE, *supra* note 2, at 3–12.

<sup>25</sup> *Id.* at 29–55.

<sup>26</sup> In the end, there were three major types of programs: a work injury program that was enacted in 1935, a disabled workers program from 1956 that covered all contributing workers who paid their social insurance fees (SSD), and a general public assistance program that covered disabled people who could not enjoy social insurance programs. *Id.* at 68–89; Williams H. Simon, *Rights and Redistribution in the Welfare System*, 38 STAN. L. REV. 1431, 1448–86 (1986); Jonathan C. Drimmer, *Cripples, Overcomers, and Civil Rights: Tracing the Evolution of Federal Legislation and Social Policy for People with Disabilities*, 40 UCLA L. REV. 1341 (1993).

<sup>27</sup> Harlan Hahn, *Advertising the Acceptable Employable Image: Disability and Capitalism*, in *THE DISABILITY STUDIES READER* 172 (Lennard J. Davis ed., 1997).

<sup>28</sup> *Id.*; see also Mark C. Weber, *Disability and the Law of Welfare: A Post-Integrationist Examination*, 2000 U. ILL. L. REV. 889, 897 ("Insofar as disability is related to work, its existence depends not only on a person's physical ability to do a job but also on the availability of work.").



¶17 The impact of the disability/poverty dyad is also apparent in today's varying benefits programs for disabled people. Disability benefits programs are usually based on one or two of the following principles: need, insurance, and desert.<sup>29</sup> General welfare programs for disabled people, such as public assistance-based programs, usually follow the legacy of the Poor Laws. They are based on the welfare-related principle of need. In these programs, the determination of whether one is sufficiently disabled depends on one's socioeconomic situation, as defined by the means test, the program's primary eligibility mechanism.<sup>30</sup> Desert and insurance-based programs determine whether one is sufficiently disabled to receive benefits without considering the person's socioeconomic situation.<sup>31</sup> Instead, they examine whether the individual in question had insurance (like social insurance) or whether the circumstances of her disablement fall under the relevant law's well-bounded definition of eligible persons (such as military or work-related injury). Desert-based programs are the most generous programs, typically designed to benefit specific groups of disabled persons who were injured in circumstances in which the state had an interest and which represent principles to which society is committed.<sup>32</sup>

¶18 Nevertheless, I contend that even desert- and insurance-based programs cannot avoid the tension between disability and poverty. While these programs do not explicitly consider their beneficiaries' level of poverty, they typically provide them with benefits that are much more generous than those provided by public assistance programs, consequently allowing beneficiaries to lead a more dignified life. As noted above, these programs were motivated not only by a concern for who potential beneficiaries were, but also by who they were not.<sup>33</sup> The scheme of disability benefits was based on the view that there are groups of disabled persons that deserve to live with economic dignity: Unlike "ordinary" disabled people, meritorious groups should live neither in poverty, nor on the edge of the poverty line.<sup>34</sup> Implicit in this scheme of benefits is the notion that the beneficiaries of the general disability program are not deserving of economic dignity and security. Although a distinction is drawn between the disabled and the general poor, it is a marginal, fragile line. Indeed, society supports the disabled, allowing them to live, but their survival is craftily maintained below the poverty line. Consequently, for privileged groups of disabled people, becoming poor is in fact the ultimate mark of becoming "truly" disabled. I therefore suggest that unlike public assistance programs for disabled people, programs for work-related injuries and for disabled veterans can be understood as sincere attempts to break the link between disability and poverty. On the other hand, these programs also create an artificial separation between the deserving and the

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<sup>29</sup> John Gal, *The Perils of Compensation in Social Welfare Policy: Disability Policy in Israel*, 75 SOCIAL SERVICE REV. 225 (2001). In this article, Gal provides a detailed account of the relationships between three allocative principles (desert, insurance and need) and their application to the various welfare programs for people with disabilities in Israel. *Id.*; see also GILBERT & TERRELL, *supra* note 23 (discussing desert, insurance and need).

<sup>30</sup> See *infra* note 112–113 and accompanying text.

<sup>31</sup> See *infra* note 114 and accompanying text.

<sup>32</sup> See *infra* note 43 and accompanying text.

<sup>33</sup> *Between Charity, Welfare and Warfare*, *supra* note 10, at 130–34.

<sup>34</sup> *Id.*

undeserving disabled, between those who deserve economic dignity and those who do not.<sup>35</sup>

¶19 More recently, disability rights advocates have introduced a different vision regarding the future of disabled people in society—a future that is liberated from poverty and even from social welfare. The primary mechanisms to accomplish that vision were laws against employment discrimination and rules concerning accommodations in the workplace. In one provocative article, Samuel Bagenstos, a prominent disability law scholar, argues that the ADA was marketed to and perceived by the public as a welfare reform, since legislators intended the Act to make disabled people more productive and self-reliant and to take them off welfare rolls and put them on payrolls.<sup>36</sup> The goal of disability rights activists involved in the legislation, on the other hand, has been much broader: These activists hoped to transform society and to alter the image of disabled people from dependent, inferior, and useless, to independent, equal, and productive members of society. In the aftermath of this new legislation, however, high unemployment rates persisted, and the number of disability benefit recipients grew larger.<sup>37</sup> This suggests that non-discrimination provisions were insufficient to overcome the long history of exclusion and oppression of disabled people.

¶20 This Article will demonstrate that the strategic shift from welfare to rights has resulted in a neglect of disability allowances. Based on the case study of disability protests in Israel, I argue that the underlying reason for such neglect was an implicit aspiration to break away from the historical link between disability and poverty.

### III. A HISTORY OF DISABILITY POLICY IN ISRAEL

#### A. *The Differentiated Structure of Disability Allowances*

¶21 Israel has developed three major models of disability allowances, and these models include eighteen separate programs for different groups of disabled people.<sup>38</sup> The first of these models, the Invalids Law of 1949, was the first welfare law in Israel and was based on benefits for disabled veterans.<sup>39</sup> The second of these models was based on the Work Injury Program of the National Insurance Law, which was passed in 1954.<sup>40</sup> The general population of disabled people who needed financial support received public assistance

<sup>35</sup> See *id.*; Gal, *supra* note 29; John Gal & Michael Bar, *The Needed and the Needy: The Policy Legacies of Benefits for Disabled War Veterans in Israel*, 29 J. SOC. POL'Y 577 (2000).

<sup>36</sup> Samuel R. Bagenstos, *The Americans with Disabilities Act as Welfare Reform*, 44 WM. & MARY L. REV. 921, 930–52 (2003) (arguing that the ADA was warmly received by policymakers because it was understood as welfare reform that would reduce the number of welfare recipients, and that this view is problematic because accommodations are not sufficient to overcome the exclusion of disabled people from the labor force).

<sup>37</sup> DISABILITY WORK AND CASH BENEFITS, *supra* note 19; GROWTH IN DISABILITY BENEFITS (Kalman Rupp & David Stapleton eds., 1998).

<sup>38</sup> See *Between Charity, Welfare and Warfare*, *supra* note 10; Gal, *supra* note 29; URIEL PROCACCIA & ARIE L. MILLER, THE RIGHTS OF THE DISABLED IN ISRAEL: BASIC ISSUES 12 (1974) (Hebrew) (translated by author), for detailed reviews of these models.

<sup>39</sup> Invalids (Pension and Rehabilitation) Law, 5709–1949, 3 LSI 119 (1949) 1959 (Isr.). In 1959, a consolidated version was published. Invalids (Pension and Rehabilitation) Law [Consolidated Version], 5719–1959, 13 LSI 315 (1958–59) (Isr.) [hereinafter the Invalids Law].

<sup>40</sup> National Insurance Law, 5714–1954, 8 LSI 4 (1953–1954).

benefits<sup>41</sup> until 1974, when the third of these models, the Disability Insurance Program, took force.<sup>42</sup> As mentioned before, these three model programs offer different benefit schemes according to three different rationales for allocating social welfare benefits: desert, insurance, and need.

¶22 The Invalids Law is based on principles of desert.<sup>43</sup> It establishes a comprehensive system of in-kind and in-cash benefits that responds to the needs of disabled veterans through a well-developed system of social services.<sup>44</sup> The Work Injury Program is based on principles of insurance and desert.<sup>45</sup> This program is not open to any worker who paid social insurance and became disabled; instead, its benefits are limited to those workers whose injury was work-related.<sup>46</sup> The individuals who qualify for this program enjoy a basic allowance that is determined by one's previous income; in most cases, beneficiaries receive an adequate income as a result.<sup>47</sup> The beneficiaries of this program are also entitled to supplemental income as well as additional related allowances.<sup>48</sup> The Disability Insurance Program, which stands at the center of this study, was enacted in 1974 as part of a general reform of Israel's social welfare policies. This reform was intended to gradually eliminate the public assistance system and expand the social security regime.<sup>49</sup> Although celebrated by politicians and policymakers as exhibiting a turn from charity to rights,<sup>50</sup> the disability insurance program was ultimately based on the principle of need, in essence replicating the structure of the public assistance program that preceded it. The program granted a minimal allowance, (20% and later on 25% of the average wage in Israel, not very different from former grants), which was later denied when program participants found employment. The program also established a mechanism for obtaining an attendance allowance and, later on, a mobility allowance was added. The law also provided rehabilitation services, but this branch was not well developed.

¶23 Israel was slow to develop social services for the general population of disabled people. As a result, a community of voluntary private sector organizations evolved which filled the role of providing services to disabled people.<sup>51</sup> The laws relating to such

<sup>41</sup> The term for public assistance benefits in Israel was *Sa'ad*. The *Sa'ad* was a residual welfare program that granted benefits to people who lived in poverty and had no other means of support. *Between Charity, Welfare and Warfare*, *supra* note 10, at 92–108 (providing a detailed description of the *Sa'ad* system).

<sup>42</sup> National Insurance Law (consolidated version), 5755–1995, Chapter 9 §§ 195–225B (originally passed as National Insurance (Amendment No. 13) Law, 5733–1973, 27 LSI 233 (1972–1973) (Isr.)). The formal name for the disability insurance program is “Invalidity Insurance,” but I call it general disability insurance, or disability insurance.

<sup>43</sup> Gal, *supra* note 29, at 226–27.

<sup>44</sup> *Between Charity, Welfare and Warfare*, *supra* note 10, at 116–17, 119–22.

<sup>45</sup> Gal, *supra* note 29, at 235–36.

<sup>46</sup> *Id.*

<sup>47</sup> Work injury allowance is calculated as 75% of one's previous income up to three times average wage. *See* National Insurance Law, 5714–1954, 8 LSI 4 (1953–1954).

<sup>48</sup> Assurance of Income Law, 5741–1980, 35 LSI 28 (1980–1981); *Between Charity, Welfare and Warfare*, *supra* note 10.

<sup>49</sup> ABRAHAM DORON & RALPH M. KRAMER, *THE WELFARE STATE IN ISRAEL: THE EVOLUTION OF SOCIAL SECURITY POLICY AND PRACTICE* 14–16, 32–35 (1991); JOHN GAL, *SOCIAL SECURITY IN ISRAEL* 29–31 (2004).

<sup>50</sup> Raphael Roter & Nira Shamai, *Disability Insurance*, 6–7 SOC. INSURANCE 18, 19 (1974) (Hebrew) (translated by author).

<sup>51</sup> RALPH M. KRAMER, *THE VOLUNTARY SERVICE AGENCY IN ISRAEL* (1976).

services at the time were mainly protective, and they only weakly regulated the treatment of individuals who lived in residential institutions or who were hospitalized for psychiatric care.<sup>52</sup>

¶24 During the 1980s, parents of children with disabilities and disabled people themselves began challenging the social structure that effectively rendered disabled people marginal and useless.<sup>53</sup> This activism increased in the 1990s, and it ultimately culminated in the enactment of the Equal Rights for People with Disabilities Law of 1998 (ERPWDL).<sup>54</sup>

### B. *The Rise of Disability Rights*

¶25 Disability rights were first introduced in Israel during the 1990s. In 1992, the first disability rights organization in the country, Bizchut, initiated a campaign to create a comprehensive disability rights law.<sup>55</sup> Eventually, a unique disability rights scheme evolved: it followed the American example of the ADA while integrating Scandinavian influences and local experience.<sup>56</sup> This local rights formula was the basis for the Equal Rights for People with Disabilities Bill (ERPWD Bill) that was submitted to the Knesset, the Israeli parliament, in 1996.<sup>57</sup> The Bill's provisions addressed almost every aspect of the lives of people with disabilities: accessibility, employment, education, culture and leisure, health, housing, and more. Together, these elements realized the ERPWD Bill's vision of equality and dignity. The language that this legislation created was new to the Israeli legal community as well as to many local disability activists. Following the submission of the ERPWD Bill, the government nominated a Public Committee for a

<sup>52</sup> See, e.g., Welfare (Treatment of Retarded Persons) Law, 5729–1969, 23 LSI 144 (1969) (Isr.); Mentally Sick Persons Law, 5715–1955, 9 LSI 132 (1955) (Isr.).

<sup>53</sup> Sagit Mor, *Disability Rights in Israel: Between Socio-Political and Legal Recognition*, in ACCESS TO JUSTICE AND SOCIAL RIGHTS 79 (Jonny Gal & Mimi Eisenstadt eds., 2009), available at <http://works.bepress.com/sagitmor/4> (Hebrew) (translated by author); Sagit Mor, *Towards Radicalization of Disability Insurance—Chronicles of a Struggle for Social Change*, 4 LAW, SOC'Y & CULTURE 91 (2008) (Hebrew) (translated by author), available at <http://works.bepress.com/sagitmor/3/> (follow "Download" hyperlink).

<sup>54</sup> Equal Rights of People with Disabilities Law, 5758-1998, S.H. 152 (1998); *Towards Radicalization of Disability Insurance*, *supra* note 53, at 121–30.

<sup>55</sup> At a press conference announcing the establishment of Bizchut, the organization declared:

For the first time in Israel, an organization has been established to promote the interests and rights of people with disabilities in the spirit of the values of the Association for Civil Rights in Israel, and to bring the principles of integration within the community and of anti-discrimination into practice. . . . 'Bizchut' wishes to eradicate the prejudices and paternalism towards populations with special needs, in order that they be an integral part of Israeli society, *Bizchut ve-lo be-chesed* (by right rather than by charity).

Press Release, Bizchut (Dec. 5, 1993) (Hebrew) (translated by author) (on file with author) (announcing the establishment of Bizchut, a center for human rights for people with disabilities in Israel).

<sup>56</sup> Neta Ziv, *Disability Law in Israel and the United States—A Comparative Perspective*, 1999 ISR. Y.B. ON HUM. RTS. 171 (1999); Stanley S. Herr, *Reforming Disability Nondiscrimination Laws: A Comparative Perspective*, 35 U. MICH. J.L. REFORM 305 (2002) (examining the effect of the ADA on disability reform in Israel, the United Kingdom and Sweden).

<sup>57</sup> Equal Rights for People with Disabilities Bill, 5756-1996, H.H. 628. The Bill was drafted by Bizchut and was submitted to the Knesset by eleven Knesset members.

Comprehensive Review of the Legislation Regarding People with Disabilities.<sup>58</sup> The public committee conducted a thorough investigation regarding the legal and social conditions of disabled people in Israel, which it published in July 1997.<sup>59</sup>

¶26 Soon afterwards, a political compromise led to a split in the ERPWD Bill, and only some parts of its original full version were brought before the Knesset.<sup>60</sup> As a result, when the ERPWDL was passed in 1998, it included only two operative chapters, addressing employment and access to public transportation.<sup>61</sup> Nevertheless, the passage of the law involved an extensive mobilization campaign and was celebrated as a revolutionary event.<sup>62</sup>

¶27 This Article focuses on the era that followed this legislative accomplishment, an era that was marked by coalition building and solidarity in action on the one hand, and by conflicts and tensions on the other. The debates during this period primarily concerned the direction the movement should take, the definition of the most important and pressing issues around which to unite, and the ways to promote them.

#### IV. THE DISABILITY ALLOWANCES PROTESTS

##### A. *Agenda and Achievements*

¶28 The end of the 1990s saw a revival of disability activism and the development of new disability organizations that encompassed almost every aspect of the lives of disabled people.<sup>63</sup> This activity produced little change, however, and participants began to grow frustrated.<sup>64</sup> Activists began to disagree on the appropriate language through which to direct the new movement's efforts. While some preferred to focus on the newly introduced rights discourse, others were still concerned primarily with social welfare benefits, particularly disability allowances. Nevertheless, disability rights activists as a whole seemed to be empowered by the mobilizing force of the emerging disability movement.

¶29 Around this time, two sit-in strike campaigns took place, one in 1999 and one in 2001.<sup>65</sup> Disabled people organized these campaigns, and they were quite successful in

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<sup>58</sup> THE REPORT OF THE PUBLIC COMMITTEE FOR A COMPREHENSIVE REVIEW OF THE LEGISLATION REGARDING PEOPLE WITH DISABILITIES (1997) (Hebrew) (translated by author) [hereinafter PUBLIC COMMITTEE REPORT].

<sup>59</sup> *Id.* In this Article I shall refer to the report in two ways: I refer to the analysis, data, and recommendations of the report as the "Public Committee Report," and I refer to specific proposals within the report as the "ERPWD Bill."

<sup>60</sup> The compromise was suggested by Saul Yahalom, the head of the Knesset Committee which prepared the Bill. Yahalom was nominated to be the Minister of Transportation. He was eager to pass the two sections that the committee finalized in order to make sure that the law passed and was not pushed back by the next head of the committee. Ariela Auphir & Dan Orenstein, *Equal Rights for People with Disabilities Law, 1998: Emancipation at the End of the 20th Century*, in MENACHEM GOLDBERG BOOK 42, 52–54 (Aharon Barak et al. eds., 2002) (Hebrew) (translated by author).

<sup>61</sup> *Id.*; Ziv, *supra* note 56.

<sup>62</sup> Auphir & Orenstein, *supra* note 60, at 87.

<sup>63</sup> See sources cited *supra* note 53.

<sup>64</sup> See *infra* notes 70–72 and accompanying text.

<sup>65</sup> Hila Rimmon-Greenspan, *Disability Politics in Israel: Civil Society, Advocacy, and Contentious Politics*, 27 SOC'Y FOR DISABILITY STUD. (2007), available at <http://www.dsqsds.org/article/view/47/47>; see also Arie Rimmerman & Stanley S. Herr, *The Power of the Powerless: A Study on the Israeli Disability Strike*

bringing the issue of disability allowances to the forefront of the national agenda.<sup>66</sup> The campaigns spurred strong and compassionate public support. During the protests, a core of activists, mainly with mobility impairments, lived in a tent in front of government buildings in Jerusalem.<sup>67</sup> The activists demanded the increase of disability insurance allowances to the point where they would be compatible with the minimum wage in Israel, which is regarded as a minimum standard of dignified living; disability allowances for homemakers and for the elderly; disability healthcare services; and more. Both strikes came to an end after the relevant Israeli government office signed an agreement accepting some of the strikers' demands.<sup>68</sup> The significance of these protests transcended their concrete results. Both incidents became seminal moments in the movement, unique instances in which the voices of disabled people were heard, and rare moments of solidarity between disabled and nondisabled people in Israeli society.

¶30 The first of these campaigns lasted thirty-five days.<sup>69</sup> It was initiated in 1999 by a grassroots group of individuals<sup>70</sup> in response both to increasing economic hardship that resulted from the inadequacy of disability insurance allowances,<sup>71</sup> and to disappointment with the ERPWDL, which had not yet brought about significant changes.<sup>72</sup> This initial group was comprised mainly of persons with mobility impairments and was later joined by others.

¶31 While the campaign began with a broad agenda that included issues of accessibility, housing, and the implementation of the ERPWDL, these issues quickly dissipated, and the campaign ultimately focused on issues surrounding disability benefits, such as disability insurance stipends, mobility allowances, and the low rates, narrow scope, and outdated structure of personal attendance allowances.<sup>73</sup> The protest ended with great achievements for the activists: The Prime Minister and the Ministry of Finance surrendered to their demands.<sup>74</sup> This marked the first time that a street protest about

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*of 1999*, 15 J. DISABILITY POL'Y STUD. 12 (2004), <http://dps.sagepub.com/content/15/1/12> (discussing the 1999 protest and its implications).

<sup>66</sup> See Interview with Arie Zudkevich, Co-founder and Director, Campaign for Handicapped Persons in Isr., & Yoav Kraim, Spokesperson, Campaign for Handicapped Persons in Isr. (May 9, 2002) (on file with author); *In Struggle—The Bulletin of the Disabled Union, Vols. 1, 2, 3*, CAMPAIGN FOR THE HANDICAPPED IN ISR. (dating 2001, 2002, 2003 consecutively) (Hebrew) (translated by author); CAMPAIGN FOR THE HANDICAPPED IN ISR., <http://www.nechim4u.com/> (translated by author).

<sup>67</sup> See sources cited *supra* note 66.

<sup>68</sup> See *infra* notes 72 (for the first campaign) and 85 (for the second campaign) and accompanying text for the results of each strike.

<sup>69</sup> See *In Struggle—The Bulletin of the Disabled Union, Vol. 1*, CAMPAIGN FOR THE HANDICAPPED IN ISR. (March 2001) (Hebrew) (translated by author), for a discussion of the strike and its achievements. This bulletin was published by the Campaign for the Handicapped, an organization that was formed during the 1999 strike and that led the second strike. *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> Disability insurance allowances were not only insufficient in the first place, but also had not been updated over more than two years to match the rise in the standard of living, and therefore suffered continuing deterioration. Interview with Simha Benita, Founder, Mazor Ass'n & activist, Bizchut (May 13, 2002) (on file with author). See Einat Fishbein, *The Disabled Are Opening a Struggle on Their Rights: We Have Nothing to Live on*, HA'ARETZ, Sept. 29, 1999, <http://www.haaretz.co.il> (Hebrew) (translated by author), for background on the strike.

<sup>72</sup> Interview with Benita, *supra* note 71.

<sup>73</sup> Fishbein, *supra* note 71.

<sup>74</sup> See *In Struggle—The Bulletin of the Disabled Union, Vol. 1*, *supra* note 69.

social welfare issues had succeeded in Israel. It yielded significant changes in mobility and attendance allowances and a rise in disability insurance payments for the “severely disabled.”<sup>75</sup> During the protest, a new organization, the Campaign for Handicapped Persons in Israel (Campaign for the Handicapped), was established.<sup>76</sup> The Campaign for the Handicapped understood the protest's achievements to be only a first step in a broader effort to improve the living conditions of disabled people.<sup>77</sup>

¶32 The second sit-in strike campaign took place in 2000 and 2001 and lasted seventy-seven days.<sup>78</sup> On the agenda was a general reform in disability allowances that would benefit the majority of disabled people who live on disability insurance, and not just the few who are “severely” disabled.<sup>79</sup> The goals were few and specific, though still steep. The activists aspired to bring disability insurance on par with minimum wage rates (including an allowance for people whose benefits were below the minimum income rate), to allow disabled people who had reached pension age to receive both disability insurance and old-age pensions as well as other disability-related benefits,<sup>80</sup> to equalize healthcare benefits and services among all disabled people (bringing them on par with benefits rendered to disabled veterans and the work-injured), and to update mobility allowances.<sup>81</sup>

¶33 Public support for the protest was accompanied by extensive media coverage. Many disabled people who were not part of the organizing group joined the strikers or supported them from afar. Non-disabled people joined the strikers as well, bringing food and other forms of assistance.<sup>82</sup> A group of students studying Chinese medicine came to give free massage treatments to the strikers, and some of Israel's leading singers participated in a Live Aid-type concert for the disabled.<sup>83</sup> The protest also prompted newspaper columnists to criticize Israel's unjust social and economic policies, including, for instance, the government's preference for funding settlements in the occupied territories over the needs of citizens located well within Israeli borders.<sup>84</sup>

¶34 This second campaign ended with achievements as well. The agreement that was signed with the government (the Prime Minister's Office) at the end of the protest included a 20% general increase in disability allowances (instead of the 100% that they

<sup>75</sup> *Id.* at 8–11.

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> See *In Struggle—The Bulletin of the Disabled Union, Vol. 2*, CAMPAIGN FOR THE HANDICAPPED IN ISR. (March 2002) (Hebrew) (translated by author) (discussing the strike and its achievements).

<sup>79</sup> *Id.*

<sup>80</sup> Previously, a disabled person would switch from disability insurance to old-age pension, which was many times lower than the disability allowance, and was denied other benefits (such as mobility and attendance allowances).

<sup>81</sup> *In Struggle—The Bulletin of the Disabled Union, Vol. 3* 17, CAMPAIGN FOR THE HANDICAPPED IN ISR. (Spring 2003) (Hebrew) (translated by author).

<sup>82</sup> Ruti Sinai & Haim Shadmi, *The Ministry of Finance Fights Back: The Cost of Disability Allowances is 9 Billion Shekels*, HA'ARETZ, Jan. 11, 2002, <http://news.walla.co.il/?w=/1/167913> (Hebrew) (translated by author).

<sup>83</sup> Attila Somfalvi & Efrat Weiss, *Ten Thousand Demonstrators in a Protest for the Disabled*, YNET ONLINE, Jan. 23, 2001, <http://www.ynet.co.il/articles/0,7340,L-1575731,00.html> (Hebrew) (translated by author).

<sup>84</sup> Anat Gov, *The Public's Right to Know*, YNET ONLINE, Dec. 26, 2001, <http://www.ynet.co.il/articles/0,7340,L-1466608,FF.html> (Hebrew) (translated by author) (claiming that “with the money that we have, we could have been a state where the disabled smile”).

demand), a promise to grant disability allowances to people whose earned income was below the minimum wage, a guarantee that disabled benefits would not be eliminated upon reaching pension age, and a commitment to appoint a public committee to study and offer operative suggestions to improve disability-related social welfare policy.<sup>85</sup>

¶35 The achievements of these two campaigns were remarkable. The protests became a demonstration of solidarity both among disabled people as a community and between disabled people and the public at large; as a historical triumph of a powerless group in society over the powerful bureaucracy; as a unique moment in which social welfare became an issue in every home, and disabled people became visible, assertive, and relevant in national politics.<sup>86</sup> One of the strengths of the struggle was its emotionality, but as I will discuss below, the protests were also criticized for using the politics of mercy and pity.

### B. Criticisms and Doubts

¶36 These campaigns, in which grassroots voices of disability activists presented general disability allowances as the most pressing matter in disabled people's lives, spurred a conflict among journalists, commentators, and rights activists, who viewed the protests with mixed reactions, to the implied message regarding the place of disabled people in society.

¶37 Arie Zudkevich, the leader of both campaigns, presented disability as a condition associated with misfortune and suffering when he addressed the candidates in the race for the office of Prime Minister in 1999:

We are talking about the disabled who have been hit by misfortune twice, once for being disabled, and a second time for being forced to live on the shameful and shaming [resource allocation under the] state budget of all Israeli governments ever since. . . . These people cannot fight to improve their living conditions; therefore, we have founded our organization . . . and have promised to serve as their mouthpiece and to fight with our ultimate powers for us all . . . .

You who have met our people and know their suffering, you who have seen the pain in our eyes, should acknowledge the terrible injustice we have suffered. We hope to bring new hope . . . so that we will no longer watch the shameful spectacles of the disabled drifting through (*mitgolelim*) the freezing streets of Jerusalem.<sup>87</sup>

<sup>85</sup> *In Struggle—The Bulletin of the Disabled Union, Vol. 3, supra* note 81, at 12–14.

<sup>86</sup> Neta Ziv, *People with Disabilities—Between Social Rights and Existential Needs*, in ECONOMIC, SOCIAL, AND CULTURAL RIGHTS IN ISRAEL 813 (Yoram Rabin & Yuval Shany eds., 2004) (Hebrew) (translated by author); Rimmerman & Herr, *supra* note 65 (naming their article *The Power of the Powerless*).

<sup>87</sup> *In Struggle—The Bulletin of the Disabled Union, Vol. 1, supra* note 69, at 12–13. Note the difference between the remarks of Zudkevich and text by Kraim, *infra* note 98. The differences between the texts deserves a more concrete analysis as they represent two generations within the movement (Zudkevich, the older, and Kraim, the younger) and two phases in the struggle (Zudkevich at the end of the 1999 strike, Kraim at the end of the 2001 strike. Still, I believe they demonstrate the tensions within the struggle and in the messages that the struggle communicated to the outside world.



¶38 One journalist observed that the first sit-in strike was a “victory of tears.”<sup>88</sup> Others noted that the strike had been a “performance of misery”<sup>89</sup> and a “one-dimensional representation [of disabled people] as miserable[,] . . . as a minority that lives on the margins, a social burden.”<sup>90</sup> “This attitude,” Kimmerling warned, “brings us closer to societies that have [promoted] physical extinction of unworthy non-contributing elements in society.”<sup>91</sup> In this view, the image of disabled people in these strikes was not of equal citizens fighting for their rights, but of a marginal group begging for compassion.<sup>92</sup> “It was a victory of misery,” one history professor explained, because “you were forced to undress yourself, to expose your impairments, to recruit some journalists that would bring them to light, and only in this way could you win. Is this the society we wanted? This is a return to [the mentality of] the village [of the Diaspora], to charity collections (*kupat tzdaka*).”<sup>93</sup> From this perspective, the exposure of the participants’ impairments in public was communicated as a call for mercy and not an act of dignity.

¶39 For disability rights advocates, a struggle over disability allowances was not the street struggle they were hoping for but instead an anachronistic struggle that could have undermined the very disability rights project.<sup>94</sup> Thus, while they did provide legal counseling services to the protesters behind the scenes, they did not join the sit-in strike in full force. They neither sat in the tent, nor lobbied Knesset members and government officials, and did not take any overtly active role in the efforts. The protocols from that period of Bizchut, the organization that initiated the enactment of the ERPWDL, indeed reveal inner conflicts, and interviews conducted with activists likewise show that heated debates were taking place with regard to whether Bizchut and the Coalition to Promote the ERPWDL should be more actively involved.<sup>95</sup>

¶40 These protests represented a dual movement in relation to disability rights activism: continuity and departure. They represented continuity because they manifested the

<sup>88</sup> Einat Fishbein, *The Victory of Tears*, HA’ARETZ, Nov. 10, 1999 (Hebrew) (translated by author). The tears refer to the turning point in the first strike when the mother of a disabled child started crying and Knesset members and reporters were carried away and cried with her.

<sup>89</sup> Rita, (June 13, 2002, 9:04 AM) YNET COMMUNITY BLOG, <http://www.ynet.co.il/home/1,7340,L-869-7949-1482850,00.html> (Hebrew) (translated by author).

<sup>90</sup> Baruch Kimmerling, *The Disabled of the Media*, HA’ARETZ, Aug. 11, 1999 (Hebrew) (translated by author).

<sup>91</sup> *Id.*

<sup>92</sup> A survey by Rimmerman and Herr of media representation of the 1999 strike concluded that “it is not surprising that the participants of the strike were more often described in the Israeli press as objects of pity rather than activists struggling for their rights.” Rimmerman & Herr, *supra* note 65, at 15; *see also* Ziv, *supra* note 86, at 843–44.

<sup>93</sup> Fishbein, *supra* note 88 (quoting Daniel Gutwein).

<sup>94</sup> *See infra* Part V.B.

<sup>95</sup> Interview with Rivka Sneh, Co-founder, YATED – Children with Down Syndrome, & Co-founder Bizchut (May 13, 2002) (on file with author); Interview with Gideon Drori, The Parents Lobby for Cmty. Living, Co-founder, Bizchut (May 12, 2002) (on file with author); Interview with Simcha Benita, Founder, Mazor Ass’n, Activist, Bizchut (May 13, 2002) (on file with author); Interview with Achiya Kamara, Co-founder & Executive Director, Bekol (May 14, 2002) (on file with author); Interview with Ariela Auphir, Executive Director, 1996–2000, Bizchut, Commissioner, 2000–2001, Equal Rights for People with Disability (May 14, 2002) (on file with author); Sylvia Tessler Lozovick, Executive Director, 2000–07, Bizchut, (May 12, 2002) (on file with author); Interview with Neta Ziv, Co-founder & Board Member, Bizchut (May 15, 2002) (on file with author); PROTOCOLS OF STEERING COMM. MEETINGS, BIZCHUT (Hebrew) (translated by author) (on file with the author).

growing visibility and assertiveness of disabled people, and they represented departure, on the other hand, because they seemed a massive step backwards to reliance on charity and pity.

¶41 Yuval Elbashan, then legal counsel to a social justice organization called Yedid, has expressed a very different view on the tactics that these campaigns involved: He found the tears both subversive and rebellious, and therefore consistent with the struggle as a whole. According to Elbashan, “there is nothing more legitimate . . . [than] taking the game to where you have the advantage.”<sup>96</sup> While normally the game is ruled by inaccessible economics, he explained, this time disabled people themselves have set the rules of the game—the rule of tears.<sup>97</sup>

## V. COMPETING MEANINGS OF DISABILITY ALLOWANCES

### A. A Social Welfare Perspective

#### 1. Hope, Solidarity, and Strength

¶42 For the organizers of the 1999 and the 2001 campaigns and for people who joined them, the protests were a demonstration of hope, solidarity, and strength. As Yoav Kraim, the spokesperson of the Campaign for the Handicapped, wrote in the organization’s bulletin after the 2001 protest:

After long years of walking in the desert with no pastor, we have finally reached the gates of the Promised Land. We can now state that the disabled populace has left behind any last remains of paternalism and represents itself with dignity and with no mediators. . . . Our two most important achievements: first—the power of working together . . . and second—the public’s understanding of the needs of all disabled: the mentally disabled, sensory disabled, physically disabled, and cognitive disabled.

The public knows today that a disabled person is a human being too, bearing rights. We too share the image of God. . . . Furthermore, the disabled populace is leaving its “closet” behind today and is starting to lift its head. The shame that society has granted us is disappearing, and we now march to the light of human dignity. This light will guide the State of Israel . . . to become a society that manages its economic affairs as well in terms of values and fundamental needs. In this way, we have provided the entire public with renewed dignity.<sup>98</sup>

¶43 Organized by disabled people and conducted in the streets, the campaigns represented a grassroots struggle in which disabled people forced society to notice them, address their hardships, and consequently deal with its own responsibility for past injustices.

<sup>96</sup> Fishbein, *supra* note 88 (quoting Yuval Elbashan).

<sup>97</sup> *Id.*

<sup>98</sup> *In Struggle—The Bulletin of the Disabled Union, Vol. 3, supra* note 81, at 15 (emphasis omitted).

¶44 The images of misery and suffering did not seem to bother the activists so much: They drew public attention, and the activists did not perceive them as contradicting the goals of the movement. Exposing their impairments and economic destitution entailed a direct challenge to the “closet” of shame that had been imposed on them. As Zudkevich blatantly put it, they truly felt “hit by misfortune twice”<sup>99</sup>—indeed, they did not see society as responsible for the “misfortune” of disablement, yet they did consider it responsible for their impoverishment.

## 2. Disability Allowances as a Means of Survival

¶45 Financial destitution, inadequate healthcare services, and lack of sufficient societal and governmental support were indeed at the center of the protests. The welfare activists who led the protests viewed disability allowances as the most pressing issue, while civil rights could wait for later stages in the overall struggle; civil rights were not entirely beyond the scope of this struggle, but their priority was low. In the 1999 protest, for instance, disability rights were included in the initial agenda but were soon abandoned. Top priority was given to disability allowances due to their fundamental role in ensuring disabled people’s very existence—their economic security and physical survival. Thus, Arie Zudkevich said: “Everyone agreed that allowances were the first priority—first of all: *to stay alive*.”<sup>100</sup> Simha Benita, one of the campaign organizers, was quoted in an interview that announced the launching of the first strike: “The ground is burning under our feet . . . we have nothing to live on, and nobody notices us. Indeed, it is not easy to take the disabled outside their homes for a demonstration, but this time we are going to fight and bring hundreds [of people] until we get attention.”<sup>101</sup> Momo Nekave, another prominent activist, was cited as saying: “Our people are desperate. Our struggle is about *the right to life*, because in the current situation many are hardly alive.”<sup>102</sup>

¶46 The formulation of disability allowances as guaranteed by the right to life resembles a similar attempt in the United States to formulate welfare benefits as rights. That view was promoted by the welfare rights movement that flourished for a short while during the 1960s. As early as 1955, A. Dalefield Smith, a legal scholar and an early advocate of welfare rights in the United States, had developed the approach that viewed welfare benefits as stemming from the fundamental “right to life,” based on the Fourteenth Amendment to the U.S. Constitution.<sup>103</sup> That argument failed, and the welfare advocates turned to due process rights as a way of ensuring benefits for indigent people (using Charles Reich’s theory of the “New Property”).<sup>104</sup> The welfare rights movement enjoyed success in courts during the 1960s, and then its influence declined without leaving much impact on the United States rights discourse.<sup>105</sup>

<sup>99</sup> *Id.*

<sup>100</sup> Interview with Zudkevich, *supra* note 66 (emphasis added).

<sup>101</sup> Fishbein, *supra* note 88.

<sup>102</sup> Ruti Sinai, *How Do You Live on 1,740 NIS a Month?*, HA’ARETZ, Feb. 20, 2002 (Hebrew) (translated by author) (emphasis added).

<sup>103</sup> See A. DELAFIELD SMITH, *THE RIGHT TO LIFE* (1955).

<sup>104</sup> See Edward V. Sparer, *The Right to Welfare*, in *THE RIGHTS OF AMERICANS: WHAT THEY ARE—WHAT THEY SHOULD BE* 65 (Norman Dorsen ed., 1971) (chronicling the struggle); MARTHA F. DAVIS, *BRUTAL NEED: LAWYERS AND THE WELFARE RIGHTS MOVEMENT, 1960–1973* (1995) (chronicling the movement); see also Charles A. Reich, *The New Property*, 73 *YALE L.J.* 733 (1964).

<sup>105</sup> Sparer, *supra* note 104; DAVIS, *supra* note 104.

### 3. Disability Allowances as a Matter of Rights

¶47 Formulating disability allowances as a matter of rights was also a central concern in tenBroek and Matson's seminal 1966 article *The Disabled and the Law of Welfare*.<sup>106</sup> Writing just at the birth of the disability movement, tenBroek and Matson provided an eloquent critique of the then-existing social security mechanisms, comparing social insurance and public assistance programs for disabled people.<sup>107</sup> TenBroek and Matson argued in favor of strong and progressive social insurance mechanisms that "maximize *similarity, normality and equality* as between the disabled and the able-bodied,"<sup>108</sup> and which follow the goals of "economic opportunity, social equality, and personal dignity."<sup>109</sup> They further explained that social insurance is a better form of social welfare policy because the covered participants can "claim the benefits as a matter of right."<sup>110</sup>

¶48 There is indeed a difference between social insurance and public assistance as two distinct social security mechanisms.<sup>111</sup> Public assistance is usually conditioned on a means test that includes a relatives' liability component.<sup>112</sup> It is a benevolent giving of a state-run charity—a discretionary, stigmatizing, and deterring mechanism, which is based on an individual assessment and results in a conferred-upon allowance rather than a right.<sup>113</sup> In contrast, social insurance is considered establishing a firm right which is unconditioned by income and means test and is unrelated to family liability; the payments are granted according to unified and egalitarian rules, and enjoy social legitimacy without deterring eligible beneficiaries.<sup>114</sup> Moreover, public assistance programs are not intended to allow a life of dignity and security. They are only intended to provide minimal relief that is essentially insufficient because it provides support that is lower than the minimum needed.<sup>115</sup> In contrast, social insurance is supposed to allow economic security as a matter of right as well as human dignity.<sup>116</sup>

¶49 The reality of social security, however, is that disability allowances programs do not follow the clear distinction described above. Public assistance programs have acquired some features of social insurance, while social insurance programs retain some

<sup>106</sup> TenBroek & Matson, *supra* note 15.

<sup>107</sup> See tenBroek & Matson, *supra* note 15.

<sup>108</sup> *Id.* at 816 (emphasis added) (depicting the basic features of "integrationism", the new approach to disability which they advocate in their article, as opposed to "custodialism"). The authors go on to explain that ideal social security schemes correspond with integrationism while public assistance mechanisms accord a custodial approach. *Id.* at 818.

<sup>109</sup> *Id.* at 840.

<sup>110</sup> *Id.* at 818.

<sup>111</sup> The following comparison is based on a table that summarizes the differences between the two mechanisms. DORON & KRAMER, *supra* note 49, at 65; see also tenBroek & Matson, *supra* note 15 (discussing in detail the features and principles of the U.S. social security programs); Weber, *supra* note 28 (discussing in detail the features and principles of the United States' social security programs); Matthew Diller, *Entitlement and Exclusion: The Role of Disability in the Social Welfare System*, 44 UCLA L. REV. 361 (1996).

<sup>112</sup> See sources cited *supra* note 111.

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

public assistance characteristics.<sup>117</sup> The lines between the two were particularly blurred in Israel. Although the general program of disability allowances is entitled “disability insurance,” it essentially exhibits public assistance features, by primarily relying on the principle of need.<sup>118</sup> The result is that even disabled workers who have paid social insurance throughout their working life receive inadequate allowances that provide merely minimal relief.<sup>119</sup> This is because they were not injured in work-related circumstances, but rather during mundane events.

¶50 Formulating disability allowances as a matter of rights became an issue for the Campaign for the Handicapped as well. After the 2001 protest, the activists increasingly talked about allowances as rights, as well as a mechanism that aims to close the gap between the living expenses of disabled and nondisabled individuals.<sup>120</sup> The size of the gap, they argued, depends on the level of services provided by the state.<sup>121</sup> Moreover, they advocated the acknowledgement of:

disability allowances [as] an investment that allows the disabled person to secure his unique needs, to integrate into the life of the country and contribute to it. We need a new balance between disability and wage-earning so that the disabled and the state will pursue the integration of the disabled person as an active and productive worker, . . . and so that the quality of life of the disabled will not decline.<sup>122</sup>

#### 4. From Welfare to Work

¶51 The protests focused primarily on practical solutions for improving the level of benefits and changing the program’s structure. The agreement with the government at the end of the 2001 campaign included a provision that guaranteed the establishment of a public committee.<sup>123</sup> One of the committee’s major expected tasks was to discuss ways to encourage and provide incentives for disabled people to work and earn their income, while still ensuring the existence of mechanisms that guarantee easy transition to economic independence (for example eligibility for an allowance if income is below minimum standards).<sup>124</sup> The Campaign for the Handicapped had indeed insisted on the establishment of such a committee and participated in its proceedings.<sup>125</sup> The Public Committee to Review Matters Concerning Disabled People and to Advance Their Inclusion in the Community (also named the Laron Committee, after Judge Laron, the

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<sup>117</sup> See tenBroek & Matson, *supra* note 15 (analyzing disability allowances in the United States); DORON & KRAMER, *supra* note 49 (analyzing disability allowances in Israel).

<sup>118</sup> See DORON & KRAMER, *supra* note 49; Gal, *supra* note 29.

<sup>119</sup> Gal, *supra* note 29.

<sup>120</sup> Memorandum from the Campaign for the Handicapped Persons in Isr. to Isr. Gov’t (May 9, 2002) (Hebrew) (translated by author) (on file with author) (regarding the establishment of a public committee, as part of the agreement that was reached at the end of the 2001/2002 strike)

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> See *supra* note 85.

<sup>124</sup> *Id.*

<sup>125</sup> Memorandum from the Campaign of the Handicapped Persons in Isr., *supra* note 120.

head of the committee) published its report in March 2005 (Laron Report).<sup>126</sup> Thus far, the Laron Report has yielded one substantial achievement: a recent amendment to the National Insurance Law, which created a mechanism that allows disabled people who earn low wages not to lose their allowance at once, but rather in a gradual process, depending on their level of income and years of work.<sup>127</sup>

¶52 Ironically, the Campaign for the Handicapped encountered much criticism regarding its role in the report proceedings. It was argued that its representatives had deserted the goals and the people they represented by participating in the committee.<sup>128</sup> Laron Report opponents argued that:

The report perpetuates historical injustice: the link between allowances and wage income. We argue: It is the right of a disabled person to work and earn wages with dignity, without losing his allowance, which is the existing situation among other groups of disabled persons. Once and for all, this link should be broken, or, alternatively, all disability allowances and eligibility criteria should be put on equal grounds.<sup>129</sup>

The heated debate surrounding the Laron Report again reinforces the argument regarding the central role that disability allowances play in disability politics in Israel.

### 5. Understanding Disability, Poverty, and Rights

¶53 The social welfare perspective as depicted here and as illustrated in the protests is a compelling one because it is rooted in the life experiences of disabled people. In the following discussion, I confront it with a disability rights perspective, and with additional critical approaches towards disability, poverty, and rights, suggesting that a new conceptualization for disability allowances is needed. Under the social welfare view of disability allowances, the relationships between disability and poverty are complex, but still remain within the framework of overlap rather than mutual constitution. For welfare activists, *poverty* was the mark of inferiority. Indeed, the correlation between disability and poverty was a matter of state responsibility, but the boundaries between the poor and the disabled were maintained as two distinct spheres of policy and activism.

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<sup>126</sup> LARON REPORT (2005), available at <http://users.tapuz.co.il/forums/laron-x.pdf> (Hebrew) (translated by author). A comprehensive analysis of the report's recommendations is beyond the scope of this project at this point. A basic fault of the report is its understanding of unemployment as a problem of the disabled person, and not as a social problem of imposed disablement. The report advances the entrance of disabled people into the labor market, but ignores the societal aspects of employment discrimination and other structural problems. In addition, the levels of disability allowances basically remained the same, in other words, at poverty levels. Although, according to the report, people who go to work will not lose their benefits at once, the reform does not improve the economic situation of people who live on disability insurance alone. See Kobi Cohen, THE LARON REPORT—WHY IT IS IMPORTANT TO STOP ITS IMPLEMENTATION, available at <http://mate.ios.st/IOS/Users/mate.ios.st/Files/3546613314.pdf> (Hebrew) (translated by author), for a fully developed critique of the report.

<sup>127</sup> National Insurance (Amendment 109) Law, 5768-2008 S.H. 671 (2008) (Isr.).

<sup>128</sup> See *supra* note 126, for the opponents' critique. The opposition to the report led to a new alliance of disabled people who even initiated a new strike against the report in October 2005.

<sup>129</sup> COHEN, *supra* note 126, at 9. This latest development in disability activism not only offers a more radical view of disability allowances, but also questions the disparities among disabled people and exposes them to public discussion.

¶54 The grand vision of the disability activists who led the sit-in strikes included not only the “here and now,” but also a future vision of rights, dignity, participation, and, ultimately, of integration into the labor market. Yet what they neglected to address and analyze is the role of discrimination and exclusion in the current situation. They also overlooked aspects relating to the social construction of disability and the role of the state and of society in the continuing disablement of persons. Still, their undisputed contribution was raising the need for a new conceptualization of disability allowances that captures the complex barriers that disabled people encounter, including unemployment and extra costs of living. The remaining major challenge would therefore be to articulate and to structure general disability allowances not as compensation for being disabled but rather as a way for society to pay for its major contribution to processes of disablement and exclusion.

## B. *A Disability Rights Perspective*

### 1. Ignoring Disability Allowances

¶55 The disability rights perspective on disability allowances is not easily portrayed. At first glance it might seem as if disability rights advocates have no position with regard to disability allowances because disability allowances are virtually absent from the disability rights scheme. Yet a closer look reveals a mix of explicit and implicit reasons for this absence, reasons which have also shaped the mixed responses to the 1999 and 2001 protests.

¶56 In the discussion below, I analyze the disability rights discourse that evolved in Israel during the 1990s. The analysis will not focus on the ERPWDL alone, but rather will examine the ERPWDL together with the ERPWD Bill and the Public Committee Report as a series of legal documents that together encompass a broader picture of the disability rights vision in Israel during that era.<sup>130</sup>

¶57 The disability rights model that has evolved in Israel was guided by progressive ideas, including careful attention to social welfare mechanisms, but it eventually ignored the issue of disability allowances. This local rights scheme was based on what the drafters identified as two dominant approaches to progressive disability legislation: non-discrimination and adequate services.<sup>131</sup> The first component referred to the Anglo-American approach that emphasized non-discrimination tools and relied, especially in the United States, on the legacy of the civil rights movement.<sup>132</sup> The second component was

<sup>130</sup> The ERPWDL eventually included only four parts of the original proposal: general principles, accessibility to public transportation, employment equality, and the establishment of an Equal Rights Commission for disabled people. Equal Rights of People with Disabilities Law, 5758-1998, S.H. 152 (1998). Therefore, it cannot be considered as representing the entire disability rights advocates’ vision. However, I will refer to the ERPWDL where the discussion involves specific provisions that were enacted into law.

<sup>131</sup> Ziv, *supra* note 56, at 176–77. Ziv emphasizes the innovativeness that lies in such a combined approach and argues that it can serve as a model for disability rights laws. *Id.* at 201–02; *see also* Public PUBLIC COMMITTEE REPORT, *supra* note 58, at 19; Auphir & Orenstein, *supra* note 60, at 56; Herr, *supra* note 56. The ERPWD Bill included a specific chapter dedicated to Special Needs. *See* ERPWD Bill, *supra* note 59, §§35–38. A stricter translation of the original concept of adequate services would be something like “*appropriate-response to special needs*” (*see* Equal Rights of People with Disabilities Law §2).

<sup>132</sup> Ziv, *supra* note 56, at 194–97; Herr, *supra* note 56.

a lesson from the Scandinavian approach, which focused on the state's duty to provide adequate services and the complementary entitlements that individuals have to receive those services.<sup>133</sup> The drafters of the scheme understood this combined model to represent a better understanding of the nature of both disability and equality for two main reasons. First, they believed it recognized that achieving equality and rights is possible only when individuals have the means and conditions to fulfill and enjoy these rights.<sup>134</sup> Second, they believed it acknowledged the unique relationship between autonomy and dependency in disabled people's (and in all persons') lives.<sup>135</sup>

¶158 Consequently, the ERPWD Bill was a unique mixture of rights and entitlements, of negative and affirmative provisions, that enabled disabled people to construct a wide range of legal claims. A typical chapter in the ERPWD Bill began with declaring an abstract right, followed by giving a few concrete instructions about the operation of that right, and concluded with detailing the concrete roles and duties of the state in providing certain services to ensure that this right was fulfilled. Thus, the employment chapter included anti-discrimination and reasonable accommodations provisions, a mechanism of appropriate representation for disabled people, and an additional provision that dealt with employment and rehabilitation programs to encourage the integration of disabled people into the general labor market.<sup>136</sup>

¶159 The ERPWD Bill created a particularly important role for social rights and state obligations within the emerging rights scheme.<sup>137</sup> It included provisions that addressed access to healthcare, grants, and personal assistance allowances in support of independent living; arrangements that allowed attention to each child's educational needs; and rehabilitation and vocational training programs. Of specific interest is the ERPWD Bill's "Special Needs" section, which included entitlements to acquisition of impairment-related equipment, to professional consultation for the purpose of personal decision-making, and to mobility allowances.<sup>138</sup> The role of the Special Needs section in the disability rights scheme was one of allowing and maximizing the utilization of rights.

¶160 It is therefore particularly revealing that missing from the ERPWD Bill was a rights-based reformulation of disability allowances. The local disability rights formula avoided the issue of social security, both as a measure of economic relief and as a source of human dignity for disabled people. None of the Bill's drafts mentions a right to economic security, to social insurance, to social welfare, to adequate living conditions, or even to a minimum standard of living, to name a few possible options.<sup>139</sup> In fact, this is

<sup>133</sup> Ziv, *supra* note 56, at 194–97; Herr, *supra* note 56.

<sup>134</sup> PUBLIC COMMITTEE REPORT, *supra* note 58, at 3.

<sup>135</sup> Ziv, *supra* note 56, at 201.

<sup>136</sup> The Employment Chapter was fully included in the 1998 law. See ERPWD Bill, *supra* note 59, §§ 8–18; see also PUBLIC COMMITTEE REPORT, *supra* note 58, at 30–41 (ERPWD Bill §10-13B) (further describing the ERPWD Bill); Auphir & Orenstein, *supra* note 60, at 63–72 (reviewing and analyzing that section).

<sup>137</sup> See Ziv, *supra* note 86, for a detailed review of the status of disabled people's social rights.

<sup>138</sup> Clearly, each of these provisions can be easily linked to a specific right: special equipment to healthcare and fostering autonomy, mobility to freedom of movement, and decision-making to liberty, human dignity, and privacy, or even to the particular right to make decisions that was already adopted into the ERPWDL.

<sup>139</sup> See *infra* notes 188-190 and accompanying text, for a discussion of an array of available options.



one of the very few issues with legal implications that were totally abandoned in the process of formulating disability rights.<sup>140</sup>

## 2. Implied Distinctions Among Disability Allowances

¶61 A close reading of the ERPWD Bill and the Public Committee Report reveals that while they both espouse in-kind benefits (provision of actual services), they also introduce an implicit distinction between two types of cash benefits (such as direct payments): those intended to cover specific, impairment-related needs, and those that concern general living expenses. The first type relies on a link between a specific disability and the particular needs it generates. These impairment-related cash benefits were incorporated into the rights formula. They were justified as “adequate services” and as a means to realize rights that would otherwise remain useless and abstract for disabled people.<sup>141</sup>

¶62 The second type of cash benefit is the focus of this study. It concerns basic disability allowances that are intended to cover general living expenses.<sup>142</sup> This basic allowance is based on one’s level of disability, but is not explicitly linked to any particular need. The structure, definitions, and levels of this allowance are different for each program, yet none of the programs provides a reference to the type of expenses the allowance is meant to cover. Based on the amounts granted, it seems that disability allowances are meant to cover daily expenses, some of which might be related to one’s impairment, but most of which are basic living expenses. This is particularly evident in instances where a means test is employed.

¶63 The inevitable conclusion is that the local disability rights scheme found no place for cash benefits that covered needs which were not disability-related, such as food, shelter, and clothing, not to mention furniture or cleaning supplies—the kind of needs that all people share and that advocates for poor people demand. It seems that an implicit distinction between disability-related needs and poverty-related needs was at work and hindered the formulation of a rights-based justification for adequate disability allowances.

## 3. The Reasons for Neglecting Disability Allowances

¶64 The primary explanation for this neglect, as expressed by some disability advocates, is a tactical one. It is based on the claim that this struggle is not to be handled by means of ordinary legal methods of litigation and legislation; instead, it should emanate from the bottom up, and as such, it should be initiated in the appropriate arena—

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<sup>140</sup> Another issue is sexuality and family life, a growing concern particularly among parents of people with developmental disabilities.

<sup>141</sup> The community living chapter, for instance, included two such provisions. One was the newly designed entitlement to personal assistance (that was to replace attendance allowance). PUBLIC COMMITTEE REPORT, *supra* note 58, at 59–65 (finding that institutional care is the norm under current state practice). A second provision concerned state funded financial assistance for housing for those who could not otherwise afford housing other than institutional care. *Id.*

<sup>142</sup> These are the more familiar disability allowances as provided by the major disability allowances mechanism, including the Invalids Law benefits to disabled veterans, the Work Injury Program, and the general disability insurance program. *See supra* Part III.A.

that is, in the streets.<sup>143</sup> While this argument presents a sufficient explanation from a tactical perspective, it avoids the central issue of the disability-poverty dyad. If the issue were a matter of strategy and not of essence, there would have been a clear understanding that disability insurance constituted an integral part of disability rights. Then the central struggle would have focused on prioritizing living allowances within the disability rights agenda. The absence of such recognition indicates that a more critical account is needed.

¶165 Another dominant explanation is that disability allowances were abandoned because they were considered part of the old world of charity and goodwill that should be abolished—the epitome of paternalistic and anachronistic social welfare policy that is based on an outdated individualist-medical approach to disability.<sup>144</sup> The charity approach to welfare implies that disability is a static condition and that disabled people are destined to live on the margins of society. It means that disabled people cannot hope to be equal participants in—not to mention contributors to—social, cultural, and political life; that they deserve handouts to keep them alive, albeit at the edge of society. This view conflicts with that advanced by disability rights advocates in Israel, as well as in Britain and the United States, who believe in transforming disabled people into a flourishing community of dignified citizens.<sup>145</sup> In reply, Mark Weber, a leading disability law scholar who studied extensively the realm of disability allowances, contends that “greater support from social insurance may make disability seem less pitiable.”<sup>146</sup>

¶166 It has also been argued that social insurance was rejected because, like private charity, it was perceived as merely “cosmetic,” a superficial social remedy that does not impact the social structure but rather legitimizes it, and consequently hinders the revolution that rights were about to bring.<sup>147</sup> Within the disability rights scheme that evolved, disability insurance, particularly in the form of living allowances, was perceived as a wrong that could be tolerated only as a transitional measure, until the transformation would be complete. According to this view, in due time, disability insurance would become irrelevant and unnecessary.<sup>148</sup>

¶167 This Article suggests an additional fundamental explanation for the avoidance of disability allowances that has not been discussed thus far in the literature—that is, the attempt to distinguish between poverty and disability. According to this explanation, the particular need-tailored benefits were acceptable because they were clearly disability-related, linked to costs and services that disabled people require regardless of their actual

<sup>143</sup> This was the kind of reasoning that the lawyers who founded Bizchut were expressing. See, e.g., Interview with Ziv, *supra* note 95; Interview with Auphir, *supra* note 95. In an article that Ziv published recently, she stressed that argument more specifically, even though she also acknowledges that “the issue of allowances is a direct reflection of the idea of ‘adequate services.’” See Ziv, *supra* note 86, at 844–45.

<sup>144</sup> See Mark Weber, *Disability Rights, Disability Discrimination and Social Insurance*, 25 GA. ST. U. L. REV. 575, 599–600 (2009).

<sup>145</sup> The rights view of disability allowances was voiced most clearly in the 1976 Fundamental Principles document of the Union of the Physically Impaired Against Segregation. See MICHAEL J. OLIVER, UNDERSTANDING DISABILITY: FROM THEORY TO PRACTICE 21–28 (1996) (quoting and discussing this document); see also Anita Silvers, *Formal Justice in Disability, Difference, Discrimination: Perspectives on Justice Bioethics and Public Policy* 13 (1998).

<sup>146</sup> Weber, *supra* note 144, at 600.

<sup>147</sup> See OLIVER, *supra* note 145, at 21–28.

<sup>148</sup> Weber, *supra* note 28, at 908–09. Weber criticizes this view. *Id.* at 909–11; see discussion *supra* Part VI.

economic condition. In the eyes of rights advocates, the perceived problem with disability allowances, particularly in their current form as a living allowance, is that they establish a link between disability and poverty. Rights advocates did not welcome this link because it had no place in the world they envisioned for disabled people. In that world, poverty among the disabled community would not stem from the condition of disability, but from other reasons.<sup>149</sup> The differentiation between poverty and disability, then, was not strategic but was instead rooted in the very assumptions of the discourse, according to which poverty in itself is not a disability rights issue. Breaking the link between disability and poverty resulted in the constitution of a rigid separation between social security and disability rights as two distinct spheres.<sup>150</sup>

¶168 The absence of social security from the ERPWD Bill also exposed the possibility that neo-liberal ideas play a prominent role in the formulation of rights-based disability policies. Hence, while all of the social services enumerated and promoted in the ERPWD Bill were designed to enable disabled persons to lead independent lives by providing better conditions for their productivity—primarily through full employment—disability insurance was perceived (albeit indirectly) as relinquishing their hope of becoming productive citizens. This implicit equation between dignity and productivity suggests that the disability rights framework has not been able to challenge the predominant meaning of productivity and independence, but rather has adopted it.

#### 4. Understanding Disability, Poverty, and Rights

¶169 Analyzing the absence of social insurance from the ERPWD Bill in terms of the disability/poverty dyad raises the question of whether the disability rights discourse is still open to a classic critique of rights as fundamentally a liberal concept.<sup>151</sup> Although sophisticated and socially oriented, disability rights seem to eventually perpetuate the marginalization of disabled people. Nancy Fraser, a world-renowned political scientist, critiques this type of identity-based rights movements, arguing that it gives rise to the politics of recognition, which overshadows the politics of redistribution that preceded it.<sup>152</sup> Fraser argues that it is typical of recognition-focused movements to ignore the

<sup>149</sup> Matthew Diller, *Dissonant Disability Policies: The Tensions Between the Americans with Disabilities Act and Federal Disability Benefit Programs*, 76 TEX. L. REV. 1003, 1032–48 (1998). Diller expresses the view that in the future disability will not be different from other conditions such as age and education. *Id.*

<sup>150</sup> Absence of attention to social security was present in additional sections of the Bill. Thus, the provision concerning accommodations of legal proceedings did not address proceedings before administrative tribunals, and the accessibility part paid no special attention to access to social welfare services (although it did specify a right regarding access to healthcare). See ERPWD Bill, *supra* note 59, §§14–24.

<sup>151</sup> Note that despite my critique, I do not advocate the abandoning of rights. Nor do I endorse them as the ultimate device to promote social change and dismantle power structures. I examine rights as the particular paradigm and a concrete resource that was developed in a certain era and ask what it entailed and what it missed or neglected. Rights in my view are a process and not an outcome, as I shall explain later, and the critique of rights is an important, yet not exclusive, aspect of my understanding of how they work. See generally JOHN BRIGHAM, *THE CONSTITUTION OF INTERESTS* (1996) (providing a constitutive approach to rights in sociolegal studies); MICHAEL W. McCANN, *RIGHTS AT WORK—PAY EQUITY REFORM AND THE POLITICS OF POLITICAL MOBILIZATION* (1994) (providing a constitutive approach to rights in sociolegal studies); Morton J. Horwitz, *Rights*, 23 HARV. C.R.-C.L. L. REV. 393 (1988) (discussing how rights theories have helped and hurt the struggle for equality).

<sup>152</sup> See sources cited *supra* note 151.

redistributive aspects of their plight, thus eventually cooperating with the neo-liberal turn of the 1970s.<sup>153</sup>

¶70 In encounters with rights advocates, social welfare activists have claimed that rights are a utopian ideal and that current pressing issues should not be ignored in the name of a future revolution, even an attractive one.<sup>154</sup> In an interview with Yoav Kraim, he said: “Our approach to rights is evolutionary not revolutionary.”<sup>155</sup> He criticized Bizchut for being “guided by ideology,” explaining that:

We have no problems with [the ideology of rights] but there is a great distance between theory and reality, and life requires compromises so that people’s happiness will not be sacrificed for that ideology . . . . Our vision of allowances is the same . . . but in the meantime, nobody should starve.<sup>156</sup>

Kraim concluded by saying that “Bizchut is not ready to talk about needs, about the ‘here and now.’”<sup>157</sup>

¶71 The central question, then, becomes: Whose responsibility is it to bear disabled people’s basic costs of living and added costs of disability? Is it the state’s duty or the individual’s obligation? And what is the role of disability allowances in the effort to re-allocate the burdens of disability and poverty between people and the state? Another issue to consider is whether this is essentially a matter of transitional measure (“in the meantime”), or whether a more fundamental challenge to the rights discourse is involved. These questions stand at the center of the remaining discussion.

## VI. RIGHTS AND THE PERSISTENCE OF POVERTY

### A. *The Necessity of Disability Allowances*

¶72 Linking disability and poverty runs the risk of perpetuating the stigma that equates disability with inferiority, lack of productivity, worthlessness, and passivity. At the same time, attempts to separate disability from poverty have ignored the fact that in many ways poverty and disability are interrelated. The purpose of this Article is to work within the tension between the two perspectives. While this approach may not immediately resolve the conflict between the two options, it could, nevertheless, facilitate a shift in perspectives that would ultimately lead to a resolution. Acknowledging this tension is the first step in thinking critically about disability allowances. The second step would be to acknowledge their undesirable yet unavoidable character. In other words, I suggest recognizing the necessity for disability allowances while at the same time striving to make them unnecessary and even redundant for as many disabled people as possible.

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<sup>153</sup> See NANCY FRASER, MAPPING THE RADICAL IMAGINATION: BETWEEN REDISTRIBUTION AND RECOGNITION (2003); NANCY FRASER & AXEL HONNETH, REDISTRIBUTION OR RECOGNITION?: A POLITICAL-PHILOSOPHICAL EXCHANGE (Joel Golb et al. trans., 2003).

<sup>154</sup> Interview with Yoav Kraim, spokesperson, Campaign for Handicapped Persons in Isr. (May 9, 2002) (on file with author); Yoav Kraim, spokesperson, Campaign for Handicapped Persons in Isr., Address, Tel Aviv Univ. (on file with author).

<sup>155</sup> Interview with Yoav Kraim, *supra* note 154.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

¶73 The tension between the undesirable yet unavoidable character of some legal measures is familiar in other realms of antidiscrimination law as well. Affirmative action policies, for example, attempt to undo social wrongs while facing the risk of reinforcing that same wrong. For that very reason, many understand affirmative action policies to be only temporary measures, even if the future in which such policies will not be necessary is distant.<sup>158</sup> Indeed, this Article considers the possibility of viewing disability allowances as a form of affirmative action that compensates disabled people for the added costs they bear in a society that is mostly inaccessible and, as yet, unwilling to become fully accessible and accommodating.

¶74 One central reason for acknowledging the necessity of disability allowances is undeniably rooted in the life experiences of disabled people. Listening to disabled people's voices is an important, corrective step. It deviates from the traditional approach, in which disabled people are excluded from the decision-making processes that concern their lives and well-being. Nevertheless, the issue of disability allowances cannot be embraced unequivocally solely because disabled people demand them. Critical listening means that "voices from the bottom" are taken into account, but examined and judged in light of other principles and of a relevant historical, political, and socioeconomic context.<sup>159</sup> Currently, there are a disproportionately large number of disabled people who live in poverty, making economic survival the most pressing issue in their lives. For those disabled people, disability allowances are about the here and now, while disability rights that attempt to restructure society are perceived as a long-term goal, if not a utopian ideal.

¶75 In the case of Israel, the conflict over the role of social insurance benefits did more than trigger a disagreement about the goals of the disability movement. It also tested the movement's limits and inclusiveness. Because disability rights advocates chose to ignore the issue of social security, the recipients of disability insurance felt alienated from and misrepresented by the rights discourse. Thus, although the focus on disability rights contributed to processes of identity construction, group formation, and movement-building among disabled people,<sup>160</sup> it nevertheless was perceived as insufficient by some of its major prospective beneficiaries. The improved status and political power that the disability rights movement promised its constituents made for a positive but incomplete framework. Its efforts to translate disabled people's experiences and needs into legal categories fell short of addressing disabled people's most basic need: a dignified standard of living and economic security.

¶76 For poor disabled people, the distinction between disability and poverty was nonexistent because their daily experiences had already taught them the many links between the two and the extent to which economic productivity played a role in shaping the relationships between them. Yet the disability rights scheme did not acknowledge the centrality of disability allowances in many disabled people's lives and their significant

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<sup>158</sup> See MARTHA MINOW, MAKING ALL THE DIFFERENCE 47, 385–87 (1990). See CHARLES R. LAWRENCE III & MARI J. MATSUDA, WE WON'T GO BACK: MAKING THE CASE FOR AFFIRMATIVE ACTION (1997), for a review of the United States' history of affirmative action policies and the debates that surrounded them.

<sup>159</sup> Mari Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323 (1987).

<sup>160</sup> Mor, *supra* note 53. See DAVID M. ENGEL & FRANK W. MUNGER, RIGHTS OF INCLUSION: LAW AND IDENTITY IN THE LIFE STORIES OF AMERICANS WITH DISABILITIES (2003), for a detailed account of these processes, as appeared in the United States context.

contribution as a means of securing their economic survival. These concerns were put aside, not because of a need to prioritize the struggle's goals, but rather because they were perceived as contradicting its goals. The local disability rights scheme, which could tolerate dependencies and "special needs" of various kinds, could not tolerate the perceived implications of demanding basic living allowances. Similarly, the rights movement was unable to deliver a vision in which disability allowances would play an affirmative role in disabled people's lives.

¶77 The demand for dignified disability allowances cannot be dismissed as irrelevant to the struggle of disability rights or as a matter of "false consciousness," nor should it be viewed as a naïve and misguided belief in the power of allowances. A useful concept here would be "double consciousness," as developed by critical race theorists in reply to the critique of rights, which was raised by critical legal studies.<sup>161</sup> According to this view, oppressed groups demand rights not because they are captivated by the myth of "rights" but because they consider rights a vehicle for hope, while nevertheless acknowledging that in the current reality, rights might mean very little.<sup>162</sup> The same can be said about disabled people's demands for disability allowances as a matter of right. This need not suggest that disability allowances are a quick and easy repair for disabled people's impoverishment, since their everyday experiences leave no doubt that the road to equality is a long one. In this view, formulating disability allowances as a matter of rights could indeed be an act of resistance, which, rather than representing a naïve approach, is in effect a call for struggle.<sup>163</sup>

### B. *The Limits of Rights*

¶78 The disability rights discourse currently faces two main challenges. The first concerns disabled people who do not yet participate in the labor force for various economic, social, and political reasons. The second concerns the group of disabled people who will never be able to work.

#### 1. Disability Allowances as a Transitory Measure

¶79 Addressing the first challenge requires resolving an apparent conflict between a short-term view and a long-term view. The former focuses on present hardships that disabled people face, while the latter envisions a dramatically different future—a disability utopia that could become a reality through a rights revolution. Instead, this study suggests the focus should shift to the measures that should be taken in the interim time period and the need to guarantee economic security until disability rights become a reality. Under this view, disability allowances are perceived as a transitory measure that compensates disabled people for their ongoing discrimination and exclusion. TenBroek and Wilson addressed the issue of disability allowances as early as 1954, arguing that

<sup>161</sup> Matsuda, *supra* note 159; see also Richard Delgado, *The Ethereal Scholar: Does Critical Legal Studies Have What Minorities Want?*, 22 HARV. C.R.-C.L. L. REV. 301 (1987); Patricia J. Williams, *Alchemical Notes: Reconstructing Ideals from Deconstructed Rights*, 22 HARV. C.R.-C.L. L. REV. 401 (1987).

<sup>162</sup> Matsuda, *supra* note 159. I use double consciousness to mean that the demand for rights made by disadvantaged groups is more than a mere fascination with rights and an inability to comprehend their limited and sometimes oppressive power.

<sup>163</sup> Rights can also be viewed as a process. See *infra* note 170 and accompanying text.

disability allowances are intended to compensate disabled people for the social barriers and discrimination they face, which prevent disabled people from being hired for productive labor.<sup>164</sup>

¶80 Framing disability allowances this way raises the following fundamental question: Who should pay the price for society's ableist power structure and its consequences until ableism is dismantled?<sup>165</sup> Excluding disability allowances from the discussion implies that society is not required to bear the full cost for its past and ongoing ableist norms and practices. It also means that until society is fully transformed, disabled people will remain poor. However, as the protests and other campaigns of recent years have demonstrated, disabled people are no longer willing to bear a burden that belongs to society as a whole. Providing dignified disability allowances means that society pays for the consequences of its current overt policies and hidden practices.

¶81 Acknowledging the need for transitory measures entails an even greater challenge to disability rights. The need to rely on disability allowances for survival might persist for a much longer time than disability rights advocates are willing to consider, much less admit, because it calls for the realization that society's transformation will be a long and drawn-out process that might never be fully completed, and it implies that disability rights are indeed a utopian ideal that will never reach full realization.<sup>166</sup>

¶82 This argument relies on the lessons of additional rights struggles, which have proved that the vision of rights is hard to achieve and that rights do not make poverty go away. Thus, both African-Americans and women have fought for their rights for many years, and despite major achievements still experience discrimination, exclusion, and high rates of poverty. Even heralded rights victories like *Brown v. Board of Education*<sup>167</sup> and *Roe v. Wade*<sup>168</sup> did not end de facto segregation or enable free access to abortion. Each resulted from a long and frustrating process, including ample failures and defeats.<sup>169</sup> Yet contending with poverty during an interim period poses a fundamental problem for disability rights advocates. Because their goal is to eradicate poverty from disabled people's lives, any measure that acknowledges the persistence of poverty casts doubt upon the efficacy of their approach. Such measures suggest that the goal of creating a world with no barriers for disabled people is unattainable. More broadly, it symbolizes the futility of rights.

¶83 Approaching the issue of disability allowances in terms of unavoidable yet undesirable necessity requires a different view of rights (and similarly of law) as a process rather than an outcome, a resource rather than an objective, a terrain of ongoing struggle rather than a promise for stability. Rights in this view belong to the contradictory and conflicted dynamics of legal and social relations, as opposed to abstract theoretical inquiries—rights are constantly produced and reproduced by various

<sup>164</sup> Jacobus tenBroek & Richard P. Wilson, *Public Assistance and Social Insurance—A Normative Evaluation*, 1 UCLA L. REV. 237 (1954); see Weber, *supra* note 28 (endorsing this argument).

<sup>165</sup> See Weber, *supra* note 28.

<sup>166</sup> *Id.* at 909–11; see Weber, *supra* note 144.

<sup>167</sup> *Brown v. Bd. of Educ. of Topeka, Shawnee, Cnty., Kan.*, 347 U.S. 483 (1954).

<sup>168</sup> *Roe v. Wade*, 410 U.S. 113 (1973).

<sup>169</sup> See GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (1991); DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987).

contradicting forces rather than given by a higher authority, or by a law of nature.<sup>170</sup> Interestingly, disability rights advocates were willing to acknowledge that in some aspects, the difficulty with disability allowances and their status as a temporary measure was characteristic of the entire initiative of legislation for the equality of disabled people. Thus, Ariela Auphir and Dan Orenstein, two of the most influential figures in the legislative process of the ERPWDL, concluded their article with the following point:

Indeed a paradox. On the one hand, by enacting the ERPWDL a new age has begun in the annals of the struggle for equality and social justice in Israel. On the other hand, Israeli society's greatest achievement will be the day that it will become obsolete.<sup>171</sup>

## 2. The Permanent Need for Disability (or Equivalent) Allowances

¶84 The second challenge to the effort to establish rights for the disabled concerns the group of disabled people who will never be able to work. This raises an additional set of delicate and complicated issues for disability advocates. One of the aims of the disability movement is to narrow the boundaries of the group that is considered unable to work by claiming that many disabled people are currently unproductive because it is society—rather than their impairments—that limits them. Once society mends its wrongs, a large portion of this unproductive group can in fact become part of the labor market. This view challenges societal assumptions with regard to the “severity” of one’s disability because many impairments are in fact easy to accommodate. Once there is an agreement on the duty of society to become fully accessible and accommodating, the question becomes primarily a financial issue. However, it seems reasonable to acknowledge that there is a group of people, particularly those with very severe and complex disabilities, who will not be able to perform any form of wage-earning labor even in a society that is fully accessible and entirely accommodating. This brings up the possibility that some disabled people are in fact expected to remain poor because of their impairments, and not for reasons unrelated to disability.<sup>172</sup>

¶85 This group of disabled people, who are expected to remain poor, forces disability rights activists to recognize the role that “mere poverty” still plays in their vision. The question is theoretical and practical at the same time. It calls for consideration of two possible mechanisms that provide support for existential needs upon which severely disabled people can depend: either living allowances designed specifically for disabled people, or general assurance-of-income allowances that cover the needs of people who live in poverty, including disabled people. The inevitable conclusion is that the scheme of disability rights must depend on a strong social insurance mechanism that is either particular to disabled people or universal to all poor people. This last issue is at the heart of the next chapter.

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<sup>170</sup> See SALLY ENGLE MERRY, *GETTING JUSTICE AND GETTING EVEN: LEGAL CONSCIOUSNESS AMONG WORKING-CLASS AMERICANS* 145 (1990) (“Rights come to be opportunities for action, not guarantees of protection.”). Other scholars have taken similar approaches to rights. See, e.g., MCCANN, *supra* note 151; BRIGHAM, *supra* note 151; HELENA SILVERSTEIN, *UNLEASHING RIGHTS: LAW, MEANING, AND THE ANIMAL RIGHTS MOVEMENT* (1996).

<sup>171</sup> Auphir & Orenstein, *supra* note 60, at 87.

<sup>172</sup> See Weber, *supra* note 28, at 909–11.



## VII. TOWARDS RECONSTRUCTING DISABILITY ALLOWANCES

¶186 In order to consider the options suggested in the previous Part,<sup>173</sup> and to re-conceptualize disability allowances as a matter of rights, it is necessary to examine what services these allowances are supposed to cover. This Part presents three possible models of general disability allowances. First, the traditional way to understand general disability allowances is as a sub-type of welfare payments (such as public assistance), a minimal safety net that intends to cover basic needs such as food, shelter, and clothing. Second, a more critical way of understanding disability allowances, which is presented here, is as a new form of benefit that is designed to cover unspecified disability-related costs that stem from society's continuing exclusionary institutions and practices. The third model integrates the first two by incorporating both basic needs and additional extra costs.

¶187 The understanding of disability allowances as merely a minimal safety net that covers poverty-related basic needs carries the risk of perpetuating the marginality of disabled people and legitimizing the ableist power structure. This is because basic needs allowances are practically destined to have need as their guiding allocating principle, and thus to perpetuate disabled people's poverty and inferiority.<sup>174</sup> Such structure is most likely to reproduce the power relations to which disabled people are currently subjected, even in a generous system, as long as it manifests a view of disability rooted in the individual, while ignoring society's role in generating indigence and disablement. Benefits for disabled veterans provide a good example. Their relative generosity is usually related to society's acknowledgement of its own direct and explicit role in disabling the soldiers by sending them to military service. However, their underlying compensation principle overlooks society's ongoing role as a disabling structure, manifested in its inaccessibility to disabled people, and in the socio-cultural understanding that equates disability with inferiority.<sup>175</sup>

¶188 The alternative understanding of disability allowances, which is promoted here, contends that disability allowances should be viewed as society's obligation to pay for its role as an ableist structure; a payment that must continue until the last of the social barriers disappears. It perceives the extra costs of disability as a matter of social responsibility for redressing past wrongs and not the individual's burden.<sup>176</sup> This understanding meets the two major lessons of the analysis thus far: it acknowledges the necessity of disability allowances, and it avoids perpetuating the marginalization of disabled people.

¶189 A somewhat similar rationale was developed by the Campaign for the Handicapped, which, as mentioned earlier, promoted a view of allowances as rights that aim to bridge the gap between the cost of living of a disabled person and those of a nondisabled person.<sup>177</sup> The Campaign for the Handicapped's memorandum argued that "disability allowances are an investment that allow the disabled to secure [their] unique

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<sup>173</sup> See *supra* Part VI.

<sup>174</sup> Silvers, *supra* note 145, at 17.

<sup>175</sup> *Between Charity, Welfare and Warfare*, *supra* note 10. Another pitfall of this model is that it is highly unlikely to change the hierarchy of benefits among the various groups of disabled people. See *id.*

<sup>176</sup> See Zaidi & Burchardt, *supra* note 18 (providing a recent survey of the extra costs of disability).

<sup>177</sup> See *supra* notes 78–81 and accompanying text.

needs, to integrate into the country's life and contribute to it."<sup>178</sup> This concept has also been developed with great elaboration by the Disability Income Group (DIG), a British organization of disabled people that, since its establishment in 1966, has been campaigning for the acknowledgement of the extra costs that disabled people accrue in their daily lives.<sup>179</sup> This view was also supported by Professor Mark Weber, who suggested that disability allowances should be understood mostly as a measure of shifting the cost of disability from disabled people to society.<sup>180</sup>

¶90 Both the Campaign for the Handicapped and DIG have asserted that the gap between the cost of living of a disabled and a nondisabled person (and therefore the level of allowance) is dynamic and depends on the level of services provided by the state. Both have also viewed the state as responsible for providing appropriate care and treatment for every person. However, what they have both missed is a further elaboration of the role of the state in creating the current social, cultural, and political barriers, and a detailed explanation of the ways in which forms of discrimination and exclusion continue to contribute to this gap.<sup>181</sup>

¶91 This Article calls for a reformulation of disability allowances as society's debt to disabled people for its failure to supply full access, equal rights and opportunities, and economic security. A new justification for disability allowances should therefore include two modular layers. First, acknowledgement of the social, dynamic, and interactive nature of disability. Second, the shifting of the costs of disability to society, which is accountable for denying services and for not eliminating all forms of discrimination and exclusion of disabled people. This new rationale justifies the subsequent demand that any disabled person, whether working or not, rich or poor, is entitled to disability allowances as coverage for additional costs imposed upon disabled people in comparison to non-disabled people, not as a substitute for wages.

¶92 Another advantage of the justification for disability allowances promoted here is that once the ableistic rationale that underlies disability benefit programs is exposed, no disability program can escape the consequences. Thus, in contrast to the current situation in Israel—whereby veterans receive more substantial benefits than other disabled people—this new logic might provide disabled veterans with lower levels of disability allowances than other disabled persons, because they enjoy services that are more comprehensive. However, under the new formulation, the allowances would be allocated to compensate not for the inferiority that is associated with disability, but rather for society's role in allowing the persistent social, cultural, and political disablements that transform disabled people into inferior citizens. This is therefore a universal model for disability benefits, based on a social construction model of disability, which takes the consequences of ableism seriously and connects all disabled people and disability benefit programs under one umbrella.

<sup>178</sup> Memorandum from the Campaign for Handicapped Persons in Isr., *supra* note 120.

<sup>179</sup> DISABILITY INCOME GRP., DIG'S NATIONAL DISABILITY INCOME: A POLICY STATEMENT ISSUED BY THE DISABILITY INCOME GROUP (1987), <http://www.leeds.ac.uk/disability-studies/archiveuk/disablement%20income%20group/dig.pdf>. See OLIVER, *supra* note 145, at Chapter 2, for a discussion of DIG's role in the history of the British disability movement.

<sup>180</sup> Weber, *supra* note 144, at 597–98; Weber, *supra* note 28.

<sup>181</sup> That was the Union of the Physically Impaired Against Segregation's (UPIAS) criticism of DIG and the main reason for the split among the groups. See OLIVER, *supra* note 145, at Chapter 2.

¶93 The third and final model of disability allowances covers both basic needs and nonspecific disability-related costs. Such a formulation is more comprehensive than the second model, as it also addresses the needs of disabled people who cannot work at all. It expresses an understanding that even in a world of complete and dignified services, and of no discrimination, marginalization, isolation, or any other form of oppression, there would still be a small group of disabled people without the means to cover daily living expenses.

¶94 Disability advocates are likely to agree on the extra costs of the disability component and on its justification, but it is less likely that they will agree on the basic needs component in disability allowances. It seems that there are three available options with regard to the basic needs component: first, to avoid the issue of living allowances as unrelated to disability, an option that might alienate a substantial group of disabled people; second, to promote dignified living allowances solely for disabled people, a path that acknowledges the linkage between disability and poverty, although it separates the disabled from the poor; and third, to join or form an alliance of all people who live in poverty, which would promote dignified living allowances for all. The next Part will discuss the implications of the dilemma that the choice between options two and three involves.

#### VIII. IMPLICATIONS FOR ACTIVISM AND COALITION BUILDING

¶95 It is evident that the disability-poverty predicament evokes not only issues related to intra-group relations and tensions, but also to conflicts and challenges related to inter-group relations and coalition building possibilities.<sup>182</sup> Separating disability from poverty generates identity group politics, which encourages disabled people to find what unites them as a group and what distinguishes them from others. It allows disabled people to distance themselves from pity, misery, and indigence, and instead dedicate their efforts to fostering activism in the realms of disability pride, identity, and culture. Yet this direction contributes to the creation of more rigid boundaries between disabled people and other social groups. As Nancy Fraser explained, such inward group-based politics is part of a “politics of recognition” climate, in which identity-based social movements distance themselves from the politics of distribution.<sup>183</sup> The immediate result of such inward group-based politics is the prevention of a unified front with other social groups in the fight against poverty as well as in other struggles. Finally, such politics might contribute to an even greater denial of poverty as a continuing concern for disability activism.

¶96 Conversely, the linking of disability and poverty through intra-group politics obscures the boundaries between disadvantaged social groups, thus allowing for a greater accumulation of power through alliances and coalition building.<sup>184</sup> This is needed not only because, as the Marxist-Socialist argument goes, the most fundamental power structure in society is that between capital owners and the capital-less proletariat. Nor is it motivated by the fact that all disadvantaged groups are disproportionately poor.

<sup>182</sup> These concerns seem to be beyond the scope of this Article, but they cannot be totally ignored.

<sup>183</sup> FRASER, *supra* note 153; FRASER & HONNETH, *supra* note 153.

<sup>184</sup> Ravi Malhotra, *The Politics of the Disability Rights Movement*, 7(3) NEW POLITICS 65 (2001).

Rather, as intersectionality<sup>185</sup> analysis shows, intra-group alliances are essential primarily because the intersections among the various identity axes allow the inclusion of a variety of social categories, including gender, race, and ethnicity, all of which are also inexorably constitutive of and constituted by poverty.<sup>186</sup>

¶97 The issue of coalition-building with other groups in the realm of disability allowances is particularly challenging. It requires comparing the forms of poverty that disabled people experience with those typical of other groups. It also questions the implicit meaning of a struggle for dignified disability allowances: Are disabled people the only group that deserves to live above the poverty line, while the other poor remain below? This latter concern returns full circle to the critique of the invention of disability allowances as a policy that creates a distinction between the deserving and the non-deserving poor. Yet to question the origins of this distinction is to question the need for disability allowances altogether.

¶98 This Article has attempted to develop a justification and rationale for disability allowances as opposed to a view that opposes, or denies, the need for them altogether. The goal of the discussion here is slightly different: to develop a justification for maintaining (or not) the divide between disabled people and poor people, between disability allowances and general welfare payments. For the purposes of this discussion, it will again be useful to distinguish between the basic needs and the added costs components of disability allowances. The added costs component could be easily justified by the different living expenses that disabled people must bear, due not only to their particular impairment but also to the discrimination and exclusion imposed on them by society, which is largely inaccessible and not accommodated for the needs of disabled people. The basic needs component, however, poses a stronger challenge to disability activists. It raises the questions of whether it is possible to address only the needs of disabled poor people, or whether it is necessary to address people who live in poverty as well.

¶99 A fully consistent view might lead one to conclude that if disability and poverty are interrelated, it would be impossible to construct separate social welfare mechanisms to address the implications of each. Moreover, a true commitment to social solidarity must assume that every person, not only disabled people, deserves to live with human dignity and economic security. Similarly, a comprehensive view of social welfare dynamics mandates a link between all persons who require basic living allowances for their physical survival, disabled or not. Promoting dignified living allowances only for disabled people strengthens intra-group bonds, but it also carries the risk of conveying a message that disabled people are more deserving of those allowances.

¶100 On the other hand, strengthening inter-group relations might come at the price of the power of inner group ties and possibly hinder the development of disability culture and pride. The alternative suggested here is to join—or better yet, form a strategic alliance with—other disadvantaged groups to promote dignified living allowances for all.

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<sup>185</sup> See Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991), for further elaboration on intersectionality. Crenshaw classifies for analysis and considers multiple axes of identity that characterizes every person, particularly along gender and race lines. *Id.*

<sup>186</sup> Pokempner & Roberts, *supra* note 22 (arguing that disability and illness are distributed in ways that reflect gender, racial, and economic inequalities).

This work of coalition-building does not require merging the various groups together and therefore should not lead to losing each group's power and relevance. It rather requires an effort that takes seriously both the politics of recognition and the politics of distribution.

#### IX. CONCLUSION

¶101 Whether one finds disability allowances a favorable reality or a terrible compromise, they appear to be ever present in the context of disability policy. As a result, it is important to find a suitable justification and proper structure to respond to the various critiques that disability allowances face.

¶102 The concept of disability allowances envisioned here does not assume that establishing disability allowances is an end unto itself, nor that it would constitute the ultimate solution to the problems of marginalization and exclusion of disabled people. Nor is it assumed that conceptualizing disability allowances as a right would ensure that they remain a firm and secure social structure.<sup>187</sup> Following the theoretical framework of disability legal studies, however, I do think that understanding the dis/ability power system entails acknowledging the necessity of disability allowances. The recognition that disability allowances are essential goes hand in hand with the aspiration that there will come a day when they will no longer be necessary, at least not in the lives of so many disabled people.

¶103 If disability allowances are indeed affirmed, there are various resources available for establishing the fundamental right to disability allowances. One approach would be to structure it as a right to social security. Thus, for example, Article 22 of the 1948 United Nations Universal Declaration of Human Rights declares, "Everyone, as a member of society, has the right to social security."<sup>188</sup> In addition, Article 9 of the International Covenant on Economic Social and Cultural Rights provides that the "States Parties to the present Covenant recognize the right of everyone to social security, including social insurance."<sup>189</sup> More recently, the United Nations adopted the Convention on the Rights of Persons with Disabilities. Article 28 of the Convention says, "States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing . . . ."<sup>190</sup>

¶104 Another possible approach would be to base this demand on a substantive right to welfare, an attempt that was unsuccessful in the United States.<sup>191</sup> Because of the related hierarchy between social security and welfare, a welfare right is of a lower status than the right to social security. The most advanced vision for disability allowances would be social insurance because it entails higher principles of social responsibility, economic

<sup>187</sup> I also do not suggest that rights are the best solution to disabled people's social hardships and suffering, or the most effective form of resistance. I take rights as the current comprehensive legal language with which to address the marginalization and exclusion of disabled people.

<sup>188</sup> Universal Declaration of Human Rights, ¶ 22, G.A. Res. 217 (III) A. U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

<sup>189</sup> International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200 (XXI), U.N. Doc. A/6316 (Dec. 16, 1966) (emphasis added).

<sup>190</sup> Convention on the Rights of Persons with Disabilities, G.A. Res. A/61/6111 (Dec. 13, 2006).

<sup>191</sup> See *supra* notes 103–105 and accompanying text, for a discussion of the welfare rights movement in the United States.

security, and dignified standards of living. These are not the only options available, of course, but mere examples. My goal here is to show that tools and precedents for articulating such a right already exist. The choice between them may depend on ideological preferences, local legacies, and political strategies.

¶105 As this study comes to an end, it might be mistakenly viewed as arguing that disability allowances are the single most important issue for disabled people in their struggle for equality, dignity, and economic security. Although important, disability allowances cannot be examined in isolation. Indeed, the view promoted here is that disability allowances should be part of a larger quest for justice, and disability rights are currently the major vehicle through which to achieve it. Clearly, disability allowances cannot be the only issue on the agenda of disabled people; ignoring them altogether, however, is both impossible and wrong. Disability allowances receive the place that they deserve only when they are positioned within a comprehensive view of dismantling ableism. Without such a comprehensive plan, the constructive component of disability allowances is lost, and only the reinforcement of disability allowances as a form of subjection remains.