

# **DISABILITY AND THE LEGAL SYSTEM**

# History

## Eugenics

**Early Roman Republic** The father's power is absolute to kill, mutilate, or sell his children.

Roman society didn't have a word equivalent to "disabled" but used "monstrum." The birth of a child with a disability was regarded as a great misfortune. A high percentage were abandoned outdoors immediately after birth and left to die.

Physical fitness and health were believed to be signs of the gods' favor, and disability was seen as a mark of the gods' displeasure; a divine punishment of the child's parents.

An abnormal birth was indication that catastrophe was just around the corner.

**Plato** "You should provide treatment for those of your citizens whose physical constitution is good. As for the others, it will be best to leave the unhealthy to die, and to put to death those whose psychological condition is incurably corrupt. This is the best thing to do, both for the individual sufferer and for society."

**Aristotle** "Let there be a law that no deformed child shall live."



## Eugenics

Advocates promoted ridding humanity of "defectives", endorsing and propelling the scientific racism and ableist discourse.

Negative eugenics by provision of information and services, i.e. reduction of unplanned pregnancies and births

- Just say no campaigns

- Sex ed

- Promoting the use of contraception, research for better contraceptives.

- Non-consensual sterilization

- Non-consensual abortion

Negative eugenics by incentives, coercion and compulsion

- Incentives for sterilization

- The Denver Dollar-a-day program, i.e. paying teenage mothers for not becoming pregnant again.

- Incentives for women on welfare to use contraception.

- Sterilization of disabled, criminals

- Licences for parenthood

Positive eugenics

- “Baby bonus”

- Selective incentives for childbearing

- Taxation of the childless

- Ethical obligations of the elite

Sexual Sterilization Act of Alberta was repealed in 1972. 2,832 adults and children were sterilized. 50 people were sterilized in Alberta in 1972, so some are very likely still alive today.

BC's was repealed in 1973.

148 female prisoners in two California institutions were sterilized between 2006 and 2010 without consenting to the procedures.

June 2014, a Virginia judge ruled that a man on probation for child endangerment had to be able to pay child support for his existing 7 children before having any more; the man agreed to get a vasectomy as part of his plea deal. (coercive eugenics)

## Disability Rights Movement – Community Living Movement

Pre-1970s: Many Canadians saw persons with disabilities as not able to contribute to society, dependent on charity, and not worthy of same rights and responsibilities as other citizens.

1970s: People with disabilities began to organize. They fought for the same basic human rights that other marginalized groups were demanding: that their rightful role in Canadian society was as equal and active participants.

1976: Formation of the Coalition of Provincial Organizations of the Handicapped (COPOH) – now Council of Canadians with Disabilities

1977: Canadian Human Rights Act

Gave persons with disabilities right to be free from discrimination when employed by or receiving services from the federal government, First Nations governments or private companies that are federally regulated (Banks, Interprovincial trucking companies, Broadcasters, Telecom).

1981: United Nations International Year of Disabled Persons

promoted full and equal participation by people with disabilities

objective was to increase public awareness, understanding and acceptance of people with disabilities

1981: Obstacles Report published – Federal Special Committee on the Disabled and the Handicapped report was a comprehensive review of federal legislation regarding people with disabilities.

130 recommendations to work towards full integration of persons with disabilities in society

1982: Canadian Charter of Rights and Freedoms

Part of Canada's Constitution

Right to be treated equally under the law

Disability was not in the early drafts.

# **Period of transition**

## Ontario Crippled Children's Center

- 9-11 yrs old.
- 4-6 to a room.
- Parents/families discouraged from visiting.
- Given “counselling” on how difficult/different our lives would be.
- Communal clothing from a clothing cart.
- Wheelchairs removed at night.
- Punishment showers.
- George – non-verbal.

**Law**

### International

- Universal Declaration of Human Rights (1948)
- UN Convention on the Rights of Persons with Disabilities (CRPD)
- UNESCO Convention against Discrimination in Education (1960)

### Federal

- Constitution
- Human Rights Act
- Charter of Rights and Freedoms

### Provincial/Municipal

- Human Rights Code (Ontario)
- Accessibility for Ontarians with a Disability Act
- Building Code
- Parking by-laws

## International Laws

- Universal Declaration of Human Rights (1948)

### Article 7.

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

- UN Convention on the Rights of Persons with Disabilities (CRPD) and Optional Protocol

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

## Charter of Rights and Freedoms

Only applied to Government, government actors.

Original drafts of Charter did not include disability as a protected ground under section 15.

Government feared that inclusion of disability would mean changes to everything from buildings to phone books to make them accessible, and the costs would bankrupt Canada.



**S.1:** The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

**s.15 (1):** Every individual is equal before the and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

## Provincial/Municipal Laws

- Human Rights Code (Ontario)

Applies to both private and public sectors, as well as to conduct between individuals within the listed social areas : Age, Ancestry, colour, race, Citizenship, Ethnic origin, Place of origin, Creed, Disability, Family status, Marital status (including single status), Gender identity, gender expression, Receipt of public assistance (in housing only), Record of offences (in employment only), Sex (including pregnancy and breastfeeding), Sexual orientation.

- Accessibility for Ontarians with a Disability Act

Purpose of improving accessibility standards for Ontarians with physical and mental disabilities to all public establishments by 2025.

"Customer Service Standard" O. Reg. 429/07

Integrated Accessibility Standards Regulation, consists of four component standards addressing accessibility of:  
Information and Communications,  
Employment,  
Transportation, and  
Design of Public Spaces (Built Environment)

- Building Code

Governs the construction, renovation, change of use, and demolition of buildings. It also provides specific powers for inspectors and rules for the inspection of buildings, and allows municipalities to establish property standard by-laws.

## **Competing Rights**

In general, competing human rights involve situations where parties to a dispute claim that the enjoyment of an individual or group's human rights and freedoms, as protected by law, would interfere with another's rights and freedoms.

The Ontario Human Rights Code, has the ability to trump other provincial legislation, no law in Canada can operate counter to the Charter.

### **Human rights**

Human rights are inalienable, indivisible, universal entitlements codified in international and domestic law.

A right guaranteed by the Charter may be circumscribed by reasonable limits as contemplated in section 1 of the Charter. A person's right to freedom of expression may be limited, for example, where their views incite hatred toward an identifiable group, or when it runs up against criminal law.

### **Legal entitlements**

Legal entitlements are non-human rights-related rights that are also codified in legislation (e.g. the Occupational Health and Safety Act and the Residential Tenancies Act), and the common law (i.e. case law) - e.g. a person's right to "reasonable enjoyment" of their rental housing.

### **Interests**

An interest is a matter in which someone has a personal concern, or stake. Not legal rights, but they're sometimes misunderstood as such, and can rise to a higher level. For example, a court or tribunal could find that an interest is genuine and reasonable in the circumstances: "the best interests of the child" have been given a high legal status and used by courts and tribunals to determine a wide range of issues involving children.

### **Values**

Values are moral principles, standards, and/or things that a person (or group) believes are vital for achieving "the good" or excellence in any sphere of life.

## Conflict and interpretation



Thank you to everyone writing to me about the ramp at 476 Roncesvalles. Like you I am a strong advocate for making Toronto an accessible City. Unfortunately, this ramp does not provide for safe access for people using a mobility device. That is why the City has told the owner to remove it.

The Province has passed the Accessibility for Ontarians with Disabilities Act. It sets out standards for making buildings and services like public transit accessible. It sets out a series of requirements for ramps to ensure that people who use mobility devices can use them safely.

More information can be found at: <http://www1.toronto.ca/wps/portal/contentonly...>

Often fitting a ramp to an existing building can be a tricky, even onerous, job. That's why the Stopgap program has been such a success. Where a business might avoid building a ramp because of the paperwork and expense, Stopgap steps in and provides a quick easy fix.

Most Stopgap ramps are simple and straightforward. The City has supported these. However, this location has bigger challenges. In order to fit the tight space at 476 Roncesvalles, the ramp includes a 90 degree turn. Turning in a wheelchair or mobility device takes space. This ramp does not provide enough space. Also, for safety's sake, a turn or landing should have handrails.

Because there isn't room to turn, and there are no handrails, this ramp does not provide safe access for people with mobility devices. The whole point of the ramp should be to provide safe access.

As much as I want access in a hurry, I can't support installing accessibility ramps that are dangerous and don't really solve the access problem.

The City has raised these concerns with Stopgap, and has yet to find a solution. I and some other Councillors are look for ways to help businesses, like the one at 476 Roncesvalles, which are faced with accessibility challenges that are not easily met. Please share any suggestions you have.

Again, thank you for speaking up.



# WARNING



- HOLD HANDRAIL
- STAND BETWEEN YELLOW LINES
- CHILDREN MUST BE SUPERVISED
- DO NOT LEAN OVER HANDRAIL



PLEASE USE LIFT PROVIDED

**Safety – who gets to decide what’s “safe”?**

# **Media and disability**

# 1. Pitiable and pathetic; sweet and innocent; a miracle cure



Tiny Tim, 'A Christmas Carol'



David Lynch's portrayal of 'The Elephant Man'



## 2. Victim or an object of violence



Wheelchair-using Blanche,  
victimised by her sister in  
**Whatever Happened to  
Baby Jane?**

(1962, Robert Aldrich, USA);

### 3. Sinister or evil

- Dr No** (Doctor No) - double arms amputee.
- Tee Hee Johnson** (Live and Let Die) - lost his arm to a alligator.
- Jaws** (Various) - has metal teeth, presumably a result of a tragic dental accident.
- Oddjob** (Goldfinger) - is non-verbal.
- Blofeld** (Various) - wheelchair-user, sometimes with a facial scar.
- Le Chiffre** (Casino Royal) - asthma and facial scar, damaged tearduct which would weep blood.
- Emilio Largo** (Thunderball) - wears an eyepatch.
- Scarpine** (A View to A Kill) - facial scar.
- Alex Trevelyan** (Golden Eye) - facial burns.
- Max Zorin** (Tomorrow Never Dies) - facial scar.
- Zao** (Die Another Day) - facial scarring involving bits of metal imbedded in his skin.
- Elektra King** (The World is Not Enough) - disfigured ear.
- Nick Nack** (The Man w/ the Golden Gun) - dwarfism.
- Renard** (The World is Not Enough) - brain injury resulting in loss of taste, smell and experience of pain.
- Mr Stamper** (Tomorrow Never Dies) - neurological condition which reverses the experiences of pain and pleasure.
- The Three Blind Mice** (Doctor No) - Assassins who pretended to be blind.



Evil **Dr. No**, with his two false hands in the Bond film, Dr. No (1962, Terence Young, UK);



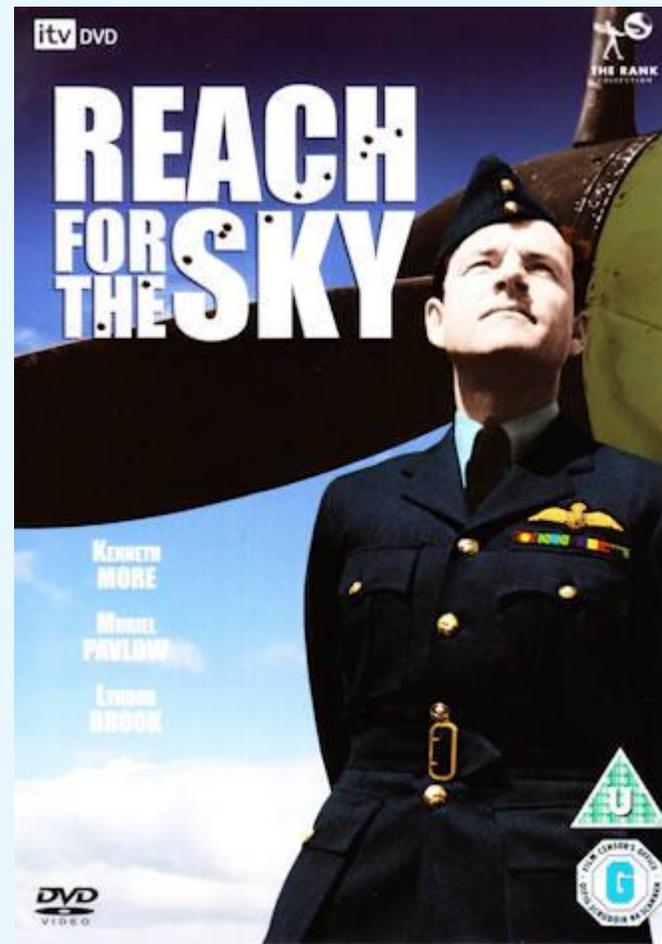


## 5. 'Super-crip'/ triumph over tragedy/noble warrior



Physically-disabled Douglas Bader walking without crutches and flying in *Reach for the Sky* (1956, Lewis Gilbert, UK)

Daredevil – blind but with “super senses” that let him overcome blindness.



## 6. Laughable or the butt of jokes



The lead character is a man with learning difficulties in *Forrest Gump* (1994, Robert Zemeckis, USA);

Lee Evans feigning cerebral palsy in  
***There's Something About Mary*** (1998, Peter Farrelly/Bobby  
Farrelly, USA)



## 7. Having a chip on their shoulder/ aggressive avenger

The vengeful, hook-using,  
black ghost in *Candyman*  
(1992, Bernard Rose, USA)



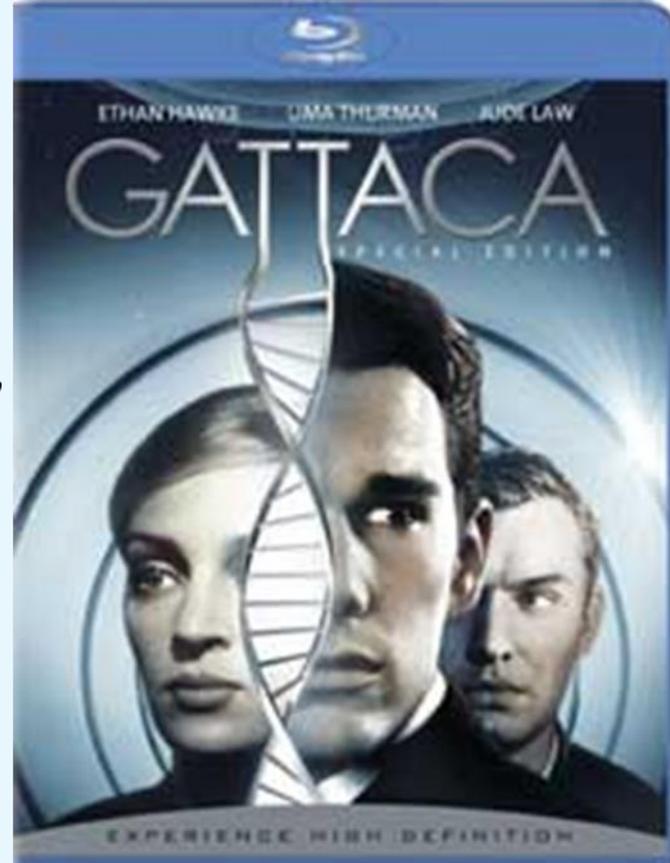
Captain Hook



## 8. A burden/ outcast

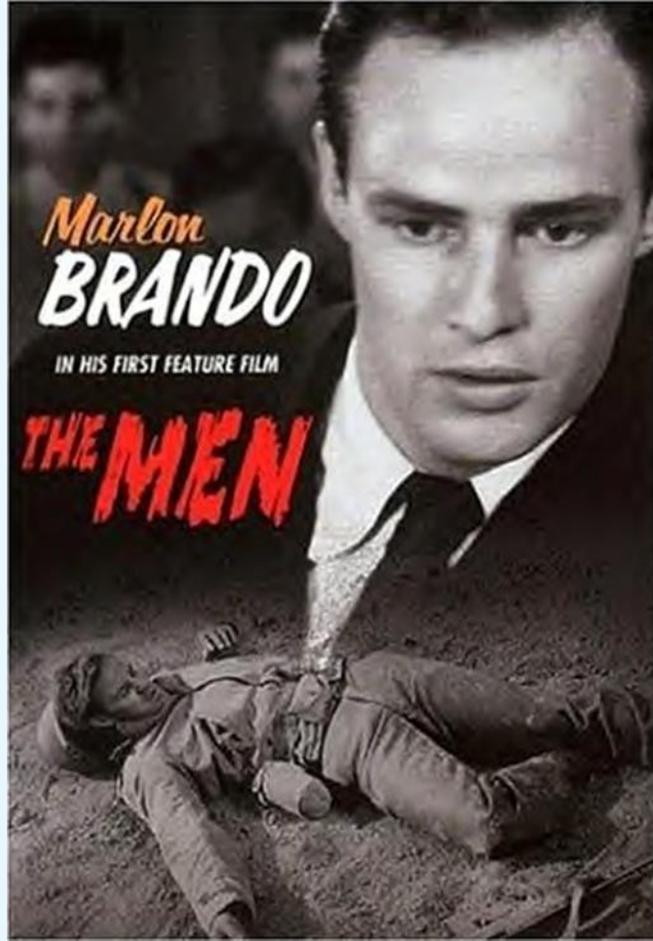


The 'In-valids' who are not of perfect genetic design in *Gattaca* (1997, Andrew Niccol, USA),



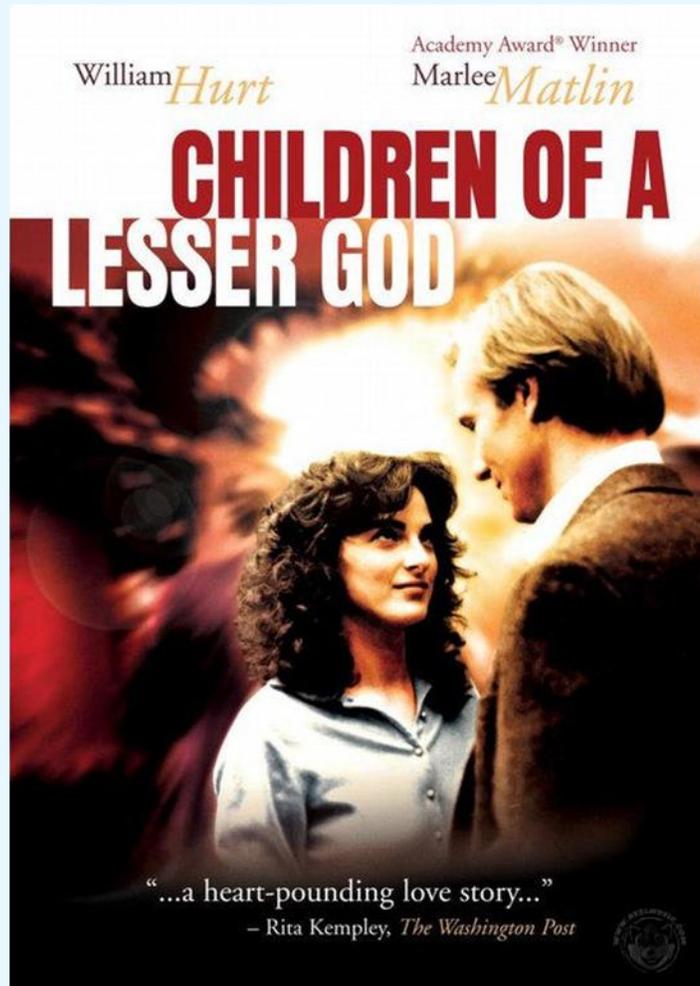
The disabled child whose parents consider euthanasia in *A Day in the Death of Joe Egg* (1971, Peter Medak, UK)

## 9. Non-sexual or incapable of a worthwhile relationship



Marlon Brando's disabled veteran in *The Men*

## 10. Incapable of fully participating in everyday life



The absence of disabled people from everyday situations, and not being shown as integral and productive members of society.

When they are shown, the focus is on their impairments

Deaf people in *Children of a Lesser God*  
(1986, Randa Haines, USA)

Cultural portrayals of disability are usually about the feelings of non-disabled people and their reactions to disability, rather than about disability itself.

Most of the time, characters draw on the prejudice, ignorance and fear that generally exist towards disabled people, knowing that portraying a character with a humped back, with a missing leg, with facial scars, will evoke certain feelings in the reader or audience. The more disability is used as a metaphor for evil, or just to induce a sense of unease, the more the cultural stereotype is confirmed.

# Television and movies

Wheelchairs dominate, as they're an iconic symbol of disability. The vast majority of actors portraying the characters with a disability are not disabled.

The wheelchair allows the character to be obviously disabled while still appearing "normal", allowing for the avoidance of major challenges for audience identification.



THE RUDERMAN WHITE PAPER  
ON MEDIA COVERAGE OF THE MURDER OF PEOPLE WITH DISABILITIES BY THEIR  
CAREGIVERS

David Perry

With contributions by:

Timotheus Gordon

Zoe Gross (Autistic Self Advocacy Network)

Kristina Kopic

Vilissa Thompson

Kathleen Seidel

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David M. Perry is a journalist and professor of history at Dominican University, in River Forest, IL. He is a columnist for Pacific Standard Magazine, and has written for many other publications. Perry is the father of a ten-year-old boy with Down syndrome.

Data shows that people with disabilities face significantly higher risk to be the victims of violent crime than those without. Death at the hands of parents and caregivers is a subset of the phenomenon.

Media coverage of the murders of people with disabilities is often biased to focus on the murderer, and stories are often written with a sympathetic slant with regard to the circumstances surrounding the crime, while writing out the person with a disability who was the victim.

The Ruderman White paper examined over 200 cases of murder in North America where the victim was a person with a disability

We have examined over 200 news reports about cases in North America between 2011-2015 that clearly describe the murder of a victim with a disability by a parent, child, spouse, or unrelated caregiver.

At least 219 disabled people were killed by parents and caregivers between 2011-2015—an average of approximately a murder a week. This is a very conservative number due to under-reporting and the fact that a victim's disability is not always made public. The real numbers are likely much higher.

The killers routinely claim “hardship” as a justification for their acts. The media rarely questions such claims or asks for comment from disability rights organizations, and especially not from people with disabilities themselves.

In the drive to explain a killing, the lives of the victims get erased resulting in killer-centered, rather than victim-centered reporting.

Spreading the hardship narrative may lead to more violence, rather than changing policy around supports. In many cases, moreover, the narrative is fundamentally not true.

Many killers receive little to no prison time. In such cases, perceptions of disability as suffering inform judicial decisions not to punish murder.

From Ruderman White Paper:

When parents and caregivers murder their disabled children, spouses, siblings or clients, the news media far too often rushes in to explain, justify, and forgive the murderer.

They produce “killer-centered” stories that link disability to hardship, hardship to murder, and erase the victim’s life and death from the narrative.

Judges, prosecutors, and juries tend to go more leniently on murderers whose victims are disabled, and the media tends to report such light sentences as understandable rather than outrageous.

Reporters almost never quote experts on disability rights, nor do they ask people with disabilities to comment. Instead, local beat reporters, chasing deadlines, quote neighbors who blithely state that the murderer truly loved his or her victim.

Comment threads and social media hashtags proliferate emphasizing empathy for the killers, but rarely seem to ask about the victim.