# Equality of opportunity in employment? Disability rights and active labour market policies

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The past 50 years have seen significant change with regard to understanding disability as a form of social and economic exclusion and, in particular, the role that environmental and social barriers play in disabling people with impairment (as illuminated in the early chapters in this volume). This, in turn, has impacted on the response of policy-makers to the challenges that disabled people face, including the challenge of securing equality of opportunity in employment for disabled people. New ways of conceptualising disability have led to a reorientation of policies designed to support the employment of disabled people, including the emergence of a more rights-based approach designed to combat disability discrimination.[[1]](#footnote-1) At the same time there has been a move away from segregated active labour market programmes, in the form of sheltered employment institutions, towards inclusive active labour market policies that facilitate greater integration of disabled people in the open labour market Such policies included both push and pull mechanisms, focusing, respectively, on equipping disabled people for employment opportunities in the open labour market and encouraging or obliging employers to take them on. This chapter introduces the challenge of achieving full participation and equality in employment by disabled people and examines the different approaches taken in law and policy to address this challenge. It shows that while clear and enforceable non-discrimination provisions are a prerequisite, there is also a need for active interventions to counter the unequal employment opportunities faced by disabled people and to structure the labour market accordingly.

## Employment as a right

The International Labour Organisation (ILO) estimate that a majority of disabled people in the world are of working age – some 470 million – yet the extent of their collective exclusion from full participation and equality in employment is marked. [[2]](#footnote-2) Data from around the world show that a large number of disabled people remain unemployed or economically inactive, more than 80 per cent in some countries, and even in economically developed countries a substantial proportion of this group remain without work.[[3]](#footnote-3) Unequal access to education and training, negative attitudes of employers and colleagues, inaccessible transport systems and workplaces and a lack of flexible work practices and employment support schemes present significant barriers to equality of opportunity in the labour market for disabled people. The potential for law and policy reform to address such inequality is contingent not only on framing and enforcing (new) legislation, but on understanding the social causes and consequences of labour market marginalisation.

In this context, Article 27 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) addressing work and employment lays down a bold challenge to policy makers and raises complex issues. It requires that:

States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities.

Of particular note here is the concept of an equal right to work and the principle of free choice, at least to the extent that anyone is free to choose the work that they do. At the same time, this bold commitment hints at some of the enablers that are pre-requisite to the realisation of employment choices and rights for disabled people in a competitive labour market – notably the inclusivity and accessibility of that market to people with diverse capabilities and resources. The challenge for law and policy makers is not only to create and enforce equal employment rights but also to facilitate the kinds of labour market conditions that will enable such rights to be exercised in practice. Eradicating employment discrimination on grounds of disability is a significant challenge; building a ‘work environment that is open, inclusive and accessible’ is even more challenging.

As discussed in this chapter, the development of public policies to advance employment opportunities for disabled people reveals a historic shift from ‘compensatory’ approaches, towards those based on equal rights, greater accessibility and support in the workplace. In many ways these are positive developments, responding to the claims and activism of the disability rights movement, but disabled people have also been the targets of more punitive policy reforms to reduce welfare spending by requiring more of those out of work to search for employment in unequal labour market conditions.

Work and employment is undoubtedly important to the general functioning of modern societies, but the way we think about work has been an important factor too in defining what we understand as ‘disability’ and its governance through social policies. Indeed, in some countries, legal definitions of what it means to be ‘disabled’ (for the purposes of social policy and administration) are based quite explicitly on measures of a person’s work capacity or ‘ability to work’.

Early proponents of the social model of disability, like Oliver (see chapter ?? in this volume), viewed the social relations of competitive labour markets as formative to the emergence of disability as a policy category in capitalist economies.[[4]](#footnote-4) Indeed, Stone argued that the definition of who is included in the policy category of disabled people flows directly from state interventions to control labour supply.[[5]](#footnote-5) This thesis suggests that, while many people with impairments have been excluded from labour market opportunities, the exact definition of who should be exempt from employment obligations changes in response to economic cycles and market demands. This means that laws and policies which define people as ‘unable to work’ at times of low demand (e.g. during an economic recession) may redefine them as able to work at times of labour shortage (e.g. during rapid economic growth). Legal definitions of disabled people’s rights and responsibilities to work are, in this sense, rather ‘elastic’[[6]](#footnote-6) and vary between different countries and at different points in time. Yet research evidence from countries across the world shows that disabled adults, and disabled women in particular, remain disproportionately unemployed, underemployed and underpaid compared to their non-disabled peers.[[7]](#footnote-7) Moreover, despite the adoption of non-discrimination laws over the past 25 years, there has been little evidence of any dramatic improvement in this disparity.[[8]](#footnote-8)

The centrality of work to our historic understanding of what disability means is underlined by the extent to which exclusion from the labour market affects people’s opportunities across the life course.[[9]](#footnote-9) For example, in framing the ‘fundamental principles’ that would be later transposed into the social model of disability, the Union of Physically Impaired Against Segregation argued in the 1970s that:

…the struggle to achieve integration into ordinary employment is the most vital part of the struggle to change the organisation of society so that physically impaired people are no longer impoverished through exclusion from full participation. Only when all physically impaired people of working age are as a matter of course helped to make whatever contribution they can in ordinary work situations, will secure foundations for full integration in society as a whole be laid. All the other situations from which physically impaired people are excluded are linked, in the final analysis, with the basic exclusion from employment.[[10]](#footnote-10)

This strong emphasis placed on paid employment underlines the importance that is attached to socially valued work in modern constructions of adult citizenship. The opportunity for employment is increasingly presented as a key social right, as a means to the realisation of other economic rights, and as a route to social inclusion more widely. For governments there are also economic benefits in tapping the labour potential of historically excluded groups, particularly in times of labour shortage or when there are fiscal constraints on welfare spending, as in a period of austerity. As a consequence both policy makers and disability activists have made economic, social and moral arguments for public policy reform to expand the opportunities, and the expectations, for disabled adults to find employment.[[11]](#footnote-11)

## Different policy approaches

Broadly speaking, a liberal approach to rights-based labour law might suggest that enforcement of the negative right to non-discrimination in a free and open labour market would be sufficient to protect disabled people’s opportunity for employment ‘on an equal basis with others’. By contrast, an approach to employment policy based on positive rights and countering discrimination might suggest that active intervention in the labour market is needed to reshape the opportunities within that market. The evolution of public intervention to promote the employment of disabled people in contemporary welfare states is strongly associated with the emergence of ‘active labour market policies’ (ALMPs). The rationale for a more active intervention approach to employment policy assumes that market forces alone will not deliver optimum employment or social outcomes, even with legislative protection for employment rights in place. The different emphases given to the role of the market and the state (and the family) in varying national welfare regimes was initially characterised in the work of Esping-Andersen.[[12]](#footnote-12)

Broadly speaking, ALMPs fall into three categories – the provision of public employment services that help people look for and find work; employment training that helps people to increase their employment skills; and, subsidies (either for the employer or the employee) to incentivise recruitment and work experience opportunities for people unable to find work easily in the open market.[[13]](#footnote-13) ALMPs are by no means solely targeted towards disabled people, and often focus on young people entering the labour market, older workers who have fallen out of the labour market, and other long-term unemployed people. Although interventionist in approach, the aim of ALMP programmes is very often stated as encouraging people who are marginal to the labour market to assume greater independence and responsibility for themselves and their families through routes into paid employment.[[14]](#footnote-14) Disabled people without work have been a key target group for such policies in recent years. However this led some within the disability movement, like Abberley, to caution against the ‘over-enthusiastic espousal of work-based programmes of overcoming the exclusion of disabled people’.[[15]](#footnote-15)

ALMPs thus play an important role in defining the relationship between individuals and (welfare) states, and in structuring the relationship between the market and the state.[[16]](#footnote-16) ALMPs may be defined as ‘measures taken in order to improve the functioning of the labour market that are directed towards the unemployed’.[[17]](#footnote-17) Calmfors, suggests that such improvements include the efficiency of matching job vacancies with job-seekers, upgrading and adapting the skills of job applicants, and job creation. Gilbert and Besharov identify four categories of active labour market policies: (a) measures that raise the cost of non-work (such as sanctions and penalties for non-participation, job search programmes, lowering of replacement rate and duration of benefit, and narrowing the eligibility criteria or conditionality for benefits); (b) measures that increase the benefits of work (such as increasing work-pay through tax credits and tax relief and restricting eligibility for benefits); (c) measures to increase the availability of work (such as creating jobs in the public sector, subsidising employment costs to employers, providing flexible working conditions, sheltered employment or micro credits to start-up businesses); and (d) measures that increase readiness to work (such as providing education and training, opportunities to learn social and therapeutic skills for people with lower qualifications to increase their employability).[[18]](#footnote-18)

ALMPs have been widely targeted at supporting disabled people to enter and remain in employment[[19]](#footnote-19) and this trend has been accentuated by the increasing numbers of people claiming long-term out-of-work welfare benefits on grounds of disability and by the downturn in employment arising from the widespread economic recession after the financial crisis of 2008. At the launch of its 2010 *Sickness, Disability and Work Report*, the General Secretary of the Organization for Economic Cooperation and Development (OECD) stressed the importance of economic integration of disabled people, urging governments ‘to speed up their welfare reforms to help people with disabilities find a job’ and that ‘the mantra of making work pay must become central to all welfare schemes’.[[20]](#footnote-20)

As applied to disabled people, the most commonly targeted intervention policies can be categorised as follows. ‘Sheltered employment’ involves the funding or operation of segregated workshops or work centres designated for the employment of disabled people, often at or below the minimum wage, as form of training or therapeutic activity. While sheltered employment is typically included in policy typologies of labour activation the difficulty with this approach is that it depends, by definition, on work outside the mainstream labour market and is thus at odds with an equality and non-discrimination approach.[[21]](#footnote-21) ‘Supported employment’ by contrast involves the provision of support on-the-job in the open labour market. ‘Subsidised employment’ refers to investments and incentives that reduce the cost of employing disabled people, for example through wage subsidies or tax subsidies for the employer. ‘Vocational rehabilitation and training’ aims to increase the job skills and productivity levels of disabled people and may also feature in either sheltered or supported employment schemes. ‘Quota schemes’ place obligations or expectations on employers to employ a specified minimum proportion of disabled people in their workforce, often accompanied by a tax penalty or levy for failing to meet the target. These approaches are all common within the active labour market policy approach. The most prominent types of ALMP are supported employment, vocational rehabilitation, work placement, employment quotas and incentives.

‘Non-discrimination’ policies, as discussed, involve stipulating and enforcing rights to equal opportunities in any aspect of job seeking and employment but may exist independently from, or do not necessarily rely upon, active policy measures to promote or create employment.[[22]](#footnote-22) It is in this area that there have been the rapid and positive advances in law and policy development in recent years.[[23]](#footnote-23) At the same time, however, there has been increasing attention to more negative social policy measures designed to channel disabled people into job search activity in the open labour market simply by removing or narrowing their eligibility criteria for out of work disability benefit schemes.[[24]](#footnote-24) In this way, the promotion of a stronger rights-based policy discourse has been accompanied by the promotion of a stronger responsibility-based policy discourse in the disability employment field.

In addition, the promotion of ‘social enterprises’ as a new category of business[[25]](#footnote-25) has produced outcomes somewhere between sheltered and supported employment, in that companies may be formed specifically to employ disabled people, and with primarily social objectives, but with exposure to the open market when selling their products or services. There are also policy examples of incentive and grant schemes targeting disabled people wishing to establish their own independent businesses as entrepreneurs.[[26]](#footnote-26) As Walls, Dowler, Cordingly, Orslene and Greer argue, the experience of micro-enterprise has enabled many disabled people to ‘redefine success’ in employment, not simply in terms of income generation, but also in achieving control over the day to day management of workloads, and workplace environments.[[27]](#footnote-27)

## The development of international law and policy

As outlined earlier, Article 27 CRPD provides a context for thinking about the state of the art in disability and international employment law. Beyond an assertive recognition of equal rights, choices and opportunities, it sets out eleven steps appropriate states should take to safeguard and promote these employment-related rights. For example, the article requires the prohibition of discrimination on the basis of disability in all aspects of recruitment, working conditions and relationships, remuneration and labour rights. It highlights the need for good access to training, support for job searching or help in starting a business. It points to the significance of reasonable adjustment and appropriate vocational rehabilitation (also highlighted in Article 26). It also outlaws slavery and other forms of forced labour of disabled people on an equal basis with others. These provisions are intended to apply both to public and private sector employment and are supported by other articles of the Convention, and particularly by Article 9 which requires that barriers to accessibility should be removed from workplaces (as well as from other buildings, roads, forms of transport and information technologies).

The CRPD was preceded by a number of other instruments of international law, which addressed the employment of disabled people. One of the earliest international instruments specifically addressing the employment of disabled people was Recommendation No. 99 of the International Labour Organisation (ILO) on Vocational Rehabilitation (Disabled). This dates from 1955 and was quite forward looking for its time and prefigured the spirit of the CRPD in some respects. It stressed that the goal of vocational training was to prepare the disabled person ‘for working normally on an equal basis with non-disabled workers if he is capable of doing so’[[28]](#footnote-28) and noted that measures designed to widen employment opportunities for disabled persons should be based on the following three principles:

(a) disabled persons should be afforded an equal opportunity with the non-disabled to perform work for which they are qualified;

(b) disabled persons should have full opportunity to accept suitable work with employers of their own choice;

(c) emphasis should be placed on the abilities and work capacities of disabled persons and not on their disabilities.[[29]](#footnote-29)

The Recommendation made reference to both employment promotion measures and to sheltered employment, but the latter was to be reserved only for those ‘who cannot be made fit for ordinary competitive employment’.[[30]](#footnote-30) Sheltered workshops were to provide both ‘useful and remunerative work’ and ‘opportunities for vocational adjustment and advancements’ with the opportunity to transfer to open employment wherever possible.[[31]](#footnote-31) Disabled workers employed in sheltered workshops should enjoy the same protection in terms of employment conditions and statutory wage regulation as other workers.[[32]](#footnote-32) Sheltered workshops were therefore seen as an important element of disability employment policy under this Recommendation, with certain safeguards recommended to ensure that only those regarded as unable to work in the open labour market would be placed in sheltered employment, and that they would continue to benefit from the general protection of labour law. Disability employment policy in the 1950s was, however, still largely framed by a discourse of rehabilitation rather than one of rights.

The 1955 ILO Recommendation did refer to measures to promote the employment of disabled people in the open labour market. The recommended measures included the ‘engagement by employers of a percentage of disabled persons’ (i.e. a quota system, reserving certain designated occupations for disabled people, and ‘arranging that seriously disabled persons are given opportunities for employment or preference in certain occupations considered suitable for them’ (i.e. reserving some types of jobs for disabled people).[[33]](#footnote-33) Such approaches were widely implemented in numerous countries but seen from the perspective of today it is questionable both how effective such measures are and the extent to which they result in stigmatizing the beneficiaries.[[34]](#footnote-34)

Following the UN International Year of Disabled Persons in 1981, the ILO adopted Convention No. 159 in 1983, with an accompanying Recommendation No. 167 on international standards to promote greater equality of opportunity and treatment in employment. This instrument was still framed within a discourse of rehabilitation and adopted an individual impairment-related definition of disability, rather than a social model definition, such that ‘the term disabled person means an individual whose prospects of securing, retaining and advancing in suitable employment are substantially reduced as a result of a duly recognized physical or mental impairment’ (Article 1). Nonetheless, it was also founded on the principle of equal opportunity, couched in the following terms:

The said policy shall be based on the principle of equal opportunity between disabled workers and workers generally. Equality of opportunity and treatment for disabled men and women workers shall be respected. Special positive measures aimed at effective equality of opportunity and treatment between disabled workers and other workers shall not be regarded as discriminating against other workers. (Article 4)

Both the Convention and the Recommendation note that, since the adoption of Recommendation No. 99 in 1955, ‘significant developments have occurred in the understanding of rehabilitation needs’.[[35]](#footnote-35) Convention No. 159, which is binding on those States that have ratified it, is relatively brief and does not refer to any specific employment activation strategies or to sheltered employment. Instead it requires ratifying States to *inter alia* promote employment opportunities for disabled persons in the open labour market.[[36]](#footnote-36)

In contrast to the Convention, Recommendation No. 168 is more detailed as to the kind of steps States should be taking. Sheltered employment is once again seen as needed for ‘disabled persons for whom access to open employment is not practicable’[[37]](#footnote-37) and governments are to provide appropriate support for various types of sheltered employment.[[38]](#footnote-38) In addition, a wide variety of measures to stimulate employment in the open labour market are recommended, including ‘financial incentives to employers to encourage them to provide training and subsequent employment for disabled persons, as well as to make reasonable adaptation to workplaces, job design, tools, machinery and work organisation to facilitate such training and employment’[[39]](#footnote-39) and ‘elimination, by stages if necessary, of physical, communication and architectural barriers and obstacles affecting transport and access to and free movement in premises for the training and employment of disabled persons’.[[40]](#footnote-40) The 1983 Recommendation still reveals the perceived importance of sheltered employment as an element of disability employment policy, although with a less prominent position than it had in the 1955 Recommendation. The 1983 Recommendation also reflects, to some degree, recognition of the socially created barriers that hinder open employment for disabled people, and the need to address those barriers as part of a labour activation strategy.

A change in the prominence given to sheltered employment as an element of disability employment policy is also reflected at the European level in the European Social Charter (ESC). The ESC is a treaty of the Council of Europe which guarantees social and economic rights. It was first adopted in 1961 and then revised in 1996 (the original ESC remains in force for those States which have not ratified the latter). Both versions of the Charter address the rights of disabled people in Article 15. The relevant article is entitled ‘The right of physically or mentally disabled persons to vocational training, rehabilitation and social settlement’ in the original Charter and calls on the Contracting Parties to: ‘take adequate measures for the placing of disabled persons in employment, such as specialised placing services, facilities for sheltered employment and measures to encourage employers to admit disabled persons to employment’.[[41]](#footnote-41) Segregated measures, including sheltered employment, are therefore seen as a key element of disability employment policy under this article.

The revised ESC, of 1996, entitles Article 15 ‘The right of persons with disabilities to independence, social integration and participation in the life of the community’. It is clear from section one of the article that measures to support persons with disabilities should be provided through ‘general schemes’ wherever possible. Integration and participation in the mainstream, as reflected in the title of the article, had become the key goal. With regard to employment, section 2 provide that the Parties are ‘to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of disability, by arranging or creating sheltered employment according to the level of disability. …’. In comparison with the original ESC, the desirability of segregated and sheltered employment services is reversed: under the 1961 ESC specialised or segregated services, including sheltered employment, were listed first in terms of the obligations on States, whilst the revised ESC only sees such measures as the exception, to be provided when open employment is not an option. This change of emphasis marks a generalised shift of thinking about disability and employment and the emergence of a more rights based approach in international law.

The change in approach to sheltered employment as an element of disability employment policy is revealed most dramatically through a comparison of the UN Standard Rules on the Equalization of Opportunities of Persons with Disabilities, adopted by the UN General Assembly in 1993 and the UN Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2006. Rule 7 of the Standard Rules specifies that ‘States should actively support the integration of persons with disabilities into open employment’. The measures which States should take in this respect include ‘vocational training, incentive-oriented quota schemes, reserved or designated employment, loans or grants for small business, exclusive contracts or priority production rights, tax concessions, contract compliance or other technical or financial assistance to enterprises employing workers with disabilities’. Attention should also be paid to designing and adapting workplaces so that they are accessible, providing reasonable accommodations by employers, training and placement and public awareness. The emphasis is very clearly placed on inclusion in the open labour market and addressing the wide variety of barriers which hamper this. Nevertheless, a place remains for sheltered employment: whilst ‘the aim should always be for persons with disabilities to obtain employment in the open labour market … [f]or persons with disabilities whose needs cannot be met in open employment, small units of sheltered or supported employment may be an alternative’.

However, even this modest role for sheltered employment is not recognised in Article 27 CRPD on work and employment. The emphasis throughout this article is on equality and promoting employment in the open labour market. There is no reference whatsoever to sheltered employment or to any other segregated or specialised employment measure. Anna Bruce has noted with regard to this article that ‘[t]he current largely segregated state of affairs is not mentioned and instead the goal is emphasized by calling for ‘a labour market and work environment that is open, inclusive and accessible to persons with disabilities’’.[[42]](#footnote-42) The decision not to refer to sheltered employment was not undisputed by the negotiating parties. Bruce argues that consensus was agreed following the inclusion of section 1(a) of the article, which provides that discrimination on the basis of disability is to be prohibited ‘with regard to all matters concerning all forms of employment’.[[43]](#footnote-43) As a result, segregated settings which qualify as employment must comply with the requirements of Article 27. Sheltered employment is not explicitly prohibited but the article poses real challenges to its continuation in certain circumstances and the emphasis is firmly on equality of opportunity in the mainstream labour market. Bruce concludes ‘through the prominence of choice and inclusion in Article 27 as well as in the remainder of the CRPD it can be concluded that segregated employment opportunities as the only alternative for an individual, particularly one who wishes otherwise, is highly questionable’.[[44]](#footnote-44)

This brief review has revealed the declining importance attached to sheltered employment as an element of disability employment policy in modern international and European human rights instruments. Instead, the focus has been placed more and more on full participation and equality in the open labour market on an equal basis with others, and on measures which can facilitate mainstream employment. Nevertheless, with the exception of the CRPD, these instruments still indicate a place for sheltered employment for individuals who are deemed to be unable to fulfil the conditions for employment opportunity in the open labour market. This view of the role of sheltered employment may have been thrown into doubt by the CRPD. In order to understand the tensions between segregated and inclusive approaches it is useful to learn more about the development of disability employment policies more generally.

## Action on employment opportunities

The preceding sections indicate the key legal developments at the international level. State responses to the challenge of achieving full participation and equality in employment by disabled people have taken a number of different forms. The 1990s saw a rapid expansion of active labour market policies, involving a mixture of compulsory and voluntary measures and the proliferation of schemes for employment support and training.[[45]](#footnote-45) Such initiatives emphasized the need for increased flexibility in responding to the employment needs of disabled people, and the economic benefits of bringing them into paid work.[[46]](#footnote-46) A number of comparative studies on policies to support and retain disabled people in employment chart developments during this period – following the adoption of ILO Convention No. 159 but prior to adoption of the UN CRPD.

For example, in 1997 Thornton and Lunt reviewed disability employment policies in 18 countries, building on earlier work in Europe, North American and Australia.[[47]](#footnote-47) Their study suggested an apparently universal commitment to the aims of participation and equality. It also indicated that legislation which sought to support these goals was becoming more common. In reviewing the legislation, they identified two broad trends. First, they identified a general policy approach based on broad anti-discriminatory legislation, in which employment appears amongst several fields addressed within a common legislative framework (although often a dominant field). Examples of this approach are the Americans with Disabilities Act 1989 (ADA, outlined in Chapter ??) and the Disability Discrimination Act 1995 (DDA – since incorporated in the Equality Act 2010) in the United Kingdom. Second, they identified the division of disability policy into departmental concerns, in which employment rights and/or support measures are addressed in specific legislation, separate from other policy areas. At the time of the report, such employment policies mostly sought to compensate, facilitate or encourage the employment of disabled people (e.g. via employment quotas, subsidies and services) rather than to ensure and enforce equal rights or to make the labour market more accessible and inclusive. Hybrid approaches merging both non-discrimination legislation and employment specific measures have subsequently become evident. For example, the EU Employment Equality Directive 2000/78/EC[[48]](#footnote-48) reflects the non-discrimination principle of the first approach but is limited to the field of occupation, employment and vocational training as in the second type of policy.

Goss, Goss and Adam-Smith also identified two distinct approaches to promoting the employment of disabled people in more developed economies during the 1990s.[[49]](#footnote-49) Thus, they identify an American tradition, based on anti-discrimination measures and civil rights and a European tradition based on compulsory employment quotas and state intervention. This binary distinction is somewhat problematised by the EU Framework Directive and the proliferation of national non-discrimination laws in European countries which occurred subsequently. Gooding linked the differences in policies to different models of disability, equating quota systems with medical and compensatory models of disability, and rights-based approaches with social models:

The different approaches are reflected in the contrasting rationales of the two policies. The quota is fundamentally a collective compensation to individuals for loss of capacity. The impetus for this derives from the state. In contrast impetus for the rights approach derives from the movement of disabled people themselves, and it does not seek to compensate the individual but to change society by opening it up to disabled people as a whole.[[50]](#footnote-50)

Within the compensatory model, the provision of ‘sheltered’ employment in segregated workshops or ‘training centres’ was commonplace in Europe after World War II (sometimes in the form of compulsory work placement for the purposes of therapeutic intervention or rehabilitation programme rather than employment opportunity, or as a pre-condition of receiving disability-related income benefits). Sheltered employment persisted as a policy approach for some decades, and continues today in the repertoire of several advanced welfare economies, but as the post-war rehabilitation paradigm was transcended by the equal opportunities paradigm there was a notable shift from sheltered employment policies towards ‘supported’ placements in mainstream employment settings. Great optimism surrounded the development of supported employment and there was rapid growth in this form of employment from the mid 1980s, particularly in North America.[[51]](#footnote-51) Although supported employment and training were not always seen as ‘real work’,[[52]](#footnote-52) as ‘socially valid’,[[53]](#footnote-53) or as ‘cost-effective’,[[54]](#footnote-54) there were positive outcomes for disabled people.[[55]](#footnote-55)

While policy evaluations tended to focus on the technical merits of sheltered versus supported employment, the wider policy shift from segregated to mainstream employment was a significant force for change in thinking and practice. At the same time, there were some concerns that a shift of emphasis towards rights-based legislation and mainstream jobs might not be sufficient to ensure the realisation of equal rights in practice. For example, reviewing the British Government's Supported Employment Programme in 1998, Hyde concluded that new policies adopted during the 1980s and 1990s were more a response to employer interests than to the interests of disabled people and that market deregulation risked abandoning disabled people to the disabling social relations of a competitive capitalist labour market.[[56]](#footnote-56)

Hodges-Aeberhard and Raskin, writing in 1997, advocated affirmative action to promote the employment of disabled people, and suggested that the exclusion of disabled people from employment was a product of deeply institutionalised discrimination and that:

prohibiting discrimination is often insufficient to eliminate the *de facto* practice. Positive measures, then, may be seen as steps which are set out to eliminate and make good any *de facto* inequalities, thereby enabling members of groups suffering from discrimination or disadvantage to work in all sectors of activity and at all levels of responsibility.[[57]](#footnote-57)

Within the emergent rights-based model, epitomised by the ADA, the emphasis is on anti-discrimination legislation and the transformative potential of the open labour market. However, just as non-discrimination legislation failed to deliver equal employment opportunities or outcomes for women[[58]](#footnote-58), this approach alone is insufficient to ensure equal opportunities for disabled people. For example, in 1997 Yelin noted that the raised expectations of disabled people following the adoption of the ADA had to be balanced against job insecurity in US labour markets, where disabled women were likely to be particularly disadvantaged.[[59]](#footnote-59) Much concern was also evident in the early years of implementation of the ADA, from 1990 in the USA, that neither employers nor the courts were well versed in what ‘reasonable adjustment’ really meant in the context of the workplace, and that they would focus more on technical adjustments than on the social context of workplaces and work groups.[[60]](#footnote-60)

To summarise, despite differing political origins and policy traditions, there are some important parallels in the development of compensatory and rights-based approaches to supporting the employment of disabled people. There is a sense in which both take a somewhat unquestioning view of the positive role attributed to paid employment as a social status in capitalist economies (and the social devaluation of those who do not or cannot work on an equal basis with others). For example, echoing the themes outlined at the beginning of this chapter, Burkhauser argues that there is unlikely to be any real progress towards independence in any sphere until there is a culture shift in accepting that disabled people ‘can and should be expected to work’.[[61]](#footnote-61) This raises some difficult questions about whether public policy should ever assume that everyone must seek work without a corresponding revision of what valued work means.[[62]](#footnote-62)

## Factors affecting employment

As noted above and at the beginning of this chapter, political discourse often conveys employment as a precondition for successful participation in adult society, and as a means to both social status and security.[[63]](#footnote-63) Increasing the employment participation of disabled people has been credited also with bringing benefits to wider society, since disabled people’s cost to the economy may be lower and their economic contribution greater when they are in paid work.[[64]](#footnote-64) However, it is also clear that the long-standing marginalisation of disabled people from full participation and equality in working life has deep roots in societal attitudes, institutionalised discrimination, and environmental barriers [[65]](#footnote-65)

A number of social and physical barriers have been identified that affect the opportunity of disabled people’s to obtain employment. For example, the willingness of employers to hire disabled employees is often cited as a key factor hampering equality of opportunity, particularly in relation to direct recruitment discrimination in small private sector firms, and this may indicate a need for public policies that promote equality through public education and positive information messages. Access to an effective employment support system, previous experience of having disabled employees, or personal interaction with disabled people have been shown to increase the willingness of employers to hire a disabled person.[[66]](#footnote-66) From the perspective of disabled workers, the existence of negative societal attitudes, fear of stigmatisation, low expectations, fears of rejection or being labelled as unproductive are amongst the factors which can hinder employment.[[67]](#footnote-67) The attitudes of employers and co-workers are clearly important in shaping social barriers to equality employment opportunities, but there are physical barriers too. The accessibility of the built environment, transport systems and information technologies is also of critical importance for employment. The availability of reasonable accommodations in the work place, vocational rehabilitation and training, transition programmes, flexible working conditions, on-the-job support and job quality are amongst the factors that influence employment rates of disabled persons.[[68]](#footnote-68)

In his writings on the social model of disability, Oliver highlighted how disability, and our responses to it, are shaped by interactions between the mode of production and social values attached to the impaired body.[[69]](#footnote-69) Thus, the industrial revolution and factory production methods gave rise to new ways of working and new types of worker, whereby mechanised manufacture became more common than agricultural work and the requirements imposed on workers, such as the ability to operate new machines, became more standardised. In this way, Oliver and others argued that the impaired body became increasingly devalued in a competitive and routinised labour market geared to employer expectations of an average productive worker. The globalisation of industrial capital has disseminated such assumptions widely[[70]](#footnote-70) and Kemp argues that technological developments have intensified the importance of higher level qualifications and skills, while the demand for low-skilled workers has declined, further impacting on disabled people who are more likely to be educationally marginalised.[[71]](#footnote-71)

Changes in future markets may offer new opportunities for disabled adults to participate in economically productive labour. For example, much hope has been placed on the potential impact of technology and flexible working in post-Fordist modes of production.[[72]](#footnote-72) However, technologies are not isolated from the prevailing relations of production, and technology alone can be no guarantor of successful employment. As, Michailakis notes, ‘technological optimism’ often overlooks the embeddedness of technologies within economic, social and cultural contexts.[[73]](#footnote-73) Similarly, Light questions uncritical approaches to the role of technology in achieving the employment goals of the Americans with Disabilities Act, expressing concern that technological developments in the information age may actually subvert progressive policies.[[74]](#footnote-74) Thus, Levine and Nourse show how an increased reliance on information technology within competitive US labour markets works against the provision of job opportunities for young people with learning difficulties.[[75]](#footnote-75) Rapid economic change therefore brings with it both new opportunities and new forms of exclusion.[[76]](#footnote-76)

## Conclusion

The policy discourse on disability and employment has clearly shifted, from traditional narratives of paternalism and compensation towards arguments based on social inclusion and employment rights. Yet the challenge of achieving full participation and equality in employment by disabled people remains very great for policy makers. Despite the widespread implementation of non-discrimination provisions in law, there has been relatively little demonstrable improvement in overall levels of employment for disabled people[[77]](#footnote-77). The same is true for the operation of employment quota schemes over a much longer period.[[78]](#footnote-78) There is some evidence that various combinations of ALMPs create better employment outcomes than any single approach[[79]](#footnote-79), and that there is a need to address both social and physical barriers to employment. More widely there is still a concern amongst disability advocates that the way in which we conceptualise work expectation in relation to disability also needs to change – or that a more fundamental re-assessment of what work means is required in order to achieve an inclusive labour market.

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